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16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA
 18 SOUTHERN DIVISION

19	BRYAN PRINGLE, an individual,)	Case No. SACV 10-1656 JST(RZx)
20)	Hon. Josephine Staton Tucker
21	Plaintiff,)	
22)	DEFENDANTS' MEMORANDUM OF
23	v.)	LAW IN SUPPORT OF MOTION FOR
24)	AN AWARD OF ATTORNEYS' FEES
25	WILLIAM ADAMS, JR.; STACY)	AND FULL COSTS AGAINST
26	FERGUSON; ALLAN PINEDA; and)	PLAINTIFF AND HIS COUNSEL
27	JAIME GOMEZ, all individually and)	
28	collectively as the music group The Black)	Complaint Filed: October 28, 2010
	Eyed Peas, et al.,)	
)	Hearing Date: June 25, 2012;
	Defendants.)	10:00 A.M
)	Courtroom 10A

DEFENDANTS' MOTION FOR ATTORNEYS'
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1 Defendants respectfully submit this Memorandum of Law in Support of their
2 Motion for Attorneys' Fees and Full Costs against Plaintiff and His Counsel.¹

3 **PRELIMINARY STATEMENT**

4 This case defines frivolous litigation. Bryan Pringle, a serial plaintiff, has
5 never been more than a music hobbyist. Yet, when the world renowned music
6 group The Black Eyed Peas released the hit song "I Gotta Feeling" in the summer of
7 2009, Pringle saw an opportunity for financial gain from his old hobby-horse. After
8 "I Gotta Feeling" had become a worldwide hit, Pringle registered a song named
9 "Take a Dive" (Dance Version) that curiously contained the same "guitar twang
10 sequence" that had appeared in "I Gotta Feeling" and was available for download on
11 the Internet.

12 Pringle presented his "work" to lawyers who were already suing The Black
13 Eyed Peas regarding another song on the same album as "I Gotta Feeling". Pringle
14 claimed The Black Eyed Peas gained access to his song through his "regular"
15 submission of demo CDs to essentially everyone in the music business, as
16 supposedly evidenced by responses Pringle had allegedly received from The Black
17 Eyed Peas' record company and music publisher. Pringle claimed that The Black
18 Eyed Peas sampled the guitar twang from "his" song, and that "I Gotta Feeling" also
19 infringed the original version of "Take a Dive", which did not contain the guitar
20 twang.

21 Counsel accepted Pringle's story at face value, and used it as an opportunity
22 to argue that The Black Eyed Peas had a "pattern and practice" of infringement.
23 They convinced Pringle to register the "Dance Version" for copyright, and then sued

24 ¹ Defendants previously sought sanctions against Pringle and his counsel under Rule
25 11 in a separate motion, because a motion under Rule 11 "must be made separately
26 from any other motion." Fed. R. Civ. P. 11(c)(2); (Docs. 237-239, 253-254).
27 Pursuant to the Court's guidance at the April 16, 2012 hearing and the Court's April
28 16, 2011 Order, however, Defendants now submit this omnibus motion for
attorneys' fees and full costs.

1 The Black Eyed Peas, David Guetta, Frederic Riesterer and eleven of their
2 respective record labels and publishing companies, seeking over \$53 million in
3 damages. Counsel then made two motions for preliminary relief even though “I
4 Gotta Feeling” had been released more than a year earlier.

5 In response to Pringle’s January 2011 preliminary injunction motion,
6 Defendants offered expert testimony that it was impossible for Defendants to have
7 sampled the guitar twang from Pringle’s song. Pringle’s counsel had no response.
8 But rather than withdraw the bogus sampling claim, Pringle dragged all Defendants
9 through more than a year of costly litigation. Ultimately, Pringle, but not his
10 lawyers, admitted that his sampling claim was factually baseless only after
11 Defendants filed a comprehensive summary judgment motion. His counsel still
12 refused to withdraw the sampling claim despite the admission of their own client.

13 Moreover, Pringle had absolutely no support for his allegations of access, and
14 did not produce a single shred of evidence that he had ever sent his music to anyone,
15 even though his counsel claimed Pringle had “communications with Defendants” in
16 his possession. Pringle then concocted a new access theory, whereby Guetta’s
17 former co-producer, Joachim Garraud, supposedly wrote to Pringle in 2001 to 2003
18 asking for a copy of his song. Yet Pringle could not produce evidence of any such
19 communication. Instead, counsel tried to misrepresent Guetta’s deposition
20 testimony to cover up this absence of evidence.

21 Additionally, even though Pringle claimed “I Gotta Feeling” infringed “Take
22 a Dive” original, which did not contain the guitar twang sequence, those songs are
23 not substantially similar, and Pringle’s experts never identified any protectable
24 similarities.

25 Finally, Pringle’s attorneys allowed Pringle to dispose of his computer hard
26 drives during the lawsuit, even though Defendants had demanded inspection of
27 those drives from the beginning.

28

1 Simply stated, Pringle and his counsel repeatedly made claims which they
2 could not substantiate and which would have otherwise supported early dismissal.
3 In addition, Pringle disposed of relevant evidence with the destruction of his
4 computer hard drives, which his counsel made no effort to preserve. Diligent
5 inquiry by counsel in advance of litigation should and would have revealed Pringle's
6 claims to be a sham. Even if the basic elements of an infringement claim were
7 initially beyond counsel's comprehension, they should have withdrawn Pringle's
8 claims when they were shown to be frivolous during the preliminary injunction
9 hearing, discovery, and on summary judgment. Instead, they pressed on with the
10 litigation and refused to give an inch, forcing Defendants to incur substantial
11 attorney fees and expenses. Counsel addressed virtually every request by
12 Defendants for evidence substantiating Pringle's wild accusations with an overly
13 facile "investigation continues" response.

14 A substantial sanction is needed not only to remedy the financial devastation
15 Pringle and his attorneys have wrought, but also to deter further abuse by Pringle,
16 his attorneys, and others who would perpetrate similar litigation fraud.

17 **BACKGROUND**²

18 **I. COUNSEL INSIST ON LITIGATING A SAMPLING CLAIM THAT 19 PRINGLE HIMSELF ADMITS IS FACTUALLY IMPOSSIBLE**

20 Pringle commenced this action in October 2010, alleging that Defendants had
21 infringed the sound recording in "Take a Dive" (Dance Version) by "directly
22 sampl[ing]" the guitar twang sequence in "Take a Dive" (Dance Version) and
23 inserting it into their song "I Gotta Feeling." (Compl. ¶¶ 40-41; FAC ¶¶ 40-41.)
24
25

26 ² Pursuant to the Court's guidance at the April 16, 2012 hearing, Defendants have
27 included a summarized version of the facts and procedural history. For a more
28 complete recitation, Defendants respectfully refer the Court to their motion for
summary judgment. (Docs. 159-160, 223.)

1 Pringle allegedly created “Take a Dive” (Dance Version) in 1999, but did not
2 register it for copyright until November 2010, after “I Gotta Feeling” had become a
3 worldwide hit and the guitar twang sequence had become publicly available on the
4 Internet. That 2010 registration was submitted at the behest of Pringle’s attorneys.
5 (Dickstein Decl. Ex. 1, Pringle Tr. 347:9-24) (it “was not my idea to file this
6 [copyright application]”); (*id.* at 424:23-24; 405-406) (“the law firm was the one
7 that was pushing this. I didn’t agree with it.”)

8 Armed with this registration, Pringle’s counsel sought a TRO in November
9 2010 (Doc. 15) and a preliminary injunction in January 2011 (Doc. 73) to halt
10 performance and distribution of “I Gotta Feeling”. (Pl. TRO Br. [Doc. 15-1] 5; Pl.
11 PI Br. [Doc. 73-1] 16.) However, Pringle’s sound recording expert, Mark Rubel,
12 did not compare “Take a Dive” (Dance Version) to “I Gotta Feeling”, but rather to
13 an isolated guitar twang provided to him by Pringle’s counsel.³ (Doc. 73-1.) As a
14 result, Rubel determined only that the guitar twang sequence *appeared* in “Take a
15 Dive” (Dance Version), not that Defendants could have *sampled* the guitar twang
16 from Pringle’s song.

17 In response, Defendants’ sound recording expert, Paul Geluso, explained that
18 it would have been technologically impossible for Defendants to have sampled the
19 guitar twang sequence from “Take a Dive” (Dance Version) because Pringle’s song
20 had been layered with other sounds that are not present in “I Gotta Feeling”. (Doc.
21 81-1 ¶ 7.) Pringle had zero response to Geluso’s analysis in his reply papers or at
22 oral argument (Dickstein Decl., Ex. 12, Jan 31, 2011 Hrg. Tr. 8-10), and the Court
23 denied Pringle’s motion in February 2011. (Doc. 99 at 9-10.)

24 Despite the uncontroverted evidence that Defendants could not have sampled
25 the guitar twang sequence from Pringle’s song, Pringle stated during discovery that
26 he would continue to pursue his sampling claim, yet pointed only to the same

27 ³ Incredibly, Pringle does not even know what audio files his expert relied upon,
28 because those files were supplied by counsel. (Dickstein Decl., Ex. 15 at 3-4.)

1 declaration of Mark Rubel that the Court already discounted. (Dickstein Decl., Ex.
2, Pl. Resp. to Ferguson Rog. 18.)

3 During the meet and confer telephone conference regarding Defendants'
4 anticipated motion for summary judgment in November 2011, Pringle's counsel
5 represented that they were "no longer pursuing", and would "withdraw", the
6 sampling claim. (Docs. 161 ¶ 16; 219 ¶ 6; 220 ¶ 6.) Counsel then reversed itself
7 and refused to formally dismiss Pringle's sampling claim. (Doc. 161 ¶ 17.)⁴

8 Defendants were thus forced to submit another expert declaration on
9 summary judgment, explaining not only why Defendants could not have sampled
10 Pringle's song, but also analyzing Defendants' music creation files and explaining
11 how Defendants had independently created the guitar twang sequence. (Doc. 162.)
12 Geluso further explained that Pringle had likely downloaded the isolated "I Gotta
13 Feeling" guitar twang stem that was available on the Internet, and used it to create
14 "Take a Dive" (Dance Version). (*Id.*)

15 Faced with this indisputable scientific evidence, Pringle finally admitted in
16 December 2011 that "it would have been impossible" for Defendants to have
17 sampled the guitar twang from his song. (Doc. 198 ¶¶ 125, 142.) But his counsel
18 still refused to withdraw the sampling claim. Instead, they asserted that "Pringle has
19 produced evidence that defendants sampled his recordings" (though none was
20 actually provided) and argued only why it would have been impossible for *Pringle*
21 to have sampled (*i.e.*, "infringed") *Defendants'* song. (Doc. 195 at 21.) They also

23 ⁴ Counsel instead served amended interrogatory answers stating that, while
24 "Plaintiff is not seeking to recover for physical appropriation of Take a Dive (Dance
25 Version) at this time" he "reserves the right to seek recovery for physical
26 appropriation" (Dickstein MSJ Decl. [Doc. 161-17] Ex. Q at 10). At a January 23,
27 2012 discovery hearing, Magistrate Judge Zarefsky recognized that this
28 interrogatory answer was "evasive, even as amended." (Dickstein Decl. Ex. 3, Jan.
23, 2012 Hrg. Tr. [Doc. 234] 10:2-12.)

1 submitted a lengthy Pringle declaration, requiring yet another expert report on reply.
2 (Docs. 198, 217.)

3 **II. PRINGLE ALLEGES ACCESS WITH NO EVIDENTIARY SUPPORT,**
4 **AND MISREPRESENTS THE RECORD**

5 Pringle alleged that he “regularly” submitted demos of “Take a Dive” and
6 “Take a Dive” (Dance Version) to essentially everyone in the music business,
7 including Defendants UMG, Interscope and EMI, and that he “received numerous
8 response letters, one of which was handwritten, from multiple A&R representatives
9 at Interscope, UMG and EMI.” (Compl ¶¶ 31, 33; FAC ¶¶ 31, 33; *see also* Joint
10 Rule 26 Report [Doc. 110] at 3.) Counsel even represented that Pringle had copies
11 of “[c]ommunications with Defendants” in his possession. (Dickstein Decl., Ex. 4 at
12 5.) Pringle also alleged that he had “continually” advertised “Take a Dive” on the
13 Internet via “multiple music websites” and that it had been played “internationally
14 via radio and internet.” (Compl. ¶ 32; FAC ¶ 32; Joint Rule 26 Report at 3.) These
15 allegations of access enabled Pringle to avoid dismissal and forced Defendants to
16 engage in costly discovery. (Doc. 95 at 9-10.)

17 Yet, Pringle has not produced a single communication to or from any
18 Defendant, let alone anything referencing any version of “Take a Dive”.⁵ Nor did
19 Pringle produce any evidence that “Take a Dive” had been distributed on the
20 Internet or radio. Indeed, when Pringle subpoenaed documents from his music
21 promotion company, TAXI Music, the documents made no mention whatsoever of
22 any version of “Take a Dive”. (Dickstein Decl., Ex. 5.) Declarations from
23 performing rights organizations confirm that neither version of “Take a Dive” was
24 ever publicly performed in either the U.S. or France. (Docs. 170, 171.)

25 _____
26 ⁵ In his summary judgment opposition, Pringle claimed his distributions of demo
27 CDs containing “Take a Dive” (Dance Version) were “partially evidenced” by
28 postal receipts produced during discovery (Pl. MSJ Opp. [Doc. 195] 3), but those
receipts do not show what, or to whom, anything was sent.

1 Having failed to provide any evidence of access in the manner alleged in his
2 complaints and injunction motions, Pringle concocted a new theory that Joachim
3 Garraud, co-founder of Guetta’s production company, somehow received a copy of
4 “Take a Dive” (Dance Version) in France and wrote to Pringle asking for more
5 tracks. (Pl. MSJ Opp. [Doc. 195] 4.) But Pringle has no evidence of any supposed
6 communications with Garraud or Guetta, did not know whether the alleged letter
7 actually asked for music, or even what language it was written in. (Pringle Tr. 93:0-
8 94:9, 113:1-11.)

9 To prop up Pringle’s story, counsel represented that Guetta admitted that he
10 had received a copy of “Take a Dive” (Dance Version). (Pl. SAF [Doc. 196] ¶ 148)
11 (citing Guetta Tr. 20-22, 66-69). In fact, Guetta testified only that it was “possible”
12 that *unspecified* artists had been solicited to perform on his albums, or had submitted
13 *unspecified* samples of their work. Indeed, both Guetta and Garraud expressly
14 denied ever having received or listened to any of Pringle’s music. (Doc. 165 ¶¶ 2-3;
15 Doc. 167 ¶¶ 4-5; Doc. 168 ¶¶ 6-7.)

16 **III. PRINGLE ASSERTS INFRINGEMENT OF “TAKE A DIVE” WITH 17 NO LEGAL BASIS**

18 Pringle alleged that “I Gotta Feeling” infringed the original version of “Take
19 a Dive”, even though that version does not contain the guitar twang sequence, and
20 the only alleged similarities consist of commonplace music elements found in
21 countless works of popular music. (Compl. ¶ 43; FAC ¶ 43.) Pringle repeated that
22 assertion in his injunction motions (Pl. TRO Br. [Doc. 15-1] 2; Pl. PI Br. [Doc. 73-
23 1] 2) and during discovery (Dickstein Decl., Ex. 6, Pl. Resp. to Def. Adams’ Rog. 7;
24 Ex. 7, Pl. Suppl. Resp. to Def. Adams’ Rog. 7).

25 Defendants therefore retained musicologist Dr. Lawrence Ferrara, who
26 conducted an analysis of the works—including full transcriptions, harmonic
27 analysis, and prior art searches—to repudiate Pringle’s specious claims. (Doc. 172
28 ¶¶ 4-5, 65, 91-97.)

1 In response, Pringle’s counsel submitted two expert musicologist reports,
2 requiring a reply report by Dr. Ferrara. (Doc. 221-3.) After reading Dr. Ferrara’s
3 rebuttal report, Pringle’s experts admitted that “the differences between the original
4 version of Take a Dive and I Gotta Feeling outweigh any similarities that those two
5 works might share” and that any similarities are not original to “Take a Dive” and
6 thus do not support an infringement claim. (Dickstein Decl. Ex. 8, Norris Tr. [Doc.
7 221-4] 80-81, 249-250; Ex. 9, Stewart Tr. [Doc. 221-5] 281-285.)

8 **IV. COUNSEL PERMIT DESTRUCTION OF CRITICAL EVIDENCE**

9 As early as July 2010, Defendants demanded that Pringle preserve all of his
10 computers. (Doc. 159-2 at 13-14, 24-25; Doc. 223 at 18-25; Doc. 110 at 7.) During
11 discovery, Defendants scheduled an inspection of Pringle’s computer. Pringle’s
12 counsel initially agreed to the inspection, only to later inform Defendants that
13 Pringle had disposed all three hard drives he used since the release of “I Gotta
14 Feeling”. (Doc. 159-2 at 13-14, 24-25; Doc. 223 at 18-25.)

15 Despite Defendants’ repeated preservation demands, Pringle’s counsel argued
16 that Pringle somehow had no duty to preserve the 2009 and 2011 hard drives. (Doc.
17 195 at 23-24.) Counsel has admitted that they never advised Pringle to preserve his
18 computers (Doc. 189 ¶ 40), and they took no steps to preserve that evidence.
19 Moreover, counsel has completely ignored the relevance of the hard drive Pringle
20 used in 2010 between the time he learned of “I Gotta Feeling” and the appearance of
21 “Take a Dive” (Dance Version) later that year. (*Id.*)

22 The Court recognized that it was “abundantly clear” that Defendants’
23 preservation requests referred to Pringle’s current computer hard drives, and that the
24 hard drives cleared the potentially relevant hurdle “by a mile” because the true
25 creation date of Pringle’s NRG music file “is at the heart of the defense in this
26 case.” (Doc. 252 at 13-16.)

27
28

1 **V. PRINGLE THREATENS DEFENDANTS WITH EVEN MORE**
2 **BASELESS INFRINGEMENT CLAIMS**

3 Pringle has threatened to bring many more infringement claims against
4 Defendants. In a pre-suit demand letter, he asserted that dozens of his songs were
5 used by Defendants as musical “road maps”, even though there is no evidence
6 Defendants ever had access to any of Pringle’s music. (Dickstein Decl., Ex. 10.)
7 Pringle repeated those threats during discovery (*id.*, Ex. 11, Pl. Am. Rog. Resp. No.
8 25; Ex. 1, Pringle Tr. 16:4-24, 74:12-75:16), even though he recognized that they
9 “may not rise to the level of substantial similarity.” Indeed, Pringle’s own expert
10 stated that he “did not find that there was a similarity that I thought was [] worth
11 pursuing” with respect to other Pringle songs. (*Id.*, Ex. 9, Stewart Tr. 276:13-
12 277:11.) Pringle nevertheless again threatened Defendants with additional
13 infringement claims, asserting in opposition to summary judgment that Guetta
14 and/or Garraud “sampled one of the other songs from the same Demo CD they
15 received via mail from me, in around 2001 to 2003”. (Doc. 198 ¶ 71.)

16 **VI. COUNSEL ENGAGE IN BAD FAITH LITIGATION TACTICS**

17 In addition to the frivolous claims and arguments discussed above, Pringle’s
18 counsel engaged in the following bad faith conduct:

- 19 • Counsel violated the Stipulated Protective Order by giving Pringle access to
20 Defendants’ proprietary music creation files (Doc. 205 at 4; Pringle Decl., Doc.
21 198 ¶ 234 (“I have had an opportunity to examine . . . Riesterer’s ‘Logic Session
22 File’ . . . marked highly confidential ‘attorneys’ eyes only”).)
- 22 • Counsel violated the Court’s Initial Standing Order that “entire deposition
23 transcripts . . . shall not be submitted in opposition to a motion for summary
24 judgment” (Doc. 4 at § 10(c)(ii)) as well as the Stipulated Protective Order
25 protecting the parties’ depositions from public dissemination (Doc. 205 at 3 n.3).
- 26 • Counsel violated the Local Rules by filing an unauthorized sur-reply on
27 Defendants summary judgment motion, forcing Defendants to file a response and
28 motion to strike. (Docs. 244, 245.)

- 1 • Counsel falsely accused Defendants of “misleading” the Court at the summary
2 judgment hearing (Doc. 244), forcing Defendants to point out that it was
3 Pringle’s counsel who misrepresented the record (Doc. 245). Counsel then
4 retreated, saying “the statements made by Defendants’ counsel were more
5 incomplete than incorrect[.]” (Doc. 246 at 3.)
- 6 • Counsel took full-day depositions of all four members of The Black Eyed Peas,
7 and continued to press claims of factual copying and willful infringement against
8 The Black Eyed Peas, even though none were involved in creating the music to
9 “I Gotta Feeling”, which they received from Guetta and Riesterer. (Doc. 196
10 ¶ 169.)
- 11 • Counsel asserted discovery objections that Magistrate Judge Zarefsky found to
12 be “evasive” and “have no merit”, including the objection “investigation
13 continues” in response to every single request. (Dickstein Decl., Ex. 3, Jan. 23,
14 2012 Hrg. Tr.)
- 15 • Counsel claimed entitlement to over \$53 million of gross revenues from *The*
16 *E.N.D.* album on which “I Gotta Feeling” appeared, even though counsel had
17 argued to a court in this same District that another client was entitled to those
18 same album revenues, thereby forcing Defendants to retain an expert economist
19 and music industry expert to rebut Pringle’s inflated damage claim.
- 20 • Counsel refused to even meet with Defendants’ counsel at a Court-ordered
21 mediation held in Chicago, Illinois, unless Defendants were prepared to make a
22 multi-million dollar settlement offer. (Dickstein Decl. ¶ 17.)
- 23 • Counsel ignored the Local Rules by attempting to withdraw as counsel without
24 obtaining leave of Court. (Docs. 180-181); Local Rule 83-2.9.2.1 (“An attorney
25 may not withdraw as counsel except by leave of court”).
- 26 • Counsel ignored the Local Rules, the Court’s General Order and the Case
27 Management Order by filing a notice of telephonic appearance without obtaining
28 leave of Court. (Doc. 265, 266.)⁶

26 ⁶ Pringle’s counsel have already been sanctioned for repeatedly attempting to serve
27 Rister Editions, a French company, through Shapiro Bernstein in the United States,
28 which “amount[ed] to recklessness, and unreasonably and vexatiously multiplied the
proceedings[.]” (Doc. 126 at 3; Doc. 264 at 10.)

ARGUMENT

I. PRINGLE’S COUNSEL VIOLATED RULE 11

Rule 11 creates an affirmative duty on every attorney to investigate and verify the legal and factual basis for any pleading, motion or other paper submitted or later advocated to the Court. *See Bus. Guides, Inc. v. Chromatic Commc’ns Enters., Inc.*, 498 U.S. 533, 541 (1991) (“the meaning of the Rule seems plain: A party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned.”); *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002).⁷ Rule 11 imposes an *objective* standard, and asks “whether a reasonable attorney, having conducted an objectively reasonable inquiry into the facts and law, would have concluded that the offending paper was well founded.” *Schutts v. Bentley Nevada Corp.*, 966 F. Supp. 1549, 1562 (D. Nev. 1997) (citation omitted). Thus, “no showing of bad faith or subjective intent is required[.]” *Truesdell v. S. California Permanente Med. Grp.*, 209 F.R.D. 169, 173-74 (C.D. Cal. 2002).

⁷ Rule 11(b) provides, in pertinent part:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and]

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

1 Attorneys cannot satisfy their obligations under Rule 11 by relying only on
2 their client’s assertions. *See Smith v. Ricks*, 31 F.3d 1478, 1488 (9th Cir. 1994),
3 *cert. denied*, 514 U.S. 1035 (1995) (“Counsel can no longer avoid the sting of Rule
4 11 sanctions by operating under the guise of a pure heart and empty head.”) (citation
5 omitted); *In re Girardi*, 611 F.3d 1027, 1036 (9th Cir. 2010) (imposing Rule 11
6 sanctions where “a reasonable attorney would have, at a minimum, inquired further
7 about the bona fides of the document that was the basis of the action he was
8 prosecuting,” and noting that “[a]t some point, failing to do so becomes willful
9 blindness”).

10 “Sanctions are appropriate for ‘insisting upon a position after it is no longer
11 tenable[.]’” *Van Scoy v. Shell Oil Co.*, 98 F.3d 1348, 1349 (9th Cir. 1996), *cert.*
12 *denied*, 520 U.S. 1169 (1997) (“[t]he district court quite properly sanctioned
13 [plaintiff’s] attorney for pursuing those claims after the absence of evidence became
14 apparent.”); *Swanson v. EMC Mortg. Corp.*, No. CV F 09-1507, 2010 WL 1173089,
15 at *6 (E.D. Cal. Mar. 23, 2010) (“[a]n attorney has a professional duty to dismiss a
16 baseless law suit, even over the objection of his client, and to do it promptly when
17 he learned that his client had no case.”) (internal citation and quotations omitted).

18 The Court may impose monetary sanctions on “any attorney, law firm, or
19 party that violated the rule or is responsible for the violation.” Fed. R. Civ. P.
20 11(c)(1); *Env’t Furniture Inc. v. Bina*, No. CV 09-7978, 2011 WL 488866, at *1
21 (C.D. Cal. Feb. 4, 2011). Sanctions may include “part or all of the reasonable
22 attorney’s fees and other expenses directly resulting from the violation.” Fed. R.
23 Civ. P. 11(c)(4).

24 **A. Counsel Asserted a Sampling Claim With No Factual Support**

25 Pringle’s counsel had numerous opportunities to withdraw the factually
26 impossible sampling claim, which required proof that Defendants physically
27 appropriated Pringle’s sound recording, *see* 17 U.S.C. § 114(b), yet they pressed
28 ahead each time. When Geluso explained in January 2011 that it was impossible to

1 sample the guitar twang sequence in “I Gotta Feeling” from “Take a Dive” (Dance
2 Version) as Pringle claimed, counsel had no response.⁸ When the Court questioned
3 counsel about Geluso’s findings at the preliminary injunction hearing, they again
4 had no response. And when Pringle himself admitted in his summary judgment
5 opposition that his sampling claim was “technologically impossible” (Doc. 198 at
6 ¶ 125), counsel initially promised to withdraw the sampling claim but later refused.⁹
7 *See Herron v. Jupiter Transp. Co.*, 858 F.2d 332, 333 (6th Cir. 1988) (imposing
8 Rule 11 sanctions where counsel indicated willingness to dismiss claims but refused
9 to execute a formal dismissal).

10 Any objectively reasonable attorney would have withdrawn the sampling
11 claim long ago. Yet Pringle’s counsel continued to press the claim, despite the
12 *admitted* absence of evidentiary support. This is an unmistakable violation of Rule
13 11. *See Van Scoy*, 98 F.3d at 1348; *Ormesher v. Raskin*, No. CV 09-6161, 2010 WL
14 2998800, at *1 (C.D. Cal. July 28, 2010) (imposing sanctions under Rule 11 and 28
15 U.S.C. § 1927 on attorney who “submitted declarations and supporting argument
16 that . . . is refuted by the physical evidence and [his client’s] own statements”).

17 **B. Counsel Asserted Allegations of Access With No Evidentiary**
18 **Support, And Then Misrepresented the Record**

19 Rule 11 required counsel to investigate Pringle’s sweeping allegations of
20 access *before* they filed the action. *See Smith*, 31 F.3d at 1488; *Estate of Blue v.*
21 *Cnty. of Los Angeles*; 120 F.3d 982, 985 (9th Cir. 1997), *cert. denied*, 522 U.S. 1111
22 (1998). This is especially true given that **Pringle has brought more than a dozen**
23 **other lawsuits, including an insurance coverage suit in which Pringle was**
24 **accused of insurance fraud and of instructing witnesses not to cooperate with**

25 ⁸ Tellingly, the sound recording expert upon whom Pringle relied in his TRO and
26 preliminary injunction motions, Mark Rubel, was nowhere to be heard from in
opposition to Defendants’ summary judgment motion.

27 ⁹ Notably, the attorney who agreed to withdraw Pringle’s sampling claim, Ira Gould,
28 has since sought to withdraw from the case. (Doc. 180.)

1 **an investigation.** (Dickstein Decl., Ex. 13, 14.) Had counsel conducted an
2 independent investigation into Pringle’s claims here—for example, by asking
3 Pringle to provide proof of his correspondence with Defendants or public
4 dissemination of his songs—they would have learned that there was not a shred of
5 evidence supporting Pringle’s claims which they then asserted in both the Complaint
6 and First Amended Complaint. *See ICU Med., Inc. v. Alaris Med. Sys., Inc.*, No. CV
7 04-00689, 2007 WL 6137003, at *11 (C.D. Cal. Apr. 16, 2007) (Rule 11 sanctions
8 imposed for claim that “was objectively baseless and could not have been the
9 product of a competent and reasonable inquiry”).

10 It was precisely those hollow allegations that enabled Pringle to survive a
11 motion to dismiss, and to drag more than a dozen defendants through costly
12 discovery. (Doc. 95 at 9-10.) And even when it became clear that Pringle did not
13 have any evidence of access, his counsel refused to withdraw those allegations and
14 simply asserted “investigation continues” in response to ever discovery request.
15 Litigating an infringement claim with no evidence that the defendants even had
16 access to the plaintiff’s work is a clear violation of Rule 11. *See Christian*, 286 F.3d
17 at 1118 (awarding sanctions under Rule 11 where counsel failed to conduct an
18 adequate pre-suit investigation, discovery showed that defendant’s works actually
19 pre-dated plaintiff’s work, and plaintiff sought to avoid summary judgment with
20 unfounded new theories not referenced in his complaint).

21 Moreover, when Pringle’s allegations were exposed as a sham, counsel
22 concocted a new story, similarly devoid of proof, whereby Pringle sent his songs to
23 Guetta and Garraud in France. Counsel tried to support this new story by falsely
24 representing that Guetta admitted receiving “Take a Dive” (Dance Version). (Pl.
25 SAF [Doc. 196] ¶ 148) (citing Guetta Tr. 20-22, 66-69). Such bad faith litigation
26 tactics threaten the integrity of the judicial process, and unquestionably violate Rule
27 11’s objective reasonableness standard. *See Christian*, 286 F.3d at 1131 (attorney
28 sanctioned for misrepresentations in briefing).

1 **C. Counsel’s Contention That “I Gotta Feeling” Infringed “Take a**
2 **Dive” Was Legally Baseless**

3 Rule 11 is violated where counsel pursues an infringement claim with no
4 evidence of substantial similarity. *See Historical Truth Prods., Inc. v. Sony Pictures*
5 *Entm’t, Inc.*, No. 93 Civ. 5529, 1995 WL 693189, at *15 (S.D.N.Y. Nov. 22, 1995)
6 (finding no substantial similarity and stating “[d]efendants have been put to needless
7 expense contesting a claim plaintiff’s attorney should have recognized as
8 meritless.”). Pringle’s claim that “I Gotta Feeling” is substantially similar to “Take
9 a Dive”, which does not contain the guitar sequence and sounds nothing like “I
10 Gotta Feeling,” is so lacking in merit that even his own experts reject it. *Supra* at 8-
11 9. Yet counsel pressed that claim all the way through summary judgment, offering
12 only general truisms and no supporting facts. (Doc. 195 at 20-21.)

13 **D. Pringle’s Defenses to Spoliation Were Objectively Unreasonable**

14 Perhaps the only thing more egregious than counsel’s baseless infringement
15 claim, was their failure to take even the most basic steps to preserve critical
16 computer evidence that Defendants had been demanding from the beginning.
17 Counsel’s representation to the Court in the February 2011 Joint Rule 26 Report that
18 they would cooperate with electronic discovery in good faith (Doc. 110 at 9-10) was
19 revealed as a lie when Defendants learned in August 2011 that counsel had allowed
20 Pringle to dispose of one computer hard drive in December 2010 or January 2011—
21 just prior to the parties’ February 2011 Rule 26(f) meet and confer—and another in
22 August 2011 just before the scheduled inspection.

23 Counsel asserted objectively unreasonable arguments in opposing Defendants
24 summary judgment motion on spoliation, arguing that they had no notice that
25 Pringle’s hard drives were potentially relevant—even though Defendants made it
26 “abundantly clear” that they intended to inspect Pringle’s current computers, and the
27 hard drives passed the potentially relevant hurdle “by a mile.” (Doc. 252 at 12-17.)
28

1 **II. DEFENDANTS ARE ENTITLED TO RECOVER THEIR**
2 **ATTORNEYS' FEES UNDER THE COPYRIGHT ACT**

3 The Copyright Act provides that “[i]n any civil action under this title, the
4 court in its discretion may allow the recovery of full costs by or against any party . .
5 . . [and] the court may also award a reasonable attorney’s fee to the prevailing party
6 as part of the costs.” 17 U.S.C. § 505. The Ninth Circuit has explained that the
7 phrase “full costs” means that “district courts may award otherwise non-taxable^[10]
8 costs, including those that lie outside the scope of [28 U.S.C.] § 1920, under [the
9 Copyright Act, 17 U.S.C.] § 505.” *See Twentieth Century Fox Film Corp. v. Ent.*
10 *Distrib.*, 429 F.3d 869, 884-85 (9th Cir. 2005), *cert. denied*, 548 U.S. 919 (2006)
11 (recognizing that costs for electronic legal research, among other things, are
12 recoverable under § 505 and distinguishing case that disallowed recovery of
13 prevailing party’s expert witness fees).¹¹

14 Because “a successful defense of a copyright infringement action may further
15 the policies of the Copyright Act every bit as much as a successful prosecution of an
16 infringement claim”, courts apply the same standard to prevailing defendants as they
17 do to prevailing plaintiffs. *See Fantasy, Inc. v. Fogerty*, 510 U.S. 517, 527 (1994).
18 Indeed, courts in this District have recognized that:

19 An award of attorneys’ fees [for a defendant] would advance
20 considerations of compensation and deterrence because it would
21 encourage defendants to defend themselves against meritless claims,
22 instead of seeking settlement to avoid the cost and inconvenience of
23 litigation. An award of fees in this case would deter other plaintiffs
24 from bringing meritless, objectively unreasonable claims. . . .
25 Additionally and central to the purpose of the Copyright Act, if

24 _____
25 ¹⁰ Defendants are separately submitting proposed bills of taxable costs.

26 ¹¹ To the extent Defendants have paid Pringle’s experts for their time giving
27 deposition testimony, such expenses are appropriately recoverable as “full costs” for
28 the reasons above. To the extent Pringle has paid for his own expert witnesses’
deposition time, Pringle obviously cannot now seek reimbursement of those costs
from Defendants.

1 defendants are compensated for defending their works, they will likely
2 produce more creative works that will further enrich the general public.

3 *Goldberg v. Cameron*, No. C-05-03534, 2011 U.S. Dist. LEXIS 89376, at *15-16
4 (N.D. Cal. Aug. 11, 2011).

5 Some of the factors that courts consider in deciding whether to award
6 attorneys' fees and full costs include "(1) the degree of success obtained; (2)
7 frivolousness; (3) motivation; (4) the objective unreasonableness of the losing
8 party's factual and legal arguments; and (5) the need, in particular circumstances, to
9 advance considerations of compensation and deterrence." *Entm't Research Grp.,*
10 *Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1229 (9th Cir. 1997); *see also*
11 *Fogerty*, 510 U.S. at 534 n.19. "[A] court's discretion may be influenced by the
12 plaintiff's culpability in bringing or pursuing the action, but blameworthiness is not a
13 prerequisite to awarding fees to a prevailing defendant." *Fantasy, Inc. v. Fogerty*,
14 94 F.3d 553, 558 (9th Cir. 1996).

15 **A. Defendants Obtained Complete Success on the Merits**

16 Defendants won summary judgment on every part of Pringle's infringement
17 claim, as well as dismissal of his complaint for spoliation of evidence, which
18 warrants an attorneys' fee award. *See Maljack Prods., Inc. v. GoodTimes Home*
19 *Video Corp.*, 81 F.3d 881, 890 (9th Cir. 1996) (award of attorneys' fees proper
20 where defendant was granted summary judgment and thus "obtained total success in
21 defending against [plaintiff's] copyright claims").

22 **B. Pringle's Claim Was Entirely Frivolous and Brought in Bad Faith**

23 As the Court recognized in granting summary judgment, there was not even
24 "some modicum" of evidence of access or similarity with "Take a Dive", and
25 Pringle could not even produce a *bona fide* copy of the "Dance Version" he
26 supposedly created in 1999, much less show that Defendants could possibly have
27 sampled from his song. This complete absence of supporting evidence warrants an
28 award of Defendants' attorneys' fees. *See, e.g., Goldberg*, 2011 U.S. Dist. LEXIS

1 89376, at *11 (granting defendants’ attorneys’ fees where plaintiff “failed to
2 produce any evidence, apart from his own speculative oral testimony, that
3 [defendant] had any access to his script and soundtrack”).

4 This lawsuit was never about vindicating meritorious claims, but extracting a
5 large settlement through two injunction motions timed to cripple sales of “I Gotta
6 Feeling”, threats to recover an alleged \$53 million of revenues from the sale of *The*
7 *E.N.D.* album (even though Pringle’s counsel had argued that those revenues were
8 attributable to another song), and threats to bring other infringement actions against
9 Defendants. Yet, the clearest indication of Pringle’s mal intent was his destruction
10 of critical computer evidence that would have exposed his claim as a fraud.

11 **C. Pringle’s Claim Was Objectively Unreasonable**

12 For the reasons discussed above, Pringle’s arguments were entirely
13 unreasonable and thus justify an attorneys’ fee award. *See Entm’t Research Grp.,*
14 *Inc.*, 122 F.3d at 1211 (awarding attorneys’ fees where plaintiff pursued objectively
15 unreasonable copyright infringement claims through numerous depositions and
16 without any evidentiary basis); *Christian*, 2011 WL 3420603, at *10 (awarding
17 \$105,688,073 in attorney’s fees and \$31,677,104 in costs where plaintiff pursued
18 unreasonable infringement theories).

19 **D. A Full Fee Award is Necessary to Deter Similar Strike Suits and to** 20 **Compensate Defendants for Proving Pringle’s Fraud**

21 There is little doubt that, absent a substantial deterrent, Pringle will bring
22 more frivolous claims against Defendants, as he made dozens of unfounded
23 accusations of copying both before and during the litigation. Indeed, Pringle’s
24 counsel have already brought another claim against The Black Eyed Peas and their
25 music publishers and record label, even though there, as here, there was no evidence
26 of substantial similarity. *See Batts v. Adams, et al.*, Case No. CV 10-8123-JFW
27 (RZx) (C.D. Cal. October 21, 2011) (Doc. 221-11). Indeed, Pringle is even more
28 likely to bring another fraudulent lawsuit now that his counsel have given him

1 access to Defendants’ “attorneys eyes only” music creation files. Unless Pringle is
2 forced to bear the cost of his actions, it would all too easy for him to use
3 Defendants’ music files to fabricate a new “version” of one of his old songs, and
4 then claim that Defendants had copied from him—exactly as he did here. *See Gable*
5 *v. Nat’l Broad. Co.*, 438 F. App’x 587 (9th Cir. 2011) (awarding fees and costs to
6 “prevent the filing of similarly meritless copyright actions” in the future); *Love v.*
7 *Mail on Sunday*, No. CV05-7798, 2007 WL 2709975, at *5 (C.D. Cal. Sept. 7,
8 2007) (awarding fees and costs in order to “deter Plaintiff from advancing
9 unsupportable claims” in the future), *aff’d sub nom.*, *Love v. Associated*
10 *Newspapers, Ltd.*, 611 F.3d 601 (9th Cir. 2010); *Seto v. Kamai’Aina Care Inc.*, No.
11 10-00351, 2011 WL 6780042, at *5 (D. Hawaii Nov. 30, 2011) (recommending
12 sanctions award of “full fees and costs [to] serve as an ‘effective deterrence’”).

13 An award of Defendants’ full fees and costs is also needed to compensate
14 Defendants for their substantial, and successful, efforts in defending against
15 Pringle’s frivolous claim. None of those efforts would have been necessary had
16 Pringle and his counsel not asserted baseless allegations of access and substantial
17 similarity to “Take a Dive”, and factually impossible allegations of sampling of the
18 “Dance Version”. In order to disprove those claims, Defendants were forced to take
19 substantial discovery from Pringle and *six* of his designated experts, and to engage
20 their own experts, not to mention prepare a comprehensive summary judgment
21 motion. Moreover, as the Court recognized, had Pringle not destroyed his computer
22 hard drives, the lawsuit would likely have been quickly resolved (Doc. 252 at 16)
23 and thus Pringle’s spoliation was directly responsible for Defendants’ attorneys’
24 fees and costs. *See Allen v. Ghoulish Gallery*, No. 06CV371, 2008 WL 474394, at
25 *8 (S.D. Cal. Feb. 19, 2008) (awarding fees and costs so that “Plaintiff may fully
26 consider and appreciate the monetary, emotional and physical costs of litigating
27 unsubstantiated claims”).

28

1 **III. COUNSEL UNREASONABLY AND VEXATOUSLY MULTIPLIED**
2 **THE PROCEEDINGS IN VIOLATION OF 28 U.S.C. § 1927**

3 Sanctions under 28 U.S.C. § 1927¹² are warranted where attorneys make
4 “factual contentions . . . without reasonable and competent inquiry.” *In re*
5 *Girardi*, 611 F.3d at 1061 (“a finding that the attorneys recklessly raised a *frivolous*
6 argument which resulted in the multiplication of the proceedings is also sufficient to
7 impose sanctions under § 1927”); *see also Retired Independent Guards Ass'n of*
8 *Nevada v. Bd. of Trustees*, No. 08-CV-00849, 2012 WL 1068262, at *1 (D. Nev.
9 Mar. 29, 2012) (imposing sanctions where “Plaintiffs asserted their claims against
10 BAC without any factual or legal authority to support their allegation”)

11 Sanctions under 28 U.S.C. § 1927 are also appropriate where counsel
12 continue litigating claims after it becomes clear they have no evidentiary support.
13 *See nSight, Inc. v. PeopleSoft, Inc.*, 296 F. App’x 555, 561 (9th Cir. 2008)
14 (sanctioning attorney who “continued prosecution after the close of discovery
15 without evidence to support [client’s] claims”); *Bellagio, LLC v. Horaney*, 319 F.
16 App’x 652, 653-654 (9th Cir. 2009) (affirming Section 1927 sanctions on attorney
17 for “filing meritless defenses in his . . . opposition to appellees’ motion for summary
18 judgment”); *Entm’t by J & J, Inc. v. Lee*, 126 F. App’x 797, 798 (9th Cir. 2005)
19 (affirming sanctions under Section 1927 when attorney “acted recklessly by not
20 fully investigating her claim, especially after information discrediting her primary
21 witness was brought to light”).

22 Counsel failed to conduct an independent investigation of Pringle’s
23 infringement claim *before* filing suit. They stubbornly refused to dismiss Pringle’s
24

25 _____
26 ¹² 28 U.S.C. § 1927 provides that any attorney who “so multiplies the proceedings in
27 any case unreasonably and vexatiously may be required by the court to satisfy
28 personally the excess costs, expenses, and attorneys’ fees reasonably incurred
because of such conduct.”

1 sampling claim even after proven to be technologically impossible,¹³ refused to
2 dismiss Pringle’s claims of access despite the absence of any evidentiary support,
3 and refused to dismiss Pringle’s claims of substantial similarity even when their own
4 experts testified there were no protectable similarities.¹⁴ All the while, counsel slept
5 while Pringle destroyed his computer hard drives. In sum, counsel turned a blind
6 eye to the fantastic and unsupportable claims of their client, preferring instead to
7 take a scorched earth approach to litigation, in violation of their responsibilities as
8 officers of the Court.

9 Moreover, while a court may base a sanctions award “on the cumulative
10 effect of [] litigation conduct” which “caused unreasonably protracted and costly
11 litigation over a frivolous copyright claim”, *Lahiri v. Universal Music and Video*
12 *Distrib. Corp.*, 606 F.3d 1216, 1222 (9th Cir. 2010), and need not rely on specific
13 instances of improper conduct to impose sanctions under Section 1927, sanctions are
14 appropriate where, as here, counsel engage in specific litigation abuses, such as
15 “repeatedly violat[ing] the local rules [and] causing [opposing party] to undertake
16 unnecessary legal expenses.” *Pray v. M/Y NO BAD DAYS*, 303 F. App’x 563, 564
17 (9th Cir. 2008).

21 ¹³ Sanctions are also warranted based on counsel’s refusal to formally dismiss
22 Pringle’s sampling claim after representing that they would do so. *See Thomas v.*
23 *Standard Ins. Co.*, No. 07-CV-00491, 2011 WL 6112296, at *5 (D. Nev. Dec. 7,
24 2011) (imposing sanctions under section 1927 where “despite the fact that Plaintiff’s
25 claims no longer had merit . . . Counsel failed to dismiss the claims against
26 Defendants even after a stipulation of dismissal was prepared by Defendants’
27 counsel and tendered to Counsel. Counsels’ behavior in knowingly refusing to
28 dismiss a frivolous argument and their intentional disregard of Counsels’ duties to
the court are tantamount to bad faith.”)

¹⁴ *See Tillman v. New Line Cinema*, 374 F. App’x 664, 667 (7th Cir. 2010)
(awarding attorneys’ fees where, among other things, plaintiff could not identify any
substantial similarity with defendant’s work).

1 **IV. COUNSEL SHOULD BE SANCTIONED UNDER THE COURT'S**
2 **INHERENT POWERS**

3 Although Defendants' fees and costs are recoverable from Pringle's counsel
4 under Rule 11 and 28 U.S.C. § 1927, the Court's inherent powers provide an
5 additional basis for a sanction award against counsel. Sanctions under the Court's
6 inherent powers "are available for a variety of types of willful actions, including
7 recklessness when combined with an additional factor such as frivolousness[.]"
8 *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001); *see also Chambers v. NASCO,*
9 *Inc.*, 501 U.S. 32, 45 (1991) ("an assessment of attorney's fees is undoubtedly
10 within a court's inherent power" which "permits the court to impose as part of the
11 fine attorney's fees representing the entire cost of the litigation.").¹⁵

12 Not only did counsel engage in the bad faith litigation conduct above, *supra*
13 at 4-11, they also permitted the willful spoliation of evidence which would have
14 shown that Pringle copied the guitar twang sequence from Defendants, and that
15 Pringle's entire case was a complete fraud. **Counsel even acknowledge that they**
16 **never informed Pringle of his obligation to preserve evidence during the**
17 **litigation.** (Frederiksen-Cross Decl. [Doc. 189] ¶ 40) ("Based on my conversation
18 with Mr. Dickie, counsel for Mr. Pringle, Mr. Pringle had not been advised of
19 Defendants' request to inspect his hard drive at the time he opened the warranty
20 claim [on August 1, 2011] and sent his hard disk to Western Digital for repair or
21 replacement.").

22 Counsel's failure to take *any* steps to preserve this critical electronic evidence
23 was not only a blatant ethical violation, *see Qualcomm, Inc. v. Broadcom Corp.*,

24 _____
25 ¹⁵ The availability of sanctions under other rules or statutes does not diminish the
26 Court's ability to impose sanctions under its inherent power. The Court may invoke
27 its inherent power when "none of the other federal rules or statutes govern the
28 situation" *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1108 (9th Cir. 2002) (citing
Chambers, 501 U.S. at 50), and "even if procedural rules exist which sanction the
same conduct." *Chambers*, 501 U.S. at 49.

1 No. 05-CV-1958, 2008 U.S. Dist. LEXIS 911, at *31 (S.D. Cal. Jan. 7, 2008);
2 *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004), but also led
3 to the destruction of critical evidence and prolonged the lawsuit far longer than it
4 should have lasted. (Doc. 252 at 16.) A sanction of Defendants’ attorneys’ fees and
5 expenses is thus fully warranted. *See Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961
6 (9th Cir. 2006) (awarding attorneys’ fees under inherent powers for bad faith
7 spoliation); *Surowiec v. Capital Title Agency, Inc.*, 790 F. Supp. 2d 997, 1011 (D.
8 Ariz. 2011) (awarding attorneys’ fees and expenses under inherent power as
9 sanction for spoliation); *Realnetworks, Inc. v. DVD Copy Control Ass’n*, 264 F.R.D.
10 517, 530 (N.D. Cal. 2009) (awarding attorneys’ fees even where spoliation was not
11 willful); *Dong Ah Tire & Rubber Co. v. Glasforms, Inc.*, No. 06-3359, 2009 WL
12 1949124, at *11 (N.D. Cal. July 2, 2009) (awarding sanction of attorneys’ fees and
13 costs for party’s act of “destroying . . . records after litigation commenced”).

14 **V. THE AMOUNT OF DEFENDANTS’ ATTORNEYS FEES AND COSTS**
15 **IS REASONABLE**

16 In calculating an award of attorney’s fees, courts determine a “lodestar”
17 figure by “multiplying the number of hours the prevailing party reasonably
18 expended on the litigation by a reasonable hourly rate.” *Morales v. City of San*
19 *Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *opinion amended on denial of reh’g*, 108
20 F.3d 981 (9th Cir. 1997). In determining what constitutes a “reasonable” number of
21 hours and rate, courts consider factors including: the attorneys’ experience, skill,
22 and reputation; whether the attorney’s fees sought are consistent with prevailing
23 market rates; and the complexity of the litigation. *See Welch v. Metro. Life Ins. Co.*,
24 480 F.3d 942, 946 (9th Cir. 2007); *Chalmers v. City of L.A.*, 796 F.2d 1205, 1210-11
25 (9th Cir. 1986).

26 Application of these factors clearly favors an award of fees and full costs to
27 Defendants. As set forth in the accompanying declarations, counsel for the Guetta
28 Defendants, the Adams Defendants and the UMG Defendants all have significant

1 experience in copyright infringement matters. The total number of hours spent on
2 this case by Defendants' counsel is reasonable given Pringle's two failed motions
3 for preliminary relief, the broad scope of fact discovery from sources in both the
4 U.S. and France, Pringle's shifting theories of access, the varied topics of expert
5 discovery, and the fact that Defendants were forced to brief a comprehensive
6 summary judgment motion and reply to a voluminous opposition. Indeed, Pringle's
7 counsel themselves recognized that filing suit would subject Defendants to the
8 "expense [of] being involved with a hard-fought litigation [and] discovery".
9 (Dickstein Decl., Ex. 10 at P-UMG 5988.) In addition, as set forth in the
10 accompanying declarations, the rates of the Defendants' attorneys and paralegals
11 who worked on this matter are consistent with prevailing market rates for attorneys
12 and paralegals at comparable law firms.

13 **CONCLUSION**

14 For all of the above reasons, Defendants respectfully ask that the Court grant
15 their motion for an award of attorneys' fees and full costs, against Pringle and his
16 counsel.

17 Dated: May 25, 2012

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