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INC.; EMI APRIL MUSIC, INC.

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

16 BRYAN PRINGLE, an individual,
17 Plaintiff,
18 v.

Case No. SACV10-01656 JST (RZx)
Hon. Josephine Staton Tucker
Courtroom 10A

19 WILLIAM ADAMS, JR.; STACY
FERGUSON; ALLAN PINEDA; and
20 JAIME GOMEZ, all individually and
collectively as the music group the
21 Black Eyed Peas; DAVID GUETTA;
FREDERICK RIESTERER; UMG
22 RECORDINGS, INC.; INTERSCOPE
RECORDS; EMI APRIL MUSIC,
23 INC.; HEADPHONE JUNKIE
PUBLISHING, LLC; WILL.I.AM.
24 MUSIC, LLC; JEEPNEY MUSIC,
INC.; TAB MAGNETIC
25 PUBLISHING; CHERRY RIVER
MUSIC CO.; SQUARE RIVOLI
26 PUBLISHING; RISTER EDITIONS;
and SHAPIRO, BERNSTEIN & CO.,

**OPPOSITION TO MOTION FOR
VOLUNTARY DISMISSAL OF
CERTAIN PARTIES WITHOUT
PREJUDICE AND WITHOUT FEES
OR COSTS**

Date: May 14, 2012
Time: 10:00 a.m.
Dept.: 10A

Complaint Filed: October 28, 2010
Trial Date: August 7, 2012

27 Defendants.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Preliminary Statement**

3 Plaintiff Bryan Pringle’s belated Motion under FED. R. CIV. P. 41(a)(2),
4 comes on the heels of being handed a defense summary judgment that forecloses his
5 copyright infringement and sampling claim as to all Defendants in this action.¹
6 Pringle and his counsel are well aware of that fact, yet Pringle requests that the
7 Court dismiss his claim without prejudice, and without being conditioned on the
8 payment of Defendants’ attorneys’ fees and costs—all in an apparent attempt to
9 minimize his and/or his counsels’ exposure. This is especially egregious given that
10 Defendants devoted significant financial resources defending a claim that was: (1)
11 objectively unreasonable; (2) unprovable given Pringle’s willful despoliation of
12 relevant evidence; and (3) factually impossible, as Pringle himself finally admitted.
13 Instead of entertaining Pringle’s Motion, the Court should enter summary judgment
14 in favor of all Defendants in this action,² thus rendering Pringle’s Motion as moot.
15 If, however, the Court entertains the motion, Defendants respectfully submit that it
16 be granted with prejudice (thereby conferring prevailing party status for recovering
17 attorneys’ fees and costs), or on the condition that Pringle pay the attorneys’ fees
18 and costs he forced the Defendants to incur. Given the Court’s summary judgment
19 rulings, dismissal without prejudice is a vacuous proposition in this case.

20 **Argument**

21 **I. THE COURT SHOULD GRANT SUMMARY JUDGMENT AS TO**
22 **THE NONMOVING DEFENDANTS AND DENY PRINGLE’S**
23 **MOTION AS MOOT**

24 ¹ Pringle’s claims against the Defendants who did not move for summary judgment
25 are based on: (1) the same 1998 musical composition that the Court held was not
26 substantially similar to “I Gotta Feeling” as a matter of law and (2) the same 2010
27 copyright registration that the Court found defective because it was not submitted
with a bona fide deposit copy. Thus, the Court’s ruling on summary judgment
applies to all Defendants.

28 ² The Court should also confirm that the sanction of dismissal for Pringle’s
despoliation of evidence applies to all Defendants in this action.

1 On March 30, 2012, the Court granted the Motion of Defendants David
2 Guetta, Frederic Riesterer, and Shapiro, Bernstein & Co., Inc. (“Guetta
3 Defendants”) for Summary Judgment as to Pringle’s copyright infringement claim.³
4 Specifically, the Court held that Pringle had no standing to pursue a claim of
5 copyright infringement with respect to “Take a Dive (Dance Version)”; that “no
6 reasonable juror could find substantial similarity between ‘Take a Dive’ and ‘I Gotta
7 Feeling’” and finally; that outright dismissal was “an appropriate sanction for
8 Pringle’s willful despoliation of his Hard Drives.” Order Granting Defendants’
9 Motion for Summary Judgment [Dkt. No. 252] (“Summary Judgment Order”), dated
10 Mar. 30, 2012, at 8-17.

11 The Court’s substantive rulings are not unique to the Guetta Defendants; they
12 underscore fundamental defects in Pringle’s claims, and as such, apply equally to all
13 Defendants. In addition, the Court’s Order Dismissing Pringle’s claim for
14 despoliation of evidence, and each of the findings of prejudice, willfulness, and bad
15 faith therein, equally applies to all Defendants. No party could have a fair trial
16 given that Pringle intentionally destroyed his computer hard drives.

17 Based on the Summary Judgment Order, and Pringle’s own recognition that
18 he cannot pursue his claim against any of the Nonmoving Defendants, the Court
19 should reject Pringle’s Rule 41(a)(2) Motion altogether and simply grant summary
20 judgment as to each remaining Defendant. The Court has the power to do this under
21 FED. R. CIV. P. 56(f) and under its inherent authority. *See* FED. R. CIV. P. 56(f)(1)
22 (providing that “[a]fter giving notice and a reasonable time to respond,” district

23 ³ Joinders to that motion were not filed by Defendants William Adams; Stacy
24 Ferguson; Allan Pineda; and Jaime Gomez, all individually and collectively as the
25 music group The Black Eyed Peas; will.i.am Music, llc; Tab Magnetic Publishing;
26 Cherry River Music Co.; Headphone Junkie Publishing, LLC; Jeepney Music, Inc.;
27 EMI April Music, Inc. (“Adams Defendants”). Nor were they filed by UMG
28 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.

1 courts may “grant summary judgment for a nonmovant.”); *see also Celotex Corp. v.*
2 *Catrett*, 477 U.S. 317, 326 (1986) (courts have power to enter summary judgment
3 *sua sponte*, “so long as the losing party was on notice that [he] had to come forward
4 with all of [his] evidence.”); *Corales v. Bennett*,
5 567 F.3d 554 (9th Cir. 2009) (“[T]he district court has the authority to decide an
6 issue on summary judgment *sua sponte*, if the losing party was on notice to come
7 forward with its evidence.”).

8 Summary judgment can—and should—be granted here as to the Nonmoving
9 Defendants because Pringle was on notice to come forward with evidence of his
10 copyright infringement claim as to issues that applied to all Defendants in this
11 action, and not just those who moved for summary judgment. The same facts and
12 analyses with respect to the elements for copyright infringement apply to all of the
13 parties Pringle alleges were direct infringers.⁴ The parties that Pringle alleged were
14 indirect infringers should also be dismissed, because there is no secondary liability
15 for copyright infringement without an underlying act of direct infringement. *See*
16 *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 n. 2 (9th Cir. 2001)
17 (“There can be no contributory infringement by a defendant without direct
18 infringement by another.”) (citation omitted); *UMG Recordings, Inc. v. Sinnott*, 300
19 F. Supp. 2d 993, 997 (E.D. Cal. 2004) (“Establishing direct copyright infringement
20 by the MFM vendors is a prerequisite to both the contributory and vicarious
21 copyright infringement claims.”).

22
23
24 ⁴ As discussed in the Summary Judgment and Rule 11 briefing, the instrumental
25 portion of “I Gotta Feeling” was composed by David Guetta and Frederic Riesterer,
26 and it was subsequently acquired by the Adams Defendants pursuant to a written
27 agreement. The Adams Defendants contributed to “I Gotta Feeling” by providing
28 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 mean that there can be no
infringement by the Adam Defendants.

1 Several courts have granted summary judgment *sua sponte* as to nonmoving
2 defendants in copyright cases, including the other case brought by Pringle’s counsel
3 against the Nonmoving Defendants. *See, e.g., Batts et al. v. Adams et al.*, CV10-
4 8123 JFW (RZx) (C.D. Cal. 2010), Order Granting Defendants’ Motion for
5 Summary Judgment [Dkt. No. 251], dated Oct. 21, 2011, at 9 (granting motion for
6 summary judgment as to single claim for copyright infringement as to moving
7 defendants and *sua sponte* as to all non-moving defendants “because the identical
8 law and facts on the issue of substantial similarity appl[ied] to all of the
9 defendants.”); *Whitehead v. Paramount Pictures Corp.*, 53 F. Supp. 2d 38, 54
10 (D.D.C. 1999) (granting summary judgment *sua sponte* as to non-moving
11 defendants in copyright infringement case because “the causes of action against the
12 individual and corporate defendants are identical and are premised on the same
13 theory—that the films BAD COMPANY and MISSION: IMPOSSIBLE and the
14 novelization of the film MISSION: IMPOSSIBLE infringed the copyright of Mr.
15 Whitehead's book—there is no point in requiring the individual defendants to brief
16 and argue the same issues already briefed by the corporate defendants.”);
17 *Kalmansohn v. J.M. Productions Co.*, 1988 WL 1517050, at *3 (C.D. Cal. Jul. 18,
18 1988) (granting summary judgment *sua sponte* as to non-moving defendants in
19 copyright infringement case because “the dispositive issues addressed [with respect
20 to the moving party] are identical to those that would be relevant against the other
21 defendants.”).

22 Based on the foregoing, the Court should—and has the power to—grant
23 summary judgment as to the Nonmoving Defendants and simply deny Pringle’s
24 Rule 41 Motion as moot. *See, e.g., Steward v. New Chrysler*, 415 Fed. Appx. 632,
25 637-38 (6th Cir. 2011) (affirming grant of defense summary judgment and denying
26 as moot plaintiff’s Rule 41(a)(2) motion); *TXCAT v. Phoenix Group Metals, LLC*,
27 2010 WL 5186824, at *2-3, 6 (S.D. Tex. Dec. 14, 2010) (granting defense summary
28 judgment and denying as moot plaintiff’s Rule 41(a)(2) motion); *Vega v. Wiley*,

1 2008 WL 4371876, at *5 (D. Colo. Sept. 22, 2008) (granting defense summary
2 judgment and denying as moot plaintiff’s Rule 41(a)(2) motion); *Nuss v. Utah*
3 *Orthopaedic Associates, P.C.*, 2011 WL 3328708, at *5 (D. Utah Aug. 2, 2011)
4 (denying Rule 41 motion as moot because court granted defense summary judgment
5 that extinguished plaintiff’s claims); *Boyle v. Molson Coors Brewing Co.*, 2007 WL
6 2688908, at *9 (D.N.J. Sept. 11, 2007) (same); *Wade v. Wooton*, 1993 WL 298715,
7 at *8 (E.D. Pa. Jul. 30, 1993) (same); *see also Wenz v. Rossford Ohio Transp.*
8 *Improvement Dist.*, 392 F. Supp. 931, 939 (N.D. Ohio 2005) (court denied as moot
9 plaintiff’s Rule 41(a)(2) motion in light of its determination that the claim must be
10 dismissed under Rule 12(h)(3) for lack of subject matter jurisdiction).⁵

11 **II. DEFENDANTS WILL SUFFER LEGAL PREJUDICE IF PRINGLE’S**
12 **MOTION IS GRANTED**

13 A decision on whether to allow dismissal under FED. R. CIV. P. 41(a)(2) rests
14 in the court's sound discretion. *Hamilton v. Firestone Tire & Rubber Co., Inc.*, 679
15 F.2d 143, 145 (9th Cir. 1982); *Burnette v. Godshall*, 828 F. Supp. 1439, 1443 (N.D.
16 Cal. 1993), *aff’d sub nom.*, *Burnette v. Lockheed Missles & Space Co.*, 72 F.3d 766
17 (9th Cir. 1995) (federal courts have discretion to require that any dismissal be with
18 prejudice “where it would be inequitable or prejudicial to defendant to allow
19 plaintiff to refile the action.”). When ruling on a Rule 41(a)(2) motion to dismiss
20 without prejudice, “the district court must determine whether the defendant will
21 suffer some plain legal prejudice as a result of the dismissal.” *Westlands Water*
22 *Dist. v. U.S.*, 100 F.3d 94, 96 (9th Cir. 1996); FED. R. CIV. P. 42(a)(2). Legal
23 prejudice is defined as “prejudice to some legal interest, some legal claim, some

24 _____
25 ⁵ The same result should also obtain here because when a copyright plaintiff such as
26 Pringle lacks standing, the district court likewise lacks subject matter jurisdiction.
27 *See Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003)
28 (“[I]f [plaintiff] lacks standing to assert his federal copyright claims, the district
court did not have subject matter jurisdiction and dismissal was appropriate.”); *see*
also TXCAT, 2010 WL 5186824, at *2-3, 6 (granting defense summary judgment
because plaintiff lacked standing and denying as moot plaintiff’s Rule 41(a)(2)
motion).

1 legal argument.” *Westlands*, 100 F.3d at 97. Here, should the Court not grant
2 summary judgment and entertain Pringle’s Rule 41 Motion, it should deny it or in
3 the alternative, grant it with prejudice.

4 The Nonmoving Defendants will suffer legal prejudice if Pringle is allowed to
5 dismiss his claim without prejudice because they will lose a legal interest: they will
6 not be deemed prevailing parties in this action (even though they are clearly entitled
7 to it), and will thus lose their ability to seek reimbursement of their attorneys’ fees
8 and costs under 17 U.S.C. § 505 and FED. R. CIV. P. 54 respectively. *See*
9 *Buckhannon Board & Care Home v. West Virginia Department of Health & Human*
10 *Resources*, 532 U.S. 598, 603 (2001) (“prevailing party” is one who has been
11 awarded some species of relief by a court); *compare Bridgeport Music, Inc. v.*
12 *London Music, U.K.*, 345 F. Supp. 2d 836, 839-40 (M.D. Tenn. 2004) (voluntary
13 dismissal without prejudice does not “constitute the judicially sanctioned change in
14 the parties’ legal relationship required by *Buckhannon* in order for one party to
15 prevail over the other.”) *with Riviera Distributors, Inc. v. Jones*, 517 F.3d 926, 928
16 (7th Cir. 2008) (dismissal with prejudice under Rule 41(a)(2) treated as a favorable
17 judgment, thus conferring prevailing party status on defendant for purpose of
18 attorneys’ fees under 17 U.S.C. § 505).

19 The loss of an ability to seek attorneys’ fees under 17 U.S.C. § 505 was one
20 of the principal reasons why the court in *Sleep Sciences Partners, Inc. v. Lieberman*
21 refused to permit the plaintiff to voluntarily dismiss its copyright claim without
22 prejudice. 2011 WL 2669494 (N.D. Cal. Jul. 7, 2011). There, the plaintiff sought to
23 eliminate its copyright infringement claim without prejudice under Fed. R. Civ. P.
24 15(a), and the defendants opposed, contending that the court should exercise its
25 discretion to require dismissal with prejudice.⁶ There defendants specifically raised

26 ⁶ Though the plaintiff in *Sleep Science* moved to eliminate its copyright claim
27 without prejudice under Rule 15(a) instead of Rule 41(a), the court noted that such a
28 distinction was immaterial. *Sleep Science*, 2011 WL 2669494, at *1; *see also Hells*
Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005),
quoting Nilssen v. Motorola, Inc., 203 F.3d 782, 784 (Fed. Cir. 2000) (“We agree
with the Federal Circuit, however, that . . . ‘[t]he fact that a voluntary dismissal of a

1 the point that they would lose their ability to seek attorneys’ fees under the
2 Copyright Act, and the *Sleep Science* court found that the plaintiff—as does
3 Pringle’s briefing here—“ignore[d] entirely Defendants’ argument regarding
4 prejudice.” *Id.* at *3. Based thereon, the *Sleep Sciences* court proceeded to require
5 dismissal of the plaintiff’s copyright claim with prejudice. *Id.* This Court should
6 likewise find that the Nonmoving Defendants will suffer the same prejudice if
7 Pringle’s requested relief is granted and instead, deny his Motion.

8 Beyond considering whether a legal interest, claim, or argument will be
9 impeded, Ninth Circuit has noted that assessing legal prejudice can also include
10 consideration of the prospect of a second litigation of a “claim that had reached the
11 summary judgment stage”⁷ and the lack of an “explanation for why [the plaintiff]

12
13 claim under Rule 41(a) is properly labeled as amendment under Rule 15 is a
14 technical, not a substantive, distinction.”).

15 ⁷ Other courts have considered the advanced status of litigation in ruling on a
16 41(a)(2) Motion without prejudice, including whether case is at the summary
17 judgment stage or a dispositive motion has been filed, or whether an adverse ruling
18 was imminent. *See, e.g., Doe v. Urohealth Systems, Inc.*, 216 F.3d 157, 160 (1st
19 Cir. 2000) (“In deciding whether to grant a Rule 41(a)(2) motion, courts typically
20 look to [multiple factors including] the fact that a motion for summary judgment has
21 been filed by the defendant.”); *Zagano v. Fordham Univ.*, 200 F.2d 12, 14 (2d Cir.
22 1990) (denying voluntary motion to dismiss without prejudice filed on eve of trial
23 because it was “far too late,” was “contested vigorously” for multiple years, and
24 “extensive discovery had taken place.”); *Williams v. Ford Motor Credit Co.*, 627
25 F.2d 778, 780 (8th Cir. 1980) (improper to permit dismissal without prejudice after
26 defendant’s motion for J.N.O.V. was pending and in anticipation of it being
27 granted); *Pace v. Southern Express Co.*, 409 F.2d 331, 334 (7th Cir. 1969)
28 (dismissal without prejudice properly denied in light of considerable discovery and
defendant’s pending motion for summary judgment); *Spencer v. Moore Business
Forms, Inc.*, 87 F.R.D. 118, 122 (N.D. Ga. 1980) (dismissal without prejudice
denied where partial summary judgment had been granted on behalf of individual
defendants); *Jewelers Vigilance Committee, Inc., v. Vitale, Inc.*, 1997 WL 582823,
at *2-3 (S.D.N.Y. Sept. 19, 1997) (denying motion to dismiss without prejudice
where partial summary judgment had been granted, extensive discovery had taken
place, and plaintiff had no claims to pursue against the defendants if a subsequent
litigation were to be initiated); *Cognitest Corp. v. The Riverside Publishing Co.*,
1995 WL 654146, at *2 (N.D. Ill. Nov. 3, 1995) (court denied motion to dismiss
without prejudice finding that “the effect of permitting [plaintiff] to pursue its
desired course at this late date, however, would be essentially to render the past ten
months of litigation an utter waste. . . . With discovery at its completion and with the
defendant poised to move for summary judgment on the remaining claim” the
request was “wholly inappropriate.”).

1 delayed so long in requesting voluntary dismissal.”⁸ *Central Montana Rail v. BNSF*
2 *Ry. Co.*, 422 Fed. Appx. 636, 638 (9th Cir. 2011). Here, not only have the parties
3 reached the summary judgment stage, the Court has already granted a Motion for
4 Summary Judgment that again, was predicated on fundamental defects in Pringle’s
5 copyright claims, and as such, extinguishes them as against all Defendants.

6 Moreover, Pringle’s briefing is completely bereft of any explanation⁹ as to
7 why he waited until April 2012 to seek voluntary dismissal, especially in light of:
8 (1) the fact that Defendants presented evidence demonstrating the technological
9 impossibility of Pringle’s theory of infringement in January 2011; (2) the Court
10 specifically questioned Pringle’s counsel on that point at the hearing on Pringle’s
11 Motion for Preliminary Injunction;¹⁰ (3) Pringle’s counsel replied: “we are in the
12 process of gathering additional information with respect to that issue”;¹¹ and in
13 December of 2011, Pringle finally agreed with Defendants regarding impossibility,
14 but nevertheless pressed forward.¹² In addition, on February 6, 2011, after a
15 summary judgment motion that set forth the flaws in Pringle’s claims had been fully

16 ⁸ In addition, other courts have refused to grant a Rule 41(a)(2) motion without
17 prejudice when the plaintiff failed to provide a sufficient explanation for the
18 requested relief. *See, e.g., Zangano*, 900 F.2d at 14 (considering, *inter alia*,
19 “adequacy of plaintiff’s explanation for the need to dismiss” when denying motion
20 to dismiss without prejudice; *Paulucci v. City of Duluth*, 826 F.2d 780, 783 (8th Cir.
1987) (denying motion to dismiss without prejudice under Rule 41(a)(2) in part
21 because plaintiffs “offer[ed] no explanation for the voluntary dismissal they
22 [sought].”); *Burnette*, 828 F. Supp. at 1444 (considering “insufficient explanation of
23 the need to take a dismissal” in denying request to dismiss without prejudice).

21 ⁹ Entry of judgment under FED. R. CIV. P. 56(f) as to the Nonmoving Defendants,
22 and for the same reasons as set forth in the Court’s Summary Judgment Order would
23 preserve any purported “appellate rights” Pringle might have. See Declaration of
24 Kathleen E. Koppenhoefer in Support of Plaintiff Bryan Pringle’s Motion for
25 Voluntary Dismissal [Dkt. No. 262-2], dated Apr. 6, 2012, at ¶3.

24 ¹⁰ Reporter’s Transcript of Proceedings on Plaintiff’s Motion for Preliminary
25 Injunction, dated Jan. 31, 2011, at 7:24-8:22.

26 ¹¹ *Id.* at 8:23-25.

27 ¹² Declaration of Bryan Pringle in Opposition to Defendants’ Motion for Summary
28 Judgment [Dkt. No. 198], dated Dec. 19, 2011, at ¶ 125 (“[I]t would have been
impossible for the Defendants to sample my guitar twang sequence out of the full
sound recording of ‘Take a Dive’ (Dance Version)”)

1 briefed, and after Pringle’s destruction of hard drives had been clear for months, the
2 Guetta and Adams Defendants presented Pringle’s counsel with a Rule 11 Motion
3 and a request that Pringle voluntarily dismiss his claim. Pringle declined to avail
4 himself of Rule 11’s safe-harbor provision at that time, but now asks the Court for
5 dismissal a mere two months later—apparently for no reason other than that the
6 Nonmoving Defendants are on the cusp of a legal victory and Pringle himself faces
7 the specter of an attorneys’ fee motion under 17 U.S.C. § 505. He has no legitimate
8 explanation for a voluntary dismissal at this stage.

9 **III. ADDITIONAL FACTORS COMPEL DENYING PRINGLE’S MOTION**

10 Futility. Ending this case under the moniker of “without prejudice” would be
11 futile and would risk wasting more judicial and party resources. Res judicata would
12 bar Pringle from reasserting claims with respect to either “Take a Dive (Dance
13 Version)” or the original version of “Take a Dive” against the Nonmoving
14 Defendants, and such claims could not withstand a FED. R. CIV. P. 12(b)(6)
15 Motion.¹³ See *Sleep Science*, 2011 WL 2669494, at *2-3 (dismissing copyright
16 claim with prejudice over plaintiff’s request because it would be barred by res
17 judicata); see also *Jewelers*, 1997 WL 582823, at *3 (“[T]he fact that Plaintiff has
18 no claims to pursue against these defendants eviscerates the need for a dismissal
19 without prejudice.”).

20 Res judicata prevents a party from bringing a second lawsuit against the same
21 opposing party and re-litigating the same claim for relief. See *W. Radio Servs. Co.*
22 *v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (“Res judicata, also known as

23 ¹³ As noted in the Rule 11 briefing [Dkt. No. 255] and as the Court observed (See
24 Summary Judgment Order at 7-8), as pleaded in the operative complaint, Pringle’s
25 copyright claim is limited to “Take a Dive (Dance Version)” and not the original
26 version of that work, or any other purportedly extant adaptations thereof. See First
27 Amended Complaint for Copyright Infringement (“FAC”) [Dkt. No. 9-2], dated
28 Nov. 18, 2010, at ¶30. Despite that, Pringle has injected the original work into this
dispute, and in his Opposition to the Guetta Defendants’ Motion for Summary
Judgment and supporting Declaration, claimed that other versions of “Take a Dive”
are also at issue in this suit. Those “other” versions have never made an appearance
in this dispute but infringement claims with respect to them would likewise be
barred.

1 claim preclusion, bars litigation in a subsequent action of any claims that were
2 raised or *could have been raised* in the prior action.”) (emphasis added). Res
3 judicata applies whenever there is “(1) an identity of claims, (2) a final judgment on
4 the merits, and (3) identity or privity between parties.” *W. Radio Servs. Co.*, 123
5 F.3d at 1192, *citing Blonder–Tongue Lab. v. Univ. of Ill. Found.*, 402 U.S. 313, 323–
6 24 (1971).

7 First, re-litigation of infringement claims with respect to “Take a Dive (Dance
8 Version)” and the original version of “Take a Dive” would result in an identity of
9 claims. Second, even if the Court were to grant Pringle’s requested relief and enter
10 a final judgment only in favor of the Guetta Defendants, there would be a final
11 judgment of non-standing and non-infringement of those two respective works.
12 Here, the Court held that Pringle lacked standing to bring a claim with respect to
13 “Take a Dive (Dance Version)” based on an invalid copyright registration certificate
14 and improper deposit. Summary Judgment Order at 8-10. Any other claim brought
15 pursuant to the same registration certificate would likewise necessitate dismissal.
16 *See Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1212 (9th Cir. 1998); William
17 F. Patry, PATRY ON COPYRIGHT § 9:9 (2012) (“Unless the deposit is a bona fide copy
18 of the work as created (or loss of the copy was due to the Office's error), the
19 certificate is invalid and the infringement claim of must be dismissed.”).

20 Further, substantial similarity is one of the essential ingredients in a
21 successful copyright infringement action for violation of the reproduction right. *See*
22 *Murray Hill Publications, Inc. v. Twentieth Century Fox Film Corp.*, 361 F.3d 312,
23 316 (9th Cir. 2004) (“Thus, copying is an essential element of infringement and
24 substantial similarity between the plaintiff's and defendants’ works is an essential
25 element of copying.”) (citation omitted); Melville B. Nimmer & David Nimmer,
26 NIMMER ON COPYRIGHT § 13.03 (2012) (“Just as copying is an essential element of
27 copyright infringement, so substantial similarity between the plaintiff's and
28 defendant's works is an essential element of actionable copying.”). A judgment of

1 no substantial similarity is clearly a judgment on the merits.

2 Finally, if Pringle simply re-files his claim against the same parties save the
3 Guetta Defendants, there would be privity between the parties.

4 The same result (preclusive effect) would also obtain with respect to any
5 other infringement claim predicated on a purportedly extant and undisclosed-in-this-
6 case adaptation of “Take a Dive” because it would arise out of the same
7 transactional nucleus of facts as this case did. *See Tahoe–Sierra Pres. Council, Inc.*
8 *v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) (“[I]dentity of
9 claims exists when two suits arise from the same transactional nucleus of facts.
10 Newly articulated claims based on the same nucleus of facts may still be subject to a
11 res judicata finding if the claims could have been brought in the earlier action.”
12 (citation omitted). Pringle would necessarily have to demonstrate: (1) that this
13 undisclosed work contained the 8-bar vamping chord progression; (2) his authorship
14 of the chord progression; (3) that the Nonmoving Defendants had access to the work
15 (which would undoubtedly be supported by the same hollow allegations of access
16 that were present here), and finally (4) that “I Gotta Feeling” was actionably similar
17 to the work and that sampling occurred.

18 As should be no surprise, other courts have barred copyright claims that could
19 have been brought in prior actions because they arose from the same transactional
20 nucleus of facts. *See, e.g., Hoffman v. Pressman Toy Corporation*, 193 Fed. Appx.
21 121, 123 (3d Cir. 2006) (res judicata required dismissal of plaintiff’s “70-page
22 complaint [that was] a rambling exposition” because it asserted no copyright claims
23 “that were not or could not have been raised in her previous litigation.”); *Steele v.*
24 *Ricigliano*, 789 F. Supp. 2d 245, 248-49 (D. Mass. 2011) (res judicata barred
25 songwriter's copyright infringement claims when district court had granted summary
26 judgment to same and/or closely related alleged infringers in songwriter's prior
27 action, the claims were based on same nucleus of operative facts as the claims
28 asserted in prior action—even though the claims in prior action arose from

1 songwriter’s sound recording copyright while the claims in later action arose from
2 his musical composition copyright, and songwriter could have raised the claims
3 related to that work in the prior action).¹⁴

4 It would be a waste of judicial resources (as well as those of the parties) and
5 contravene public policy to permit a spurious claim for which no evidence exists to
6 be filed anew given that the same result would immediately obtain: dismissal. This
7 is precisely what a dismissal “without prejudice” would invite.

8 Frivolousness and Bad Faith. A Rule 41(a)(2) motion to dismiss without
9 prejudice is also properly denied when the claim to be dismissed was not researched
10 diligently, was frivolous, or bad faith was present. *See Burnette*, 828 F. Supp. at
11 1443-44 (claim dismissed with prejudice instead of without when it was clear that
12 plaintiff’s claim was “frivolous” and without “diligent research”); *Manual v.*
13 *Shipyard Holdings*, 2001 WL 1382050, at *3-4 (N.D. Cal. Nov. 5, 2001) (denying
14 voluntary motion to dismiss, in part, based on suspicious timing (after defense
15 summary judgment motion was filed) and noting that “Ninth Circuit caselaw
16 intimates that a district court may refuse to grant dismissal under Rule 41(a)(2)
17 when exceptional circumstances suggest bad faith and/or vexatious tactics on the
18 part of the plaintiff.”). This case has always been objectively unreasonable, and it is
19 the very definition of frivolous—as set forth in great detail in the Defendants’
20 summary judgment and Rule 11 briefing. *See* Dkt. Nos. 159, 223, 237, 240, 253,
21 and 255.

22 Moreover, the Court held that Pringle willfully discarded evidence in this case

23 ¹⁴ *Creative Arts by Calloway, LLC v. Brooks*, 2007 WL 766079 at *1-2 (S.D.N.Y.
24 Mar. 12, 2007) (granting defense summary judgment because res judicata barred
25 plaintiff’s copyright claims that could have been asserted in the prior action); *Sapp*
26 *v. Memorial Hermann Healthcare System*, 2010 WL 1576479 at *3-4 (S.D. Tex.
27 Apr. 19, 2010) (barring copyright claims based on res judicata because they could
28 have and should have been litigated in the first suit); *Green v. North Seattle*
Community College, 2007 WL 709308, at *2-4 (W.D. Wash. Mar. 6, 2007) (barring
second suit for copyright infringement when, in opposing motion for summary
judgment in first suit, plaintiff included allegations regarding the unauthorized use
of his photographs. The court found that the copyright infringement claims arose
from the same transactional nucleus of facts, and that the plaintiff should have
brought his copyright claim in the first lawsuit).

1 that “clear[ed] the ‘potentially relevant’ hurdle by a mile.” Summary Judgment
2 Order at 15. Pringle intentionally destroyed his 2010 and 2011 hard drives, which
3 were the only pieces of evidence that could conclusively determine whether his
4 creation story was legitimate or—and more likely based on Pringle’s inability to
5 adduce evidence and Defendants’ analyses—that he backdated his computer files.
6 The Court further held that such conduct qualified as bad faith, it prejudiced
7 Defendants, and that outright dismissal was the only sanction that would remedy the
8 harm Pringle inflicted. *Id.* at 12-17. Dismissal without prejudice as to the
9 Nonmoving Defendants (who were similarly prejudiced by Pringle’s litigation
10 misconduct) would unjustifiably create ambiguity regarding the Court’s sanction of
11 dismissal and further, would invite Pringle’s attempt to circumvent that result.

12 Delay. Courts routinely deny Rule 41(a)(2) Motions without prejudice due to
13 the dilatoriness of a plaintiff. *See, e.g., Zagano*, 200 F.2d at 14 (denying voluntary
14 motion to dismiss without prejudice filed on eve of trial because it was “far too
15 late,” was “contested vigorously” for multiple years, and “extensive discovery had
16 taken place.”); *Pace*, 409 F.2d at 334 (dismissal without prejudice properly denied
17 in light of considerable discovery); *Jewelers*, 1997 WL 582823, at *2-3 (denying
18 motion to dismiss without prejudice where extensive discovery had taken place);
19 *Cognitest*, 1995 WL 654146, at *2 (court denied motion to dismiss without
20 prejudice finding that “the effect of permitting [plaintiff] to pursue its desired course
21 at this late date, however, would be essentially to render the past ten months of
22 litigation an utter waste. . . . With discovery at its completion and with the defendant
23 poised to move for summary judgment on the remaining claim” the request was
24 “wholly inappropriate.”); *cf. Getz Photography, Inc. v. Cosmetics N.Y., Ltd.*, 1998
25 WL 345413, at *1 (S.D.N.Y. Jun. 29, 1998) (Rule 41(a)(2) Motion granted when
26 plaintiff moved to dismiss shortly after settlement, sought through settlement to
27 minimize the proceedings rather than multiply them and vex his opponents, the suit
28 had not progressed far, no discovery had been conducted, and his explanation for

1 dismissing (*i.e.*, settlement) was a good one).

2 Here, Pringle waited a year and a half to file this Motion. Everything but trial
3 has occurred in this case, including extensive motion practice related to the denial of
4 Pringle's two motions for preliminary relief, discovery disputes, a fully briefed and
5 decided summary judgment and sanctions motion that completely eviscerated
6 Pringle's claims, and a fully briefed Rule 11 Motion. In addition, discovery has
7 long since closed, and Pringle himself was the principal reason why discovery was
8 so expensive given that he took full day depositions of all members of The Black
9 Eyed Peas, as well as David Guetta and Frederic Riesterer, engaged seven experts,
10 and requested production of thousands of documents (including those related to the
11 personal earnings of every single Defendant), even though Pringle's claim was—
12 and still is—a fraud. Further, significant travel expenses have been incurred for
13 hearing attendance (most counsel in this case reside outside of California) and
14 because the fifteen depositions that were held in this case occurred in five different
15 states that spanned the continent, *i.e.*, California, New York, Illinois, Texas, and
16 Oregon.

17 Dismissal without prejudice is improper because neither Pringle nor any other
18 plaintiff should be permitted to drag more than a dozen defendants through
19 aggressively pursued litigation for more than a year, force them to incur very
20 substantial attorneys' fees and costs, and then throw in the towel and request
21 impunity when is clear that the claim has been killed off—precisely as it was when
22 the Court granted the Guetta Defendants' Motion for Summary Judgment on
23 substantive grounds, as well as Pringle's willful destruction of evidence. This is
24 especially so given that many of bases upon which the Court granted that Motion
25 were raised by defense counsel prior to and in the very early stages of litigation.
26 The bottom line is that Pringle had every opportunity to seek a voluntary dismissal
27 early on, but chose instead to wait until the end and, essentially, forced into
28 submission, thereby requiring everybody to incur significant and unnecessary

1 expense. This case must be disposed of now, and with prejudice.

2 **IV. SHOULD THE COURT DISMISS PRINGLE’S CLAIM WITHOUT**
3 **PREJUDICE, IT SHOULD CONDITION SAME ON THE PAYMENT**
4 **OF THE NONMOVING DEFENDANTS’ ATTORNEYS’ FEES AND**
5 **COSTS**

6 Finally, should the Court grant Pringle’s Motion without prejudice, Pringle
7 should be required to reimburse the Nonmoving Defendants for all of their
8 attorneys’ fees and costs in defending this action. FED. R. CIV. P. 41(a)(2) provides
9 federal courts with the authority to attach “any terms and conditions [they] deems
10 proper,” including the imposition of attorneys’ fees and costs, in dismissing an
11 action without prejudice. “The terms and conditions imposed by the district court
12 upon the granting of a motion for a voluntary dismissal under Rule 41(a)(2)
13 generally are for the protection of the defendant.” Charles Alan Wright & Arthur R.
14 Miller, FEDERAL PRACTICE & PROCEDURE § 2366 (2012); *Westlands*, 100 F.3d at 97
15 (“The defendants’ interests can be protected by conditioning the dismissal without
16 prejudice upon the payment of appropriate costs and attorney fees.”); *Woodfin Suite*
17 *Hotels, L.L.C., v. City of Emeryville*, 2007 WL 81911, at *5 (N.D. Cal. Jan. 9, 2007)
18 (“We do not read Rule 41(a)(2) as always requiring the imposition of costs as a
19 condition to a voluntary dismissal, although it is usually considered necessary for
20 the protection of the defendant.”).

21 Though federal courts have discretion to not impose conditions, “usually the
22 district judge at least should require that the plaintiff pay the costs of the litigation
23 and that practice has become commonplace.” FEDERAL PRACTICE & PROCEDURE §
24 2366; *see also Beard v. Sheet Metal Workers Union, Local 150*, 908 F.2d 474, 476
25 (9th Cir. 1990) (noting that trial court's order granting plaintiff's motion to
26 voluntarily dismiss complaint was conditioned upon his payment of the defendant's
27 costs and attorney's fees, even though the order did not explicitly so provide); *Mayer*
28 *v. Fujimoto*, 181 F.R.D. 453, 456 (D. Haw. 1998), *affirmed*, 173 F.3d 861 (9th Cir.

1 1999) (“To alleviate the prejudice resulting from dismissal, courts typically impose
2 costs and attorney fees upon plaintiff.”); *see also Westlands*, 100 F.3d at 98
3 (remanding case to district court for determination of whether costs and attorneys’
4 fees should be imposed as a condition of a dismissal without prejudice under R. 41
5 (a)(2)).

6 Here, Pringle argues that dismissal should not be conditioned on the payment
7 of the Nonmoving Defendants’ attorneys’ fees and costs because, in his view, the
8 Nonmoving Defendants’ work product can be used in a subsequent action. This is a
9 nonstarter. Based on the Court’s Summary Judgment Order, and as discussed
10 above, there is no possibility of a meaningful second action. Pringle has no standing
11 to pursue a claim of infringement with respect to “Take a Dive (Dance Version)”
12 and the original version of “Take a Dive” and “I Gotta Feeling” are not substantially
13 similar as a matter of law. Summary Judgment Order at 8-11. Subsequent
14 copyright claims with respect to those works against any of the defendants in this
15 action will be barred once a final judgment is entered. As such, the only mitigation
16 and protection to the prejudice that the Nonmoving Defendants would suffer if
17 Pringle’s requested relief were granted is reimbursement of their attorneys’ fees and
18 costs.

19 Granting Pringle’s belatedly filed Motion, without prejudice and without an
20 award of attorneys’ fees and costs, particularly after the Pringle’s protracted and
21 expensive year and a half litigation pursuit, and Pringle’s willful despoliation of
22 evidence, would lead to an inequitable and unjust result favoring only Pringle and
23 his counsel. Pringle should not be rewarded for his inexcusable and unexplained
24 delay.

25 Conclusion

26 Both Pringle and his counsel had the knowledge, ability, and opportunity to
27 voluntarily dismiss this claim at very early and numerous other junctures in this
28 case, but chose instead to litigate the case to the hilt, cause seventeen Defendants to

1 incur substantial expense, and to intentionally delay the request for “voluntary”
2 dismissal, until it was in effect not so much voluntary, but an inevitable result due to
3 an adjudication of the merits that applied to all Defendants. Pringle and his counsel
4 advanced meritless claims in an aggressive, defamatory, and expensive fashion.
5 That approach not only wasted the Defendants’ time and resources, but also of those
6 of the Court. Principles of equity and fairness weigh against granting Pringle’s
7 request to simply walk away without consequence, and a permanent resolution is
8 what will best protect the Nonmoving Defendants and the Court from future abuse
9 by Pringle and his counsel. It is for this reason that, although the Court has the
10 power to dismiss Pringle’s claim under Rule 41, the Nonmoving Defendants
11 respectfully submit that Pringle’s request should be held moot, and that entry of
12 summary judgment pursuant to FED. R. CIV. P. 56(f) is in the best interest of the
13 parties, the Court, and to the judicial process.

14
15 Dated: April 23, 2012

Respectfully submitted,
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16
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