

BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612-4414

1 **BRYAN CAVE LLP**
Jonathan Stuart Pink, California Bar No. 179685
2 jonathan.pink@bryancave.com
3161 Michelson Drive, Suite 1500
3 Irvine, California 92612-4414
4 Telephone: (949) 223-7000
5 Facsimile: (949) 223-7100

5 **BRYAN CAVE LLP**
Sara Ahmed, California Bar No. 223549
6 sara.ahmed@bryancave.com
120 Broadway, Suite 300
7 Santa Monica, California 90401-2386
8 Telephone: (310) 576-2100
9 Facsimile: (310) 576-2200

9 Attorneys for Defendants
HENRY GARFIELD a/k/a HENRY
10 ROLLINS, an individual; KEITH MORRIS;
GARY MCDANIEL a/k/a CHUCK
11 DUKOWSKI, an individual; DENNIS
PAUL CADENA a/k/a DEZ CADENA, an
12 individual; JOHN WILLIAM STEVENSON
a/k/a BILL STEVENSON, an individual;
13 and STEPHEN PATRICK O'REILLY a/k/a
STEPHEN EGERTON, an individual

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16
17 SST RECORDS, INC., a Texas
corporation; GREGORY R. GINN, an
18 individual,

19 Plaintiffs

20 vs.

21 HENRY GARFIELD a/k/a HENRY
ROLLINS, an individual; KEITH
22 MORRIS; GARY MCDANIEL a/k/a
CHUCK DUKOWSKI, an individual;
23 Dennis PAUL CADENA a/k/a DEZ
CADENA, an individual; JOHN
24 WILLIAM STEVENSON a/k/a BILL
STEVENSON, an individual; and
25 STEPHEN PATRICK O'REILLY
a/k/a STEPHEN EGERTON, an
26 individual, and DOES 1 through 10,
inclusive,

27 Defendants.
28

Case No. CV13-5579 DDP (MANx)

Hon. Dean D. Pregerson

**DECLARATION OF CHUCK
DUKOWSKI**

Date: October 7, 2013
Time: 10:00 a.m.
Courtroom: 3

Complaint Filed: March 20, 2012
Trial Date: Not Assigned

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1 I, Gary Arthur McDaniel, professionally known as "Chuck Dukowski,"
2 declare as follows:

3 1. I am a former partner, employee and founding member of the punk
4 band, Black Flag, a California general partnership ("Black Flag"). I likewise am a
5 former partner, employee and founding member of SST Records, a California
6 general partnership ("SST Records"). I have personal knowledge of the facts
7 hereinafter stated. If called as a witness and sworn, I could and would competently
8 testify thereto.

9 2. In 1977, I joined plaintiff Greg Ginn and co-defendant Keith Morris as
10 a member of the band, Panic. Ginn, Morris and I changed the name of our band to
11 "Black Flag."

12 3. While this name, and the logo for the band were suggested by the artist,
13 Raymond Pettibon, both were decided upon by all members of the band, not
14 unilaterally chosen by Mr. Ginn or anyone else.

15 4. Indeed, at all times the band behaved as a statutory partnership. This
16 was the case from its inception in 1978 until its demise in 1986. That is, all
17 decisions were made by majority-rule as in a partnership. All funds earned were
18 evenly distributed as in a partnership. Further, tax filings were made on behalf of
19 the partnership. See, for example our California tax filing of 1984, a true and correct
20 copy of which is attached hereto as Exhibit "A," and our federal tax filing made in
21 1984, a true and correct copy of which is attached hereto as Exhibit "B."

22 5. In 1981 and 1982 Greg Ginn asked if I would file our 1981 and 1982
23 taxes in my own name, listing Black Flag as my own "sole proprietorship." I agreed
24 to do so. True and correct copies of these tax filings are attached hereto as Exhibit
25 "C."

26 6. While Mr. Ginn would have this court believe that he was Black Flag's
27 "leader," such a characterization is overstated and misleading. I and others had
28 equally prominent leadership roles in the partnership. For example, I was the band's

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1 public spokesperson for many years. By way of example, I appeared alone on
2 behalf of Black Flag on the network television show "Two on the Town," hosted by
3 Tom Snyder and Rona Barrette. In addition, I was Black Flag's tour manager for
4 the entire time that I performed with the band, and continued as its manager even
5 after I was leveraged out and stopped playing in the group.

6 7. Likewise, while Mr. Ginn would have this court believe that he alone
7 wrote the majority of the band's songs, this too is inaccurate and misleading. Our
8 band wrote dozens of songs during its existence. A lesser number were deemed to
9 be popular "hits." These however were the songs that served to help identify the
10 band and its releases. Thus, while Mr. Ginn wrote a number of Black Flag songs, he
11 did not write the majority of the songs that popularized the band Black Flag, and
12 branded it in the public, the press, the media, concert promoters, and peer artists.

13 8. For purposes of understanding the foregoing, the following is a
14 breakdown of the songs written in whole or in party by me and my co-defendants:

15 A. Henry Garfield (p/k/a Henry Rollins):

- 16 Damaged I
- 17 Forever Time
- 18 The Swinging Man
- 19 Nothing Left Inside
- 20 Three Nights
- 21 Wound Up
- 22 Rat's Eyes
- 23 The Bars
- 24 My Ghetto
- 25 Swinging Man
- 26 Three Nights
- 27 Nothing Left Inside
- 28 Wound Up

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- 1 Rat's Eyes
- 2 Family Man
- 3 Salt On A Slug
- 4 Hollywood Diary
- 5 Let Your Fingers Do The Walking
- 6 Shed Reading (Rattus Norvegicus)
- 7 No Deposit - No Return
- 8 Armageddon Man
- 9 This Is Good
- 10 I'm The One
- 11 Sinking
- 12 This Is Good
- 13 Drinking And Driving
- 14 White Hot
- 15 In My Head
- 16 Drinking And Driving

17 B. Keith Morris:

- 18 I Don't Care
- 19 Wasted

20 C. John William Stevenson (p/k/a Bill Stevenson):

- 21 Now She's Black
- 22 Out Of This World

23 D. Dez Paul Cadena:

- 24 Thirsty And Miserable
- 25 Damaged 1
- 26 Machine

27 E. Chuck Dukowski:

- 28 No More

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- 1 Padded Cell
- 2 You Bet I've Got Something Personal Against You
- 3 American Waste
- 4 I've Heard It Before
- 5 Machine
- 6 My War
- 7 Modern Man

8 9. By my calculation, I and the other co-defendants wrote or co-wrote
 9 approximately 36 (or nearly 44%) of the 83 songs released by Black Flag between
 10 1978 and 1986. Of these 36 songs, I personally wrote three of the most identifiable
 11 songs ever released by the band, including "My War" and "American Waste."
 12 These songs remained in the Black Flag live set long after my departure from the
 13 band. This fact demonstrates the importance of my creative contribution to Black
 14 Flag and the Black Flag brand. As an indication of its ongoing popularity, "My
 15 war" ranks as one of the most played back tracks on YouTube. See
 16 <http://www.youtube.com/watch?v=DTYJAguaHRk>. Furthermore, it is worth
 17 nothing that more versions of "My War" have been posted on YouTube than any
 18 song written by Mr. Ginn.

19 10. Not surprisingly, it is my understanding that Mr. Ginn continues to
 20 perform in his 2013 incarnation of "Black Flag" many of the songs that I wrote.

21 11. The recognition and professional standing of Black Flag increased
 22 exponentially once co-defendant Henry Rollins (Henry Garfield) joined the
 23 partnership in 1981.

24 12. Mr. Rollins became a prominent and well respected member of Black
 25 Flag, and his ascending celebrity propelled the band's renown. Consistent with past
 26 practices, Mr. Rollins became a full member of the Black Flag partnership. Notably,
 27 and to this point, when individuals left the band, there was no formal or expressed
 28 dissolution of their partnership interest. Indeed, no steps nor efforts were ever taken

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1 to formally dissolve the partnership. The band remained – and to this day remains
2 (with the exception of my participation, as discussed below) – a statutory
3 partnership in need of a winding up and distribution of assets. This fact informs, at
4 least in part, the defendants’ counterclaim.

5 13. While Black Flag was well known in punk rock circles, we performed
6 at a time when the music industry had yet to fully embrace independent musical acts
7 such as ours. This fact underlies our notoriety and helps explain why the band
8 evolved as a equal partnership. That is, keeping the band afloat required constant
9 attention by every member to direct, manage, and facilitate its endeavors and
10 ascending status. We worked 18-20 hours a day, for days, weeks, and months on
11 end. We slept on the floor of our band office beginning and ending each day with
12 band business. No one took vacations or days off; we dedicated our entire existence
13 to the formation and management of Black Flag’s business affairs.

14 14. No single person was capable handling all of the tasks required of the
15 partnership. It was not a one-man-show, nor could it have been. Mr. Ginn himself
16 has acknowledged this repeatedly. Rather, it was our combined effort and skills, as
17 musicians and business partners, that enabled us to form one of the most respected
18 punk bands of the era.

19 15. After I stopped playing as a touring member of Black Flag, I continued
20 my involvement as the band’s manager and agent. I likewise remained a partner in
21 SST Records until divesting my interest by written instrument in 1989. As to the
22 Black Flag partnership, so far as I know, I am the only former band member to have
23 ever divested his interest therein. I did this by way of a settlement agreement with
24 SST Records and Mr. Ginn dated September 4, 2007.

25 16. My long term involvement as a partner in SST Records provides me
26 with a detailed knowledge of the company’s business practices and assets. I am
27 aware of the fact that SST Records never owned, nor did it have any exclusive right
28 to, the Black Flag trademarks. Nor were these rights exclusively held by Greg Ginn.

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1 Rather, they belonged to the group as a whole: to the Black Flag statutory
2 partnership. The Black Flag partnership never assigned these rights to SST Records,
3 nor did it assign them to Greg Ginn, individually. To the extent the Black Flag
4 trademarks were not otherwise abandoned through non-use, naked license or a
5 failure to police the mark, it is my understanding that they remained with the
6 partnership to the extent the individual partners continued to use those marks
7 individually or in concert with one another. However, there is ample reason to
8 believe that the marks were abandoned due to a plethora of unlicensed uses over the
9 years, none of which the Black Flag partnership ever bothered to stop. By way of an
10 example, see the pages collectively attached hereto as Exhibit "D."

11 17. I also know, based on my long term involvement as a partner in SST
12 Records, that the band Black Flag never entered into a written recording agreement
13 with SST Records. In addition, none of its individual writers ever assign to SST
14 Records their copyright interest in the musical compositions listed above. The only
15 exception to this is the assignment I made in 2007 pursuant to the above-mentioned
16 settlement agreement. Nonetheless, it has recently come to the attention of myself
17 and my co-defendants that Mr. Ginn, on behalf of his now-wholly owned company,
18 SST Records, perpetrated a fraud on the U.S. Copyright Office by registering these
19 same works exclusively in the name of SST Records. See, for example, the
20 documents collectively attached hereto as Exhibit "E." SST Records had no right to
21 register these works in its own name as they were neither created as works made for
22 hire nor assigned by the authors to SST Records. These registrations should have
23 been made in the name of the appropriate authors. As such, this fraudulent
24 registration also informs the defendants' counterclaims.

25 18. Among the inaccuracies set forth by plaintiffs in this lawsuit, and in
26 their motion in particular, is the proposition that Mr. Ginn – and no one else – has
27 continuously performed as Black Flag since 1978. It is a well documented fact that
28 Mr. Ginn quit Black Flag in 1986. Given the then-membership, Mr. Ginn's self-

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1 imposed departure left Mr. Rollins as the last remaining member of Black Flag.

2 19. Since 1986, Mr. Ginn has performed as Black Flag no more frequently
3 than other former members, including my co-defendants. This, too, is consistent
4 with my belief that the name "Black Flag" was a partnership asset, and not an asset
5 belonging only Mr. Ginn. In addition, that name does not and never did belong to
6 SST Records.

7 20. To expand on the foregoing, even Black Flag's Wikipedia page, which
8 appears to have been written by or on behalf of Mr. Ginn, states that between 1983
9 and 2003, Mr. Ginn performed as Black Flag on only three occasions, one of which
10 was at a small, local bar. On each of these three occasions, Mr. Ginn was
11 accompanied by my co-defendant, Dez Cadena, a member of the Black Flag
12 partnership.

13 21. In contrast, former-Black Flag co-defendants Keith Morris, Bill
14 Stevenson and I performed as Black Flag at the Goldenvoice 30th Anniversary show
15 at the Santa Monica Civic Auditorium on December 18, 2011, a venue that seats
16 3,500 people. That show, which also included co-defendant Stephen Egerton, was
17 introduced to the audience as a "Black Flag" reunion (although we indicated that it
18 should not be referred to in this manner). While Mr. Ginn may characterize that
19 show as impromptu, it was not. We were invited to perform and had accepted that
20 invitation several weeks prior to the show.

21 22. The success of this December 2011 show ignited in myself and my co-
22 defendants a desire to again play the music we had written, and upon which we had
23 built a following. Based on this desire, by July 11, 2012 my band mates and I had
24 decided to play as a Black Flag "tribute band." A tribute band is commonly
25 understood as one that plays the music of another, well known musical act.
26 Examples include: "Mini Kiss," playing the music of "Kiss"; "Dred Zeppelin,"
27 playing the music of "Led Zeppelin"; "God Save the Queen," playing the music of
28 Queen and "Zappa Playing Zappa," playing the music of Frank Zappa.

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1 23. Similarly, we selected the name “Flag,” but have never represented
2 ourselves to be the band, Black Flag. Nor are we the only Black Flag tribute band.
3 Others include Black on Black and Black Fag, just to name a couple. There are also
4 a number of bands that use the word “Flag” in their name. These include, but are
5 not limited to:

- 6 • White Flag
- 7 • Antiflag
- 8 • Flag of Democracy
- 9 • Red Flag
- 10 • Wild Flag
- 11 • Dixie Flag Band
- 12 • Green Flag
- 13 • Pirate Flags
- 14 • Yellow Flag
- 15 • She Waves the Flag
- 16 • Tattered Flag
- 17 • Wild Flag (the fictional name of the band on television show,
18 Portlandia)

19 24. By September 15, 2012, Flag had received an offer to perform at a
20 festival called “Punk Rock Bowling” to be held on May 27, 2013. By October 15,
21 2012 we received an offer to play three shows in Canada. On November 26, 2012,
22 we hired Dimitri Coates as our manager. On November 28, 2012, we began
23 planning for our “Moose Lodge” gig (which we played on April 18, 2013). Around
24 this same time, Mr. Coates received an offer for Flag to appear and perform at the
25 February 2013 South-by-Southwest festival (“SXSW”) in Austin, Texas. See
26 Exhibit “F” attached hereto.

27 25. On January 9, 2013, Flag created its first agent-and-media one sheet. A
28 true and correct copy of the same is attached hereto as Exhibit “G.” On January 11,

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1 2013, Flag launched its Facebook page. At or about this same time, it became well
2 known in certain circles of the music industry that my co-defendants and I intended
3 to perform in concert. On January 25, 2013, FLAG officially announced the tour it
4 had planned throughout 2012. It is my belief that this information quickly made its
5 way to Mr. Ginn, who responded by publicly announcing two weeks later that he
6 would tour as Black Flag along with former Black Flag member, Ron Reyes.

7 26. On various dates between March 5, 2013 and April 17, 2013, Flag
8 rehearsed for its inaugural show. That show took place on April 18, 2013 at the
9 Redondo Beach "Moose Lodge." Since that time, Flag has continued to tour both in
10 and outside the United States. Moreover, we are scheduled to continue touring
11 through the end of November 8, 2013. It is my understanding that Mr. Ginn began
12 performing again in May 2013, and has done so intermittently since that time.

13 27. Notably, from the time Flag and Black Flag began their independent
14 tours, there has been considerable media coverage of this fact in major news outlets.
15 These have included articles in:

- 16 • The New York Times
- 17 • The Los Angeles Times
- 18 • Rolling Stone Magazine
- 19 • The Las Vegas Review-Journal
- 20 • The LA Weekly
- 21 • The Pittsburg Post Gazette
- 22 • The Pittsburg Tribune- Review, and
- 23 • The Oakland Press.

24 True and correct copies of these and other articles are collectively attached hereto as
25 Exhibit "H." Moreover, from the time Flag and Black Flag began their independent
26 tours to the present, there has not—to my knowledge – ever been any instance of
27 consumer confusion as to which band was which. Indeed, Flag promotes itself by
28 reference to the actual names of its performers, e.g. Morris. Cadena, Morris,

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1 Stevenson, Egerton and myself, coupled with the phrase “playing the music of Black
2 Flag.” A true and correct copy of a photograph of a Flag poster evidencing this is
3 attached hereto as Exhibit “I.”

4 28. Moreover, ticket prices for our live concerts can run between \$40 and
5 \$60 dollars. In my experience, our audience tends to be music aficionados and fans
6 of the music my co-defendants and I created. Based on this, it is my belief and
7 understanding that those who purchase our tickets do not make spontaneous, point
8 of purchasing decisions as they might when buying a pack of gum. They are paying
9 significant amount of money and know what they are buying. Indeed, it is my belief
10 and understanding that these purchasers are not merely seeking a performance of
11 Black Flag music; they intend to see performances of that music by Messrs. Cadena,
12 Morris, Stevenson, Egerton and myself. They know that Flag is the band that they
13 have come to see, and not the band Black Flag. And they certainly know that they
14 are not coming to see Mr. Ginn. If they wanted to see Mr. Ginn perform, they have
15 the option to see his performance of Black Flag music. In short, it is not confusion
16 that brings the audience to our shows, it is a choice by sophisticated music
17 aficionados.

18 29. As indicated above, the four bars design logo used to designate the
19 band Black Flag have been parroted and co-opted by many. See Exhibit “D.” To
20 the extent the Black Flag partnership retains an interest in that trademark, and to the
21 extent this court would otherwise find that plaintiffs have any valid interest therein
22 to this day, they abandoned that mark due to a failure to police it. The same is
23 largely true with the name “Black Flag” as well, which has been registered by the
24 Japanese company, Neighborhood Co., Ltd. See Exhibit “J” hereto. Similarly,
25 while plaintiffs claim to have some lock on the font used in the Black Flag name,
26 that font is not, and never, exclusively used by Black Flag. As shown in the
27 documents collectively attached as Exhibit “K,” that font is used by others,
28 including other musical artists. Finally, the fact that many other bands continue to

1 trademark infringement against the defendants for their use of that word in their own
2 name.

3 30. Notwithstanding my departure from the SST Records Partnership in
4 1989, SST Records continued to owe me royalties for my contribution to the music
5 of Black Flag. When Mr. Ginn repeatedly failed to pay that money, I sued him and
6 SST Records. The parties ultimately resolved that dispute on September 4, 2007.

7 31. Pursuant to that settlement, SST Records and Mr. Ginn affirmed their
8 commitment to pay me certain royalties due on a bi-annual basis. SST Records and
9 Mr. Ginn have breached that agreement almost immediately, thereby forcing me to
10 bring a series of legal actions against them. The most recent of these actions was
11 filed in 2012, and ultimately resolved by settlement just a few months ago, in July
12 2013.

13 32. Further, despite that settlement, Mr. Ginn and SST Records are again
14 (or still) in breach for the payment period extending from January 1, 2012 to the
15 present. This too informs, in part, the counterclaim asserted herein. Specifically, in
16 addition to seeking money owed to me pursuant to that agreement, the repeated and
17 continued breach by SST Records and Mr. Ginn nullified my obligation to perform
18 under the its terms.

19 I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct.

21 Executed this 31 day of September at Minneapolis MN

22 
23 Gary Arthur McDaniel

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