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16 Attorneys for Plaintiff
BRYAN PRINGLE

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **SOUTHERN DIVISION**

21 BRYAN PRINGLE, an individual,) Case No. SACV 10-1656 JST(RZx)
22 Plaintiff,) **REQUEST FOR JUDICIAL**
23 v.) **NOTICE IN CONNECTION WITH**
24 WILLIAM ADAMS, JR.; STACY) **DEFENDANTS' MOTION TO**
25 FERGUSON; ALLAN PINEDA; and) **DISMISS FIRST AMENDED**
26 JAIME GOMEZ, all individually and) **COMPLAINT, MOTION TO**
collectively as the music group The Black) **STRIKE AND MOTION FOR**
Eyed Peas, *et al.*,) **MORE DEFINITE STATEMENT**
27 Defendants.) DATE: January 24, 2011
TIME: 10:00 a.m.
CTR: 10A

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1 Plaintiff Bryan Pringle hereby requests, pursuant to Rule 201 of the Federal
2 Rules of Evidence, that the Court take judicial notice of the following fact, which is
3 not subject to reasonable dispute:

4 On January 18, 2011, in the action captioned Ebony Latrice Batts, *et al.* v.
5 William Adams, Jr., *et al.*, Case No. CV10-8123-JFW(RZx) in the U.S. District
6 Court for the Central District of California, the Court filed the ORDER DENYING
7 MOTION OF DEFENDANTS STACY FERGUSON P/K/A FERGIE,
8 HEADPHONE JUNKIE PUBLISHING, LLC AND EMI APRIL MUSIC
9 PUBLISHING, INC. FOR A MORE DEFINITE STATEMENT AND TO STRIKE
10 ALLEGATIONS IN COMPLAINT and ORDER DENYING DEFENDANTS
11 WILLIAM ADAMS, ALLAN PINEDA, AND JAIME GOMEZ, ALL
12 INDIVIDUALLY AND COLLECTIVELY AS THE MUSIC GROUP THE BLACK
13 EYED PEAS; JAIME MUNSON A/K/A POET NAME LIFE; WILL.I.AM MUSIC,
14 LLC; TAB MAGNETIC PUBLISHING; CHERRY RIVER MUSIC CO.; AND
15 JEEPNEY MUSIC, INC.’S MOTION TO STRIKE PORTIONS OF PLAINTIFFS’
16 COMPLAINT, OR IN THE ALTERNATIVE, MOTION TO DISMISS, a copy of
17 which is attached to this Request as Exhibit “A.”

18 It is appropriate for the Court to take judicial notice of the fact listed above
19 pursuant to Rule 201(b)(2) of the Federal Rules of Evidence because the fact is
20 capable of accurate and ready determination by resort to sources whose accuracy
21 cannot be reasonably questioned.

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1 The filing listed above can be determined by reference to the records of the
2 U.S. District Court for the Central District of California.

3
4 Dated: January 20, 2011 Dean A. Dickie (appearing *Pro Hac Vice*)
5 Kathleen E. Koppenhoefer (appearing *Pro Hac Vice*)
6 MILLER, CANFIELD, PADDOCK AND STONE,
7 P.L.C.

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11 George L. Hampton IV (State Bar No. 144433)
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14 By: /s/ Dean A. Dickie
15 Dean A. Dickie

16 Attorneys for Plaintiff
17 BRYAN PRINGLE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 10-8123-JFW (RZx)**

Date: January 18, 2011

Title: Ebony Latrice Batts, et al. -v- William Adams, Jr., et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

S. Eagle
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS (IN CHAMBERS):

ORDER DENYING MOTION OF DEFENDANTS STACY FERGUSON P/K/A FERGIE, HEADPHONE JUNKIE PUBLISHING, LLC AND EMI APRIL MUSIC PUBLISHING, INC. FOR A MORE DEFINITE STATEMENT AND TO STRIKE ALLEGATIONS IN COMPLAINT [filed 12/13/10; Docket Nos. 42 and 43]; and

ORDER DENYING DEFENDANTS WILLIAM ADAMS, ALLAN PINEDA, AND JAIME GOMEZ, ALL INDIVIDUALLY AND COLLECTIVELY AS THE MUSIC GROUP THE BLACK EYED PEAS; JAIME MUNSON A/K/A POET NAME LIFE; WILL.I.AM MUSIC, LLC; TAB MAGNETIC PUBLISHING; CHERRY RIVER MUSIC CO.; AND JEEPNEY MUSIC, INC.'S MOTION TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINT, OR IN THE ALTERNATIVE, MOTION TO DISMISS [filed 12/13/10; Docket No. 44]

On December 13, 2010, Defendants Stacy Ferguson p/k/a Fergie, Headphone Junkie Publishing, LLC and EMI April Music Publishing, Inc. (collectively, the "Ferguson Defendants") filed a Motion for a More Definite Statement and to Strike Allegations in Complaint [Docket Nos. 42 and 43]. On December 13, 2010, Defendants William Adams, Allan Pineda, and Jaime Gomez, all individually and collectively as the music group The Black Eyed Peas; Jaime Munson a/k/a Poet Name Life; will.i.am music, llc; Tab Magnetic Publishing; Cherry River Music Co.; and Jeepney Music, Inc. (collectively, the "Adams Defendants") filed a Notice of Joinder of the Ferguson Defendants' Motion for a More Definite Statement and to Strike Allegations in Complaint [Docket

No. 45]. On January 3, 2011, Plaintiffs Ebony Latrice Batts a/k/a Phoenix Phenom and Manfred Mohr (collectively, "Plaintiffs") filed their Opposition [Docket No. 51]. On January 10, 2011, the Ferguson Defendants filed a Reply [Docket No. 52].

On December 13, 2010, the Adams Defendants filed a Motion to Strike Portions of Plaintiffs' Complaint, or in the Alternative, Motion to Dismiss [Docket No. 44]. On December 13, 2010, Defendants UMG Recordings, Inc. and Interscope Records (collectively, "UMG Defendants") filed a Joinder in Motion to Strike Portions of Plaintiffs' Complaint, or in the Alternative, Motion to Dismiss filed by the Adams Defendants [Docket No. 47]. On January 3, 2011, Plaintiffs filed their Opposition [Docket No. 50]. On January 10, 2011, the Adams Defendants filed a Reply [Docket No. 55]. On January 10, 2011, the UMG Defendants filed a Notice of Joinder in the Adams Defendants' Reply [Docket No. 56].

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for January 24, 2011 is hereby vacated and these matters taken off calendar. After considering the moving, opposing, and reply papers and the arguments therein, the Court rules as follows:

I. Factual and Procedural History

On October 28, 2010, Plaintiffs filed a Complaint against the Ferguson Defendants and the Adams Defendants (collectively, "Defendants"), alleging a single claim for relief for copyright infringement. In their Complaint, Plaintiffs allege that Defendants' song, "Boom Boom Pow" infringes Plaintiffs' copyright in the song "Boom Dynamite."

In response, the Ferguson Defendants filed a Motion for a More Definitive Statement and to Strike Allegations in Complaint, in which they seek, pursuant to Rule 12(e) and (f) of the Federal Rules of Civil Procedure: (1) an order for a more definite statement; and (2) an order striking several impertinent and immaterial allegations that appear in Plaintiffs' Complaint.

The Adams Defendants filed a Motion to Strike Portions of Plaintiffs' Complaint, or in the Alternative, Motion to Dismiss, in which they seek: (1) an order striking certain allegations in the Complaint pursuant to Rule 12(f) because these allegations are redundant, immaterial, impertinent, and/or scandalous; or, in the alternative (2) an order dismissing the Complaint for failure to comply with Rule 8(a)(2).

II. Discussion

A. The Ferguson Defendants' Motion for a More Definite Statement and to Strike Allegations in Complaint

1. The Ferguson Defendants' Motion to Strike Certain Allegations in Complaint Should be Denied.

In their Motion for a More Definite Statement and to Strike Allegations in Complaint, the Ferguson Defendants seek, in part, an order striking certain allegations in the Complaint, pursuant

to Rule 12(f), because these allegations are immaterial and/or impertinent. Rule 12(f) provides that “on motion made by a party [] before responding to the pleading,” the Court “may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “‘Immaterial’ matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded . . . ‘Impertinent’ matter consists of statements that do not pertain, and are not necessary, to the issues in question.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil 2d*, § 1382, pp. 706-07, 711 (1990)), *rev’d. on other grounds by Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994). “‘Redundant’ allegations are those that are needlessly repetitive or wholly foreign to the issues involved in the action.” *California Dept. of Toxic Substances Control v. Alco Pacific, Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002). “Motions to strike are generally regarded with disfavor because of the limited importance of pleading in federal practice, and because they are often used as a delaying tactic.” *Id.*; see also *Clement v. American Greetings Corp.*, 636 F. Supp. 1326, 1332 (S.D. Cal. 1986) (Motions to strike are “generally viewed with disfavor and not frequently granted.”). “Given their disfavored status, courts often require ‘a showing of prejudice by the moving party’ before granting the requested relief.” *Id.* (quoting *Securities & Exchange Comm’n v. Sands*, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995)). “In exercising its discretion, the court views the pleadings in the light most favorable to the non-moving party, and resolves any doubt as to the relevance of the challenged allegations or sufficiency of a defense in defendant’s favor. This is particularly true if the moving party can demonstrate no resulting prejudice.” *Id.* (internal citations omitted).

In this case, the Court concludes that, given Plaintiffs’ “compliance with at least the minimum standard of the Federal Rules, the disfavor with which motions to strike are viewed, and the fact that the court may strike matter prejudicial to defendants from the pleadings at any time upon its own initiative,” and the lack of prejudice demonstrated by the Ferguson Defendants, the Ferguson Defendants’ motion to strike is denied. *Clement v. American Greetings Corp.*, 636 F.Supp. at 1334.

2. The Ferguson Defendants’ Motion for a More Definite Statement Should be Denied.

In their Motion for a More Definite Statement and to Strike Allegations in Complaint, the Ferguson Defendants seek, pursuant to Rule 12(e), an order requiring Plaintiffs to specify which Defendants are involved in certain allegations in the Complaint. Under Rule 12(e), “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired.” Fed. R. Civ. P. 12(e). “A Rule 12(e) motion is proper only where the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being asserted.” *Sagan v. Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). “Motions for a more definite statement are viewed with disfavor and are rarely granted because of the minimal pleading requirements of the Federal Rules.” *Id.*; see also *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1461 (C.D. Cal. 1996) (“[A] motion for a more definite statement must be considered in light of the liberal pleading standards of Rule 8(a).”).

Pursuant to Rule 8(a), claimants are only required to set forth “a short and plain statement

of the claim showing that [they are] entitled to relief.” Fed. R. Civ. P. 8(a). “Parties are expected to use discovery, not the pleadings, to learn the specifics of the claims being asserted.” *Sagan*, 874 F. Supp. at 1077. “In particular, where the information sought by the moving party is available and/or properly sought through discovery [a motion for a more definite statement] should be denied.” *Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal. 1981).

In this case, the Court concludes that Plaintiffs’ Complaint is not so vague or ambiguous that the Ferguson Defendants cannot reasonably prepare an answer to the Complaint. Accordingly, the Ferguson Defendants’ motion for a more definite statement is denied.

B. The Adams Defendants’ Motion to Strike Portions of Plaintiffs’ Complaint, or in the Alternative, Motion to Dismiss

1. The Adams Defendants’ Motion to Strike Certain Allegations in the Complaint Should be Denied.

In their Motion to Strike Portions of Plaintiffs’ Complaint, or in the Alternative, Motion to Dismiss, the Adams Defendants seek, in part, an order striking certain allegations in the Complaint pursuant to Rule 12(f) because these allegations are redundant, immaterial, impertinent, and/or scandalous. As stated above with respect to the Ferguson Defendants’ motion, the Court concludes that, given Plaintiffs’ “compliance with at least the minimum standard of the Federal Rules, the disfavor with which motions to strike are viewed, and the fact that the court may strike matter prejudicial to defendants from the pleadings at any time upon its own initiative,” and the lack of prejudice demonstrated by the Adams Defendants, the Adams Defendants’ motion to strike is denied. *Clement v. American Greetings Corp.*, 636 F.Supp. at 1334.

2. The Adams Defendants’ Motion to Dismiss for Failure to Comply with Rule 8(a)(2) Should be Denied.

In their Motion to Strike Portions of Plaintiffs’ Complaint, or in the Alternative, Motion to Dismiss, the Adams Defendants seek, in the alternative, an order dismissing Plaintiffs’ Complaint for failure to comply with Rule 8(a)(2) because Plaintiffs’ Complaint is verbose, redundant, and speculative. Rule 8(a)(2) requires a pleading to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” In *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969), the Ninth Circuit discussed a court’s ability to dismiss a complaint for failure to comply with Rule 8(a)(2). The Ninth Circuit stated, in part:

The failure of a complaint to state a claim upon which relief can be granted is usually dealt with by a motion made under Rule 12(b)(6), while the need for supplying a more definite statement is ordinarily brought before the court by a motion invoking Rule 12(e). However, in an aggravated case a district court has discretion to dismiss an action for failure to comply with the requirement of Rule 8(a)(2). See *Corcoran v. Yorty*, 347 F.2d 222 (9th Cir. 1965); *Agnew v. Moody*, 330 F.2d 868, 870-871 (9th Cir. 1964). But, as exemplified by *Corcoran* and *Agnew*, a dismissal for a violation under Rule 8(a)(2), is usually confined to instances in which the complaint is so “verbose, confused and redundant that its true substance, if any, is well disguised.” *Corcoran*, 347 F.2d at 223.

In this case, the Court concludes that Plaintiffs' Complaint is not so "verbose, confused and redundant that its true substance, if any is well disguised." Given the Adams Defendants' familiarity with the extensive history of this dispute including the prior lawsuit filed in the Northern District of Illinois and the pending Motion for Preliminary Injunction, any argument that the Adams Defendants cannot reasonably prepare an answer to the Complaint borders on the frivolous. Accordingly, the Adams Defendants' motion to dismiss for failure to comply with Rule 8(a)(2) is denied.

III. Conclusion

Accordingly, the Ferguson Defendants' Motion for a More Definite Statement and to Strike Allegations in Complaint is **DENIED**, and the Adams Defendants' Motion to Strike Portions of Plaintiffs' Complaint, or in the Alternative, Motion to Dismiss is **DENIED**. Defendants shall file an answer to the Complaint by January 28, 2011.

IT IS SO ORDERED.

CERTIFICATE OF SERVICE

1 On January 20, 2011, I electronically filed the foregoing REQUEST FOR
2 JUDICIAL NOTICE IN CONNECTION WITH DEFENDANTS' MOTION TO
3 DISMISS FIRST AMENDED COMPLAINT, MOTION TO STRIKE AND
4 MOTION FOR MORE DEFINITE STATEMENT using the CM/ECF system which
5 will send notification of such filing to the following registered CM/ECF Users:

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29 I am unaware of any attorneys of record in this action who are not registered
30 for the CM/ECF system or who did not consent to electronic service.

1 I certify under penalty of perjury under the laws of the United States of
2 America that the foregoing statements are true and correct.

3 Dated: January 20, 2011 /s/Colin C. Holley

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