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12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **SOUTHERN DIVISION**

16 BRYAN PRINGLE, an individual, 17                                   Plaintiff, 18                                   v. 19 WILLIAM ADAMS, JR.; STACY 20 FERGUSON; ALLAN PINEDA; and 21 JAIME GOMEZ, all individually and collectively as the music group The Black Eyed Peas, <i>et al.</i> , 22                                   Defendants.	) Case No. SACV 10-1656 JST(RZx) ) ) <b>MEMORANDUM OF POINTS</b> ) <b>AND AUTHORITIES IN SUPPORT</b> ) <b>OF PLAINTIFF BRYAN</b> ) <b>PRINGLE'S MOTION FOR</b> ) <b>VOLUNTARY DISMISSAL OF</b> ) <b>CERTAIN PARTIES WITHOUT</b> ) <b>PREJUDICE AND WITHOUT</b> ) <b>FEES OR COSTS</b> ) ) DATE: May 7, 2012 ) TIME: 10:00 a.m. ) CTRM: 10A
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1 **I. INTRODUCTION**

2 Plaintiff Bryan Pringle respectfully requests that this Court issue an order,  
3 pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, allowing the  
4 voluntary dismissal of defendants William Adams, Jr., Stacy Ferguson, Allan Pineda  
5 and Jaime Gomez, all individually and collectively as the music group the Black  
6 Eyed Peas, UMG Recordings, Inc., Interscope Records, EMI April Music, Inc.,  
7 Headphone Junkie Publishing, LLC, Will.I.Am, LLC, Jeepney Music, Inc., Tab  
8 Magnetic Publishing, Cherry River Music Co., and Square Rivoli Publishing  
9 (collectively, “Remaining Defendants”) without prejudice and without requiring  
10 Plaintiff to pay Remaining Defendants’ attorneys’ fees or costs.

11 Plaintiff brought this action against Remaining Defendants, as well as against  
12 defendants David Guetta, Frederic Riesterer, Rister Editions and Shapiro, Bernstein  
13 & Co. (“Shapiro, Bernstein”), on October 28, 2010, with a First Amended Complaint  
14 filed on November 19, 2010.

15 On November 17, 2011, Mr. Guetta, Mr. Riesterer and Shapiro, Bernstein filed  
16 a motion for summary judgment in this action. On March 30, 2012, this Court  
17 granted the motion for summary judgment filed by Guetta, Riesterer and Shapiro,  
18 Bernstein. Plaintiff intends to appeal the summary judgment order, and believes that  
19 a voluntary dismissal of Remaining Defendants without prejudice will most  
20 efficiently bring this action to conclusion in this Court and allow it to move forward  
21 on the appellate level.

22 Plaintiff voluntarily dismissed Rister Editions from this action on April 5,  
23 2012, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

24 Plaintiff has not previously dismissed any action based upon or including the  
25 same claim in any Court of the United States or of any state. Although three  
26 defendants in this action prevailed on a motion for summary judgment, Remaining  
27 Defendants have not brought a motion for summary judgment, nor did they join in  
28 the motion for summary judgment brought by Mr. Guetta, Mr. Riesterer and Shapiro,

1 Bernstein. Plaintiff seeks voluntary dismissal of Remaining Defendants without  
2 prejudice in order to best conserve the resources of the Court and the parties pending  
3 Plaintiff's appeal of the grant of summary judgment in favor of Mr. Guetta, Mr.  
4 Riesterer and Shapiro, Bernstein.

5 **II. COMPLIANCE WITH MEET AND CONFER REQUIREMENT**

6 This motion is made following the conference of counsel pursuant to Local  
7 Rule 7-3 which took place on April 5, 2012. The details of the conference of counsel  
8 are set forth in the Declaration of Kathleen E. Koppenhoefer filed concurrently  
9 herewith. *See* Declaration of Kathleen E. Koppenhoefer, at ¶¶ 2-4.

10 **III. ARGUMENT**

11 **A. Plaintiff Should Be Permitted to Voluntarily Dismiss the Remaining**  
12 **Defendants Without Prejudice**

13 Rule 41 (a)(2) provides:

14 Except as provided in Rule 41(a)(1), an action may be  
15 dismissed at the plaintiff's request only by court order, on  
16 terms that the court considers proper. If a defendant has  
17 pleaded a counterclaim before being served with the  
18 plaintiff's motion to dismiss, the action may be dismissed  
19 over the defendant's objection only if the counterclaim can  
20 remain pending for independent adjudication. Unless the  
order states otherwise, a dismissal under this paragraph (2)  
is without prejudice.

21 Fed R. Civ. P. 41(a)(2). The purpose of this rule is "to permit a plaintiff to dismiss  
22 an action without prejudice so long as the defendant will not be prejudiced or  
23 unfairly affected by dismissal." *Creative Labs, Inc. v. Orchid Tech.*, No. C 93-3429  
24 TEH, 1997 U.S. Dist. LEXIS 13911, at \*3 (N.D. Cal. Sept. 12 1997) (citing  
25 *Stevedoring Svcs. of Am. v. Armilla Intern.*, 889 F.2d 919, 921 (9th Cir. 1989). Thus,  
26 "[a] district court should grant a motion for voluntary dismissal under Rule 41(a)(2)  
27 unless a defendant can show that it will suffer some plain legal prejudice as a result."  
28 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001); *see also Creative Labs*, 1997

1 U.S. Dist. LEXIS 13911, at \*3 (citing *Hamilton v. Firestone Tire & Rubber*, 679  
2 F.2d 143, 145 (9th Cir. 1982)). Notably, plain legal prejudice “does not result simply  
3 because a suit remains unresolved” or because “the defendant faces the prospect of a  
4 second lawsuit.” *Mitchell-Jones v. Menzies Aviation, Inc.*, No. C10-1190JLR, 2011  
5 U.S. Dist. LEXIS 82889, at \*5 (W.D. Wash. Jul. 28, 2011) (citing *Westlands Water*  
6 *Dist. v. U.S.*, 100 F.3d 94, 97 (9th Cir. 1996)).

7 None of Remaining Defendants has pleaded a counterclaim. Although  
8 Remaining Defendants have answered Plaintiff’s complaint and undergone  
9 discovery, neither the fact that Remaining Defendants may have incurred substantial  
10 expense, nor the fact the Remaining Defendants may have begun trial preparations  
11 constitutes a legal prejudice warranting the denial of a Rule 41(a)(2) motion.

12 *Hamilton*, 679 F.2d at 145-46. In addition, there has been no adjudication on the  
13 merits as to these Remaining Defendants.

14 Further, dismissal without prejudice will not prejudice Remaining Defendants,  
15 nor cause them legal harm. Instead, it will streamline the litigation process by  
16 allowing Plaintiff to more immediately appeal the grant of summary judgment in  
17 favor of defendants Mr. Guetta, Mr. Riesterer, and Shapiro Bernstein.

18 Finally, should Plaintiff prevail on appeal, a voluntary dismissal will not have  
19 caused Remaining Defendants legal prejudice—no “prejudice to some legal interest,  
20 some legal claim, [or] some legal argument.” *Westlands*, 100 F.3d at 97. Any  
21 subsequent suit by Plaintiff will be based on the same facts, and there will be nothing  
22 precluding Remaining Defendants from then raising during the subsequent litigation  
23 the same arguments and defenses that they may have been preparing. Indeed, all of  
24 the preparation conducted by Remaining Defendants in this action would be  
25 necessary to them in any subsequent action brought by Plaintiff.

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1           **B. The Court Should Not Condition Plaintiff’s Voluntary Dismissal of**  
2           **Remaining Defendants on Payment of Attorneys’ Fees or Costs.**

3           Plaintiff anticipates that Remaining Defendants will ask this Court to condition  
4 any voluntary dismissal upon the payment of Remaining Defendants’ attorneys’ fees  
5 and/or costs. Such a request has no merit under the circumstances. In connection  
6 with a Rule 41(a)(2) motion, “a defendant is entitled only to recover ... attorneys  
7 fees or costs for work which is not useful in continuing litigation between the  
8 parties.” *Koch v. Hankins*, 8 F.3d 650, 652 (9th Cir. 1993); *see also Westlands*, 100  
9 F.3d at 97.

10           As noted above, should Plaintiff re-file suit against Remaining Defendants, the  
11 efforts that Remaining Defendants have made in this action will be relevant and  
12 useful in any subsequent action. Remaining Defendants will be able to use the  
13 discovery they have conducted and any trial preparations they have made.  
14 Accordingly, an award of attorneys’ fees and costs is not appropriate, and should not  
15 be a condition of dismissal.

16           **IV. CONCLUSION**

17           The Court should allow Plaintiff to voluntarily dismiss the Remaining  
18 Defendants without prejudice, and without paying attorneys’ fees or costs.

19  
20 Dated: April 6, 2012

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25           By: /s/ Dean A. Dickie  
26                     Dean A. Dickie

27                     Attorneys for Plaintiff  
28                     BRYAN PRINGLE

## CERTIFICATE OF SERVICE

1           On April 6, 2012, I electronically filed the foregoing MEMORANDUM OF  
2 POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF BRYAN  
3 PRINGLE'S MOTION FOR VOLUNTARY DISMISSAL OF CERTAIN PARTIES  
4 WITHOUT PREJUDICE AND WITHOUT FEES OR COSTS using the CM/ECF  
5 system which will send notification of such filing to the following registered  
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1 I am unaware of any attorneys of record in this action who are not registered  
2 for the CM/ECF system or who did not consent to electronic service.

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

5 Dated: April 6, 2012 /s/Colin C. Holley

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