Dean A. Dickie (appearing *Pro Hac Vice*)
Dickie@MillerCanfield.com
Kathleen E. Koppenhoefer (appearing *Pro Hac Vice*)
Koppenhoefer@MillerCanfield.com
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
225 West Washington Street, Suite 2600
Chicago, IL 60606
Telephone: 312.460.4200
Facsimile: 312.460.4288

George L. Hampton IV (State Bar No. 144433)
ghampton@hamptonholley.com
Colin C. Holley (State Bar No. 191999)
cholley@hamptonholley.com
HAMPTONHOLLEY LLP
2101 East Coast Highway, Suite 260
Corona del Mar, California 92625
Telephone: 949.718.4550
Facsimile: 949.718.4580

Attorneys for Plaintiff
BRYAN PRINGLE

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, *et al.*, Defendants.	Case No. SACV 10-1656 JST(RZx) **JOINT STATUS REPORT**

Plaintiff Bryan Pringle ("Plaintiff"), Non-Moving Defendants, William Adams, Stacy Ferguson, Allan Pineda, Jaime Gomez, individually and professionally known as the musical group The Black Eyed Peas, Tab Magnetic Publishing, Headphone Junkie Publishing, LLC, will.i.am. music, llc, Jeepney Music, Inc.,

Cherry River Music Co., EMI April Music, Inc., UMG Recordings, Inc., Interscope Records (the "Remaining Defendants" or "Nonmoving Defendants"), and defendants Frederic Riesterer, David Guetta, and Shapiro, Bernstein & Co., Inc. (the "Moving Defendants), and non-party Rister Editions, jointly submit the following status report report pursuant to the Court's Order dated April 2, 2012:

I. PLAINTIFF'S STATEMENT

A. Purpose of Joint Status Report

Defendants David Guetta, Frederick Riesterer, and Shapiro Bernstein moved for summary judgment on November 19, 2011 (Dckt. No 159). The Remaining Defendants did not move for summary judgment and did not file a joinder. On April 2, 2012, the Court entered summary judgment on behalf of the Moving Defendants. On the same date, the Court entered an order directing the parties to submit a joint status report regarding the status of the case, specifically as to the Remaining Defendants. On April 3, the parties engaged in correspondence regarding these issues and they later participated in a phone call on April 5, 2012 to further discuss the issues pursuant to the Court's directive.

B. Status of Remaining Defendants

As the Court noted in its April 2, 2012 Order, several defendants remain in the case after the Court's ruling on the Moving Defendants' Motion for Summary Judgment. During the parties' April 5, 2012 telephone call, Plaintiff indicated his intent to dismiss Defendant Rister Editions pursuant to Fed. R. Civ. P. 41(a)(1) because that Defendant never filed an answer nor moved for summary judgment. Counsel for Rister Editions indicated that they opposed the motion and would cross-move for dismissal with prejudice. Plaintiff filed a notice of voluntary dismissal on April 5, 2012 pursuant to Rule 41(a)(1) (Dckt No. 261).

During the April 5 meet and confer, the Remaining Defendants proposed that Plaintiff stipulate to entry of judgment against him pursuant to Rule 56(f). Plaintiff declined to volunteer to entry of judgment against him given the adverse impact it

could have on Plaintiff's appellate rights, and further because it is Plaintiff's position Rule 56(f) does not contemplate action by the parties but rather, the Court's own action. This position was communicated to the Remaining Defendants. Instead, Plaintiff indicated that he would move for a voluntary dismissal against the Remaining Defendants under Rule 40(a)(2). Defendants objected to Plaintiff's motion and instead proposed entering a stipulation for summary judgment with added language to the effect that the parties agreed that the stipulation would not adversely impact Plaintiff's appellate rights. Plaintiff declined this proposal as well due to the same concern that Plaintiff's voluntary entry of judgment against him could adversely impact his appellate rights, regardless of the parties' stipulation. The parties fully discussed the matter and are unable to reach an agreement on this point. Because the parties are at an impasse, further efforts to meet and confer will not lessen the burden of litigation on either the parties or the Court.

On April 6, 2012, Plaintiff moved for voluntary dismissal of the Remaining Defendants pursuant to Rule 40(a)(2) (Dckt. No. 262). The Remaining Defendants who are represented by Bryan Cave object to the motion. It is their position that the parties never engaged in a meet and confer regarding the Rule 40(a)(2) motion during the April 5 call and that Plaintiff did not did not wait ten days before moving.

It is Plaintiff's contention that during the April 5 call, Plaintiff's counsel specifically advised all parties that Plaintiff would be making the motion, and outlined the basis for it. The parties then meaningfully discussed the motion, and each party provided their position. The Remaining Defendants indicated that they would not agree to the motion. Ms. Cenar further indicated that in opposition to Plaintiff's motion, the Remaining Defendants would instead ask the Court to dismiss them with prejudice, with all costs and attorneys fees to be awarded to them.

C. Rule 11 Motion

The only other matter currently pending is the Motion for Rule 11 Sanctions, made by Defendants Riesterer, Guetta and Shapiro Bernstein and joined by the

Adams Defendants. That motion is set for oral argument on April 16, 2012 at 10:00 a.m.

D. Other Matters

The Moving Defendants have advised Plaintiff that it is their intention to make a motion for attorneys' fees under Section 505 of the Copyright Act, and for sanctions under the Court's inherent power and 28 U.S.C. § 1927. The Moving Defendants and Plaintiff have met and conferred on this motion and Plaintiff indicated his intent to oppose the motion.

II. NONMOVING DEFENDANTS' STATEMENT

A. Procedural Posture

On November 17, 2011, Defendants David Guetta, Frederic Riesterer, and Shapiro, Bernstein & Co., Inc. ("Guetta Defendants") filed a motion for summary judgment as to Pringle's copyright infringement claim. Dkt. No. 159. Joinders to that motion were not filed by Defendants William Adams; Stacy Ferguson; Allan Pineda; and Jaime Gomez, all individually and collectively as the music group The Black Eyed Peas; will.i.am Music, llc; Tab Magnetic Publishing; Cherry River Music Co.; Headphone Junkie Publishing, LLC; Jeepney Music, Inc.; EMI April Music, Inc. ("Adams Defendants"). Nor were they filed by UMG Recordings, Inc.; and Interscope Records (UMG, Interscope and the Adams Defendants collectively referred to herein as the "Nonmoving Defendants"). Joinders were not filed because the same law and facts applied to all defendants in this action. As such, if the Court granted the motion as to the Guetta Defendants, it could readily grant summary judgment as to the Nonmoving Defendants *sua sponte* under Fed. R. Civ. P. 56(f) and its inherent authority.

On March 30, 2012, the Court granted that motion based on substantive grounds as well as Pringle's willful spoliation of evidence. *See* Dkt. No. 252. On the same day, the Court issued a further Order requiring the parties to file a joint report as to the status of the case, "specifically as to the remaining defendants." Dkt.

No. 256. On April 5, 2012, the parties held a telephonic conference pursuant to the Court's Order with a view to bringing this case to a close and preparing the instant report.

B. Summary Judgment Should Be Granted to All Defendants in This Action

It is the position of the Nonmoving Defendants that, based on the Court's March 30, 2012 Order Granting the Guetta Defendants' Motion for Summary Judgment, and Pringle's own recognition that his case cannot currently proceed as to any of the remaining defendants, the Court should grant summary judgment as to each remaining defendant. The Court has the power to do this under Fed. R. Civ. P. 56(f) and under its inherent authority. *See* Fed. R. Civ. P. 56(f)(1) (providing that "[a]fter giving notice and a reasonable time to respond," district courts may "grant summary judgment for a nonmovant."); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (courts have power to enter summary judgment *sua sponte*, "so long as the losing party was on notice that [he] had to come forward with all of [his] evidence."); *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009) ("[T]he district court has the authority to decide an issue on summary judgment *sua sponte*, if the losing party was on notice to come forward with its evidence.").

In ruling on summary judgment, the Court held that Pringle had no standing to pursue a claim of copyright infringement with respect to "Take a Dive (Dance Version)." Order Granting Defendants' Motion for Summary Judgment [Dkt. No. 252], dated Mar. 30, 2012, at 8. In addition, the Court held that "no reasonable juror could find substantial similarity between 'Take a Dive' and 'I Gotta Feeling.'" *Id.* at 11 (citation omitted). Finally, the Court held that outright dismissal was "an appropriate sanction for Pringle's willful despoliation of his Hard Drives." *Id.* at 17. These specific rulings are not unique to the Guetta Defendants; they apply equally to all of the defendants in this action, and as such, it is simply not possible for Pringle to pursue his claim against any of the remaining defendants.

Summary judgment can be granted here as to the Nonmoving defendants because Pringle was on notice to come forward with evidence of his copyright infringement claim as to all defendants in this action, and not just those who moved for summary judgment. The same facts and analyses with respect to the elements for copyright infringement apply to all of the parties Pringle alleges were direct infringers.[1] The parties that Pringle alleged were indirect infringers should also be dismissed, because there is no secondary liability for copyright infringement without an underlying act of direct infringement. *See A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 n. 2 (9th Cir. 2001) ("There can be no contributory infringement by a defendant without direct infringement by another.") (citation omitted); *UMG Recordings, Inc. v. Sinnott*, 300 F. Supp. 2d 993, 997 (E.D. Cal. 2004) ("Establishing direct copyright infringement by the MFM vendors is a prerequisite to both the contributory and vicarious copyright infringement claims.").

Several courts have granted summary judgment *sua sponte* as to nonmoving defendants in copyright cases, including the other case brought by Pringle's counsel against the Nonmoving Defendants. *See, e.g., Batts et al. v. Adams et al.*, CV10-8123 JFW (RZx) (C.D. Cal. 2010), Order Granting Defendants' Motion for Summary Judgment [Dkt. No. 251], dated Oct. 21, 2011, at 9 (granting motion for summary judgment as to single claim for copyright infringement as to moving defendants and *sua sponte* as to all non-moving defendants "because the identical law and facts on the issue of substantial similarity appl[ied] to all of the

---

[1] As discussed in the summary judgment and Rule 11 briefing, the instrumental portion of "I Gotta Feeling" was composed by David Guetta and Frederic Riesterer, and it was subsequently acquired by the Adams Defendants pursuant to a written agreement. The Adams Defendants contributed to "I Gotta Feeling" by providing lyrics and concomitant vocal melodies. Given that only the instrumental portions of "I Gotta Feeling" and "Take a Dive (Dance Version)" are relevant to this action, the Court's rulings on lack of standing (as to "Take a Dive (Dance Version)" and lack of substantial similarity (as to the original version of "Take a Dive"), and thus, the exoneration of the Guetta Defendants, necessarily means that there can be no infringement by the Adams Defendants.

defendants."); *Whitehead v. Paramount Pictures Corp.*, 53 F. Supp. 2d 38, 54 (D.D.C. 1999) (granting summary judgment *sua sponte* as to non-moving defendants in copyright infringement case because "the causes of action against the individual and corporate defendants are identical and are premised on the same theory—that the films BAD COMPANY and MISSION: IMPOSSIBLE and the novelization of the film MISSION: IMPOSSIBLE infringed the copyright of Mr. Whitehead's book—there is no point in requiring the individual defendants to brief and argue the same issues already briefed by the corporate defendants."); *Kalmansohn v. J.M. Productions Co.*, 1988 WL 1517050, at *3 (C.D. Cal. Jul. 18, 1988) (granting summary judgment *sua sponte* as non-moving defendants in copyright infringement case because "the dispositive issues addressed [with respect to the moving party] are identical to those that would be relevant against the other defendants.").

C. Pringle's Rule 41 Motion

Given the Court's summary judgment ruling, the Nonmoving Defendants seek to close this matter with permanency in the most efficient and economic manner possible. As such, during the parties' April 5, 2012 conference concerning the joint status report, the Nonmoving Defendants suggested that the parties stipulate that the Court's Summary Judgment Order would apply equally to the Nonmoving defendants as it does to the moving defendants. Pringle declined that invitation, stating a desire to seek dismissal instead under Fed. R. Civ. P. 41(a)(2) without prejudice, due to the preservation of undisclosed "appellate rights." The Nonmoving Defendants stated that they would oppose such a motion, and asked Pringle's counsel to reconsider their position, especially given that an additional round of briefing would be costly and wholly unnecessary in light of the fact that this matter could be resolved through Fed. R. Civ. P. 56(f) and the Court's inherent authority. The Adams Defendants also stated their intent to seek fees and costs if they were forced to entertain a round of unnecessary briefing. Again, Pringle declined and instead, filed his Rule 41 motion a day after the parties' conference and prior to the

submission of this report.[2] Nevertheless, the Court should—and has the power to—grant summary judgment as to the Remaining Defendants and simply deny Pringle's motion as moot.

It is respectfully submitted that another purpose of Pringle's Rule 41 Motion, which, again, seeks dismissal without prejudice, is simply to prevent the Adams Defendants (or any of the remaining defendants in this action) from attaining prevailing party status when Pringle's claim is inevitably dismissed. *See Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources*, 532 U.S. 598, 603 (2001) ("prevailing party" is one who has been awarded some species of relief by a court); *Bridgeport Music, Inc. v. London Music, U.K.*, 345 F. Supp. 2d 836, 839-40 (M.D. Tenn. 2004) (voluntary dismissal without prejudice does not "constitute the judicially sanctioned change in the parties' legal relationship required by Buckhannon in order for one party to prevail over the other."

A voluntary dismissal without prejudice should not be countenanced here because it will not yield a permanent resolution. Given that: (1) Pringle has been known to file scores of lawsuits (*See* Dkt. No. 253, at pp. 1-2) and (2) his attorneys

---

[2] While the parties did discuss Pringle's contemplated Rule 41 motion during the conference call, that discussion was in response to the Court's directive to prepare a joint status report, in which various options to bring this case to a close were discussed, not a discrete meet and confer for the filing of a Rule 41 Motion. Even if that discussion satisfied the meet and confer requirement of C.D. Cal. L.R. 7-3, the timing requirement of that rule has not been met. Local Rule 7-3 provides that the "conference shall take place at least five (5) days prior to the last day for filing the motion; otherwise, the conference shall take place at least ten (10) days prior to the filing of the motion." Even though none of the Nonmoving Defendants consented to the filing of Pringle's motion prior to the time period set forth in L.R. 7-3, Pringle filed it the day after the parties' conference call concerning the joint status report. This appears to be nothing more than a thinly veiled attempt to get a motion on file prior to date the joint status report was to be submitted and/or frustrate the Court's ability to grant summary judgment as to the remaining defendants. Though the hearing date on Pringle's Rule 41 Motion was previously set for May 7, 2012, Pringle has agreed to continue it to accomodate a scheduling conflict of the Adams Defendants' counsel.

have filed multiple lawsuits against the Adams Defendants (including levying unfounded allegations of a conspiracy and violations of Cal. Bus. & Prof. Code § 17200 *et seq.*), there is the very real possibility that Pringle will simply re-file his claim anew. Dismissal without prejudice is improper because Pringle should not be permitted to drag more than a dozen defendants through litigation for more than a year and force them to incur very substantial attorneys' fees and costs and then walk away with impunity when it became clear that he could not proceed with his claim. This is especially so given that the bases upon which the Court granted summery judgment were raised by defense counsel prior to and in the very early stages of litigation. Pringle had every opportunity to seek a Rule 41 dismissal early on, but chose instead to wait until the end and force everybody to incur substantial fees and costs.

Moreover, dismissal without prejudice would be improper here in light of Pringle's spoliation of evidence, saying nothing of his frivolous and counterfactual claim for infringement. It would be a waste of judicial resources (as well as those of the parties) and contravene public policy to permit a spurious claim for which no evidence exists to be filed anew given that the same result would obtain: dismissal. Finally, should summary judgment be granted in favor of the Adams Defendants, they will also seek their costs, including attorneys' fees under 17 U.S.C. § 505, 28 U.S.C. § 1927, and the Court's inherent authority. The Adams Defendants' counsel expressed this intention during the April 5, 2012 conference, but Pringle's counsel refused to discuss it or consider it as a meet and confer (thus requiring a follow-up call), regarding the discussion as premature.

D. Rule 11 Motion

On March 1, 2012, the Guetta Defendants filed a motion for sanctions under Fed. R. Civ. P. 11 against Pringle and his counsel, in which the Adams Defendants joined. That motion is fully briefed and is set for hearing on April 16, 2012.

III. STATEMENT OF NON-PARTY RISTER EDITIONS

Non-party Rister Editions ("Rister") submits this statement in response to the Court's April 2, 2012 Order For Case Status Report concerning the then-remaining Defendants. As the Court will recall, on three separate occasions, Pringle improperly attempted to serve process on Rister, a foreign corporation based in France, by serving process on Shapiro Bernstein in the United States. In quashing Pringle's third such service attempt, the Court granted Rister's motion for attorneys fees under 28 U.S.C. § 1927 for "Plaintiff's decision to disregard this Court's order with regard to its service on Rister [which] amounts to recklessness, and unreasonably and vexatiously multiplied the proceedings[.]" (Apr. 12, 2011 Order, Doc. 126.)

Although the Court once again "order[ed] Plaintiff to serve Rister promptly pursuant to Rule 4(f), as Rister is a foreign corporation" (*id.* at 3), Plaintiff disregarded that Order as well. During the April 5, 2012 conference call, Rister's counsel asked Pringle's counsel whether, during the nearly twelve months since the Court's April 12, 2011 Order, Pringle had properly served Rister. Pringle's counsel gave no audible response. Rister's counsel followed up with an email asking Pringle's counsel for their "position as to when and how Rister Editions has been properly served in this action[.]" Rather than respond to that email and acknowledge their continued disregard of the Court's April 12, 2011 Order, Pringle's counsel proceeded to file a Notice of Dismissal without prejudice under to Rule 41(a). (Doc. 261.)

In light of the Court's entry of summary judgment on grounds that apply to all Defendants, Rister has chosen not to engage in additional costly motion practice to convert Pringle's Notice of Dismissal without prejudice into a dismissal with prejudice for insufficient service of process. Rister nevertheless believed it appropriate to bring to the Court's attention Pringle's counsel's continued disregard of the Court's April 12, 2011 Order and attempt to conceal that disregard through their April 5, 2012 Notice of Dismissal.

Dated: April 10, 2012

Dean A. Dickie (appearing *Pro Hac Vice)*
Kathleen E. Koppenhoefer (appearing *Pro Hac Vice)*
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

George L. Hampton IV (State Bar No. 144433)
Colin C. Holley (State Bar No. 191999)
HAMPTONHOLLEY LLP

By: /s/ Dean A. Dickie
Dean A. Dickie
Attorneys for Plaintiff BRYAN PRINGLE

Dated: April 10, 2012

BRYAN CAVE LLP

By: /s/ Kara E. F. Cenar
Kara E. F. Cenar
Attorneys for Defendants
WILLIAM ADAMS; STACY FERGUSON; ALLAN PINEDA; and JAIME GOMEZ, all individually and collectively as the music group THE BLACK EYED PEAS; will.i.am music, llc; TAB MAGNETIC PUBLISHING; CHERRY RIVER MUSIC CO.; HEADPHONE JUNKIE PUBLISHING, LLC; JEEPNEY MUSIC, INC.; EMI APRIL MUSIC, INC.

Dated: April 10, 2012

LOEB & LOEB LLP

By: /s/ Tal E. Dickstein
Tal E. Dickstein
Attorneys for Non-Party RISTER EDITIONS, and Defendants DAVID GUETTA, FREDERIC RIESTERER and SHAPIRO, BERNSTEIN & CO., INC.

Dated: April 10, 2012

CALDWELL LESLIE & PROCTOR, PC

By: /s/ Linda M. Burrow
Linda M. Burrow
Attorneys for Defendants UMG RECORDINGS INC. and INTERSCOPE RECORDS

CERTIFICATE OF SERVICE

On April 10, 2012, I electronically filed the foregoing JOINT STATUS REPORT using the CM/ECF system which will send notification of such filing to the following registered CM/ECF Users:

Barry I. Slotnick	bslotnick@loeb.com
Donald A. Miller	dmiller@loeb.com, vmanssourian@loeb.com
Tal Efriam Dickstein	tdickstein@loeb.com
Linda M. Burrow	wilson@caldwell-leslie.com, burrow@caldwell-leslie.com, popescu@caldwell-leslie.com, robinson@caldwell-leslie.com
Ryan Christopher Williams	williamsr@millercanfield.com
Kara E. F. Cenar	kara.cenar@bryancave.com
Robert C. Levels	levels@millercanfield.com
Kathleen E. Koppenhoefer	koppenhoefer@millercanfield.com
Rachel Aleeza Rappaport	rrappaport@loeb.com
Jonathan S. Pink	jonathan.pink@bryancave.com, elaine.hellwig@bryancave.com
Dean A. Dickie	dickie@millercanfield.com, smithkaa@millercanfield.com, deuel@millercanfield.com, christensen@millercanfield.com, seaton@millercanfield.com
Edwin F. McPherson	emcpherson@mcphersonrane.com, astephan@mcphersonrane.com
Joseph G. Vernon	vernon@millercanfield.com
James W. McConkey	mcconkey@millercanfield.com
Justin Michael Righettini	justin.righettini@bryancave.com, elaine.hellwig@bryancave.com
Tracy B. Rane	trane@mcphersonrane.com
Thomas D. Nolan	tnolan@loeb.com

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

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

Dated: April 10, 2012 /s/Colin C. Holley

George L. Hampton IV (State Bar No. 144433)
Colin C. Holley (State Bar No. 191999)
HAMPTONHOLLEY LLP
2101 East Coast Highway, Suite 260
Corona del Mar, California 92625
Telephone: 949.718.4550
Facsimile: 949.718.4580