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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

BRYAN PRINGLE, an individual,
 Pringle,
 v.
 WILLIAM ADAMS, JR.; STACY
 FERGUSON; ALLAN PINEDA; and
 JAIME GOMEZ, all individually and
 collectively as the music group The
 Black Eyed Peas, et al.,
 Defendants.

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

**RESPONSE TO PLAINTIFF'S
 MOTION TO RE-FILE
 TRANSCRIPTS UNDER SEAL
 (DOC. 202); REQUEST TO
 CONTINUE HEARING DATE**

Complaint Filed: October 28, 2010
 Trial Date: March 27, 2012
 Motion Hearing Date: January 23, 2012
 Time: 10:00 A.M.
 Courtroom: 10A

1 Defendants Shapiro, Bernstein & Co, Inc., Frederic Riesterer and David
2 Guetta respectfully submit this Response to Plaintiff’s Motion to Withdraw
3 Transcripts and Re-File Portions of Previously Filed Transcripts Under Seal (Doc.
4 202.)

5 **INTRODUCTION**

6 Defendants support the relief requested in Plaintiff’s motion—*i.e.*,
7 withdrawing the Highly Confidential deposition transcripts which Plaintiff filed on
8 the public docket, and allowing Plaintiff to re-file portions of those transcripts under
9 seal. Defendants submit this response, however, to correct certain false assertions
10 and spurious accusations in Plaintiff’s motion.

11 Defendants also respectfully request that, should the Court deem it necessary
12 to hold a hearing on this motion, that such hearing be continued for one week, from
13 January 23, 2012 to January 30, 2012, so as to coincide with the previously
14 scheduled hearing on Defendants’ Motion for Summary Judgment. (*See* Doc. 183).

15 **BACKGROUND**

16 Although Plaintiff initially refused to enter any confidentiality stipulation
17 governing the handling of sensitive personal information and business trade secrets
18 produced in discovery, following extended discussion and negotiation among
19 counsel (*see, e.g.*, Dickstein Decl., Ex. A), Plaintiff later agreed to enter a Stipulated
20 Protective Order Re Confidential Information dated June 15, 2011 (“Stipulated
21 Protective Order”) (Doc. 137).

22 The Stipulated Protective Order allowed any party to designate documents or
23 information produced during discovery as either “Confidential”—in which case
24 distribution of the material was to be limited to counsel and the parties—or as
25 “Highly Confidential – Attorneys Eyes Only”—in which case distribution was to be
26 limited to counsel, and not the parties themselves. (*Id.* at ¶¶ 7.2, 7.3.) The
27 Stipulated Protective Order also provided that “[r]egardless of whether or not any
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1 portion of a transcript, video or recording of a deposition taken in this action has
2 been designated as ‘CONFIDENTIAL’ or ‘HIGHLY CONFIDENTIAL,’” the
3 parties were prohibited from publicly disseminating deposition transcripts, including
4 by posting them to a publicly available website. (*Id.* at ¶ 7.4.)

5 Any party had the right to challenge another party’s confidentiality
6 designation within a reasonable period of time after production, by first meeting and
7 conferring with the producing party, and then, if the matter could not be resolved
8 amicably, raising the dispute with the Court pursuant to Local Rules 37-1 through
9 37-3. (*Id.* at ¶ 6.1-6.3.) The Stipulated Protective Order provided, however, that
10 “[u]ntil the Court rules on the challenge, all parties shall continue to afford the
11 material in question the level of protection to which it is entitled under the
12 Producing Party’s designation.” (*Id.*)

13 On June 23, 2011, Magistrate Judge Zarefsky declined to endorse the
14 Stipulated Protective Order, but noted that “[t]he parties may, of course, enter into a
15 stipulation among themselves, without a court order[.]” (Doc. 139 at 13) (citing
16 Fed. R. Civ. P. 29.) Plaintiff does not dispute that the parties continued to be bound
17 by the Stipulated Protective Order even after Magistrate Judge Zarefsky’s decision.
18 Indeed, on July 7, 2011, Plaintiff acknowledged that “[t]he parties are bound by a
19 stipulated protective order that requires that we abide by the designations unless we
20 move to challenge those designations with the Court.” (Dickstein Decl., Ex. B.)

21 **RESPONSE TO PLAINTIFF’S MOTION TO SEAL**

22 Contrary to Plaintiff’s insinuations, the above discussion makes clear that the
23 Stipulated Protective Order was not the product of any undue influence exerted by
24 Defendants on Plaintiff, but rather the result of a professional, arms-length
25 negotiation in which Plaintiff’s experienced litigation counsel voluntarily agreed to
26 enter the Stipulated Protective Order and expressly agreed to continue to be bound
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1 by the Stipulated Protective Order even after Magistrate Judge Zarefsky declined to
2 endorse it as a Court Order.¹

3 Defendants' insistence that Plaintiff agree to the Stipulated Protective Order
4 before confidential documents were produced and depositions taken was merely an
5 attempt to prevent the dissemination of sensitive trade secret and personal
6 information. This was entirely justified given Plaintiff's counsel's demonstrated
7 desire to publicize this lawsuit, as evidence by their posting a press release about the
8 suit on their firm's website,² and given the celebrity status of many of the
9 Defendants. If Plaintiff was not inclined to agree to the Stipulated Protective Order,
10 however, any one of the three law firms representing him at the time could have
11 sought to compel discovery from Defendants notwithstanding the absence of a
12 protective order. But they did not, and instead voluntarily agreed to the Stipulated
13 Protective Order.

14 Defendants' fear that Plaintiff would publicize their confidential information
15 was validated when, in connection with Plaintiff's opposition to Defendants' Motion
16 for Summary Judgment, Plaintiff filed complete³ deposition transcripts of each and
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18 ¹ Plaintiff's rush to sling mud at Defendants has led his counsel to misrepresent the
19 facts of this case. Although Plaintiff's counsel states that "Defendant Riesterer had
20 not yet produced a single document as of June 30[, 2011]" (December 21, 2011
21 Declaration of Dean Dickie [Doc. 202-1] ¶ 4), counsel's own letter dated June 20,
22 2011—ten days earlier—acknowledged receipt of dozens of documents from
23 Defendant Riesterer, including over a *gigabyte* of data related to his independent
creation of the music for "I Gotta Feeling," as well as over 7,000 pages of
documents from co-defendant Shapiro Bernstein. (Dickstein Decl., Ex. D.)

24 ² See <http://www.millercanfield.com/news-854.html>.

25 ³ Although Plaintiff's counsel swore that only "portions" of the deposition
26 transcripts were being filed (December 19, 2011 Declaration of Dean Dickie [Doc.
27 197] ¶¶ 2-9, 15), he in fact filed the *entire* transcripts, in violation of the Court's
28 October 29, 2010 Initial Standing Order that "entire deposition transcripts . . . shall
not be submitted in opposition to a motion for summary judgment." (Doc. 4 at §
10(c)(ii).)

1 every individual Defendant on the public ECF docket—notwithstanding the fact that
2 those transcripts had been designated Highly Confidential and Plaintiff cited to only
3 a few selected pages of those transcripts in their opposition papers. (*See* Exhibits B,
4 C, D, G, H, N to the December 19, 2011 Declaration of Dean Dickie [Doc. 197] and
5 Exhibits 22, 42, 46 to the December 19, 2011 Declaration of Bryan Pringle [Doc.
6 198].)⁴ Those deposition transcripts contain not only proprietary trade secret
7 business information and cited to confidential financial documents, but also
8 contained several of the Defendants’ sensitive non-public personal information.

9 If Plaintiff believed a Highly Confidential designation was somehow
10 improper for these, or any other materials, his recourse under the Stipulated
11 Protective Order was to raise the issue with counsel, and then the Court if necessary.
12 Indeed, Plaintiff’s counsel did meet and confer with Defendants’ counsel with
13 respect to certain other confidentiality designations, and the parties were able to
14 amicably resolve the dispute. (Dickstein Decl., Ex. C.) Yet, when it came to
15 Defendants’ deposition transcripts, Plaintiff never challenged Defendants’ Highly
16 Confidential designations, and chose instead to unilaterally violate the Stipulated
17 Protective Order by filing the full deposition transcripts on the public docket,
18 without even raising the issue with Defendants first.

19 The Court should also be aware that Plaintiff’s counsel has violated the
20 Stipulated Protective Order in other ways as well, by giving Mr. Pringle copies of
21 not only Defendants’ deposition transcripts, but also their proprietary music creation
22 files, all of which were designated as Highly Confidential without challenge. Given
23 Mr. Pringle’s demonstrated ability and willingness to incorporate portions of
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25 ⁴ Although Defendants filed selected portions of their deposition transcripts in
26 connection with their Motion for Summary Judgment, the Stipulated Protective
27 Order does not prohibit a party’s use of its own Confidential or Highly Confidential
28 information, and Defendants filed only the transcript pages that were necessary to
support Defendants’ motion.

1 Defendants' music into his own sound recordings (*See* Defs.' Br. in Support of
2 Summary Judgment [Doc. 159-2] at 12 n.8) (noting that Plaintiff incorporated
3 portions of "I Gotta Feeling" into at least one version of his song that he posted to
4 the Internet), Defendants were more than justified in designating those proprietary
5 music files as Highly Confidential in order to prevent them from falling into Mr.
6 Pringle's hands.

7 Plaintiff has since agreed to remove all confidential deposition transcripts
8 from Mr. Pringle's possession, and Defendants have requested that counsel do the
9 same with respect to Defendants' music files. Defendants are hopeful that Plaintiff
10 will agree to do so, without need for further involvement by the Court.

11 CONCLUSION

12 In sum, while it is highly regrettable that Plaintiff chose to violate the parties'
13 Stipulated Protective Order by filing full copies of Highly Confidential deposition
14 transcripts on the public docket, and by giving these and other Highly Confidential
15 materials to Mr. Pringle, Defendants support Plaintiff's instant motion to withdraw
16 the deposition transcripts from the public docket, and to allow Plaintiff's to re-file
17 portions of those transcripts under seal.

18 Defendants also respectfully request that, should the Court deem it necessary
19 to hold a hearing on this motion, that such hearing be continued from January 23,
20 2012 to January 30, 2012, so as to coincide with the previously scheduled hearing
21 on Defendants' Motion for Summary Judgment.

22 Dated: December 30, 2011

LOEB & LOEB LLP

24 By: /s/ Tal E. Dickstein

25 Donald A. Miller
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