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 7

8 **UNITED STATES DISTRICT COURT**  
 9 **CENTRAL DISTRICT OF CALIFORNIA**  
 10 **SOUTHERN DIVISION**  
 11

12 BRYAN PRINGLE, an individual,  
 13 Plaintiff,  
 14 v.  
 15 WILLIAM ADAMS, JR.; STACY  
 FERGUSON; ALAN PINEDA; and  
 16 JAIME GOMEZ, all individually and  
 collectively as the music group the  
 17 Black Eyed Peas; DAVID GUETTA;  
 FREDERICK RIESTERER; UMG  
 18 RECORDINGS, INC.; INTERSCOPE  
 RECORDS; EMI APRIL MUSIC,  
 19 INC.; HEAPHONE JUNKIE  
 PUBLISHING, LLC.; WILLIAM  
 20 MUSIC, LLC; JEEPNEY MUSIC,  
 INC.; TAB MAGNETIC  
 21 PUBLISHING; CHERRY RIVER  
 MUSIC, CO.; SQUARE RIVOLI  
 22 PUBLISHING; RISTER EDITIONS;  
 and SHAPIRO, BERNSTEIN & CO.,  
 23 Defendants.  
 24

Case No. SACV 10-1656 JST (RZx)

**JOINDER TO OPPOSITIONS AND  
 OPPOSITION BY DEFENDANTS  
 UMG RECORDINGS, INC. AND  
 INTERSCOPE RECORDS TO  
 MOTION FOR PRELIMINARY  
 INJUNCTION; DECLARATIONS  
 OF LINDA M. BURROW, TOM  
 ROWLAND, AND IKE YOUSSEF;  
 EXHIBIT**

Hearing Date: January 31, 2011  
 Time: 10:00 a.m.  
 Courtroom 10A  
 Trial Date: None Set

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1 **I. INTRODUCTION**

2 Defendants UMG Recordings, Inc. and Interscope Records (collectively,  
3 “UMG”) hereby oppose the Motion for a Preliminary Injunction filed by Plaintiff  
4 Bryan Pringle. Instead of repeating the arguments and evidence presented by other  
5 Defendants, UMG hereby joins in their Oppositions (Docket (“Dkt.”) Nos. 81, 83).  
6 UMG firmly agrees with its co-Defendants that Plaintiff has failed to establish that  
7 he is likely to prevail on the merits of his claim, which alone is reason enough to  
8 deny this motion for a Preliminary Injunction. *See Gilman v. Schwarzenegger*, 2010  
9 WL 4925439 at \*3 (9th Cir. Dec. 6, 2010) (providing that “[a] plaintiff seeking a  
10 preliminary injunction must establish that he is likely to succeed on the merits, that  
11 he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
12 balance of equities tips in his favor, *and* that an injunction is in the public interest”)  
13 (emphasis added).

14 UMG files this brief to support the other Defendants’ Oppositions, and  
15 emphasize that this Motion should be denied because, even if Plaintiff could  
16 demonstrate a possibility of success on the merits (which he cannot), he is still not  
17 entitled to injunctive relief, for at least four reasons:

- 18 • *First*, Plaintiff delayed nearly twenty months from the release of the  
19 alleged infringing work, the Black Eyed Peas’ “I Gotta Feeling,” (the  
20 “Song”) to bring this motion—an unreasonably long period that negates  
21 any finding of irreparable harm.
- 22 • *Second*, Plaintiff’s Motion makes clear that any harm he may have  
23 suffered is not irreparable. Rather, Plaintiff merely seeks through his  
24 lawsuit a share of the “millions of dollars” he claims Defendants have  
25 received from the distribution of the Song.
- 26 • *Third*, when balancing the harms caused by the injunction, this Court  
27 must account for the incalculable costs that UMG would incur in

1 complying with his proposed injunction, which far outweighs any  
2 possible harm Plaintiff may incur during this litigation.

- 3 • *Finally*, Plaintiff fails to offer any evidence of any “public interest,”  
4 that would be served should an injunction issue in this case.

5 In addition, contrary to Plaintiff’s apparent belief that he is entitled to the  
6 benefit of an injunction without satisfying his burden to post a bond (a position for  
7 which there is no support), any injunction in this case must be secured by an  
8 immense bond, and even that bond could protect against the intangible harm of loss  
9 of good will and reputation that the injunction would cause UMG.

10 “A preliminary injunction is an extraordinary and drastic remedy; it is never  
11 awarded as of right.” *Gilman*, 2010 WL 4925439 at \*3 (quoting *Munaf v. Geren*,  
12 553 U.S. 674, 689-90 (2008) (quotation marks and citations omitted)). Plaintiff has  
13 failed to meet his burden to satisfy any of the factors for injunctive relief.

14 Accordingly, for the reasons set forth below, and for the reasons described in the  
15 Oppositions filed by UMG’s co-Defendants, Plaintiff’s motion should be denied.

## 16 **II. PLAINTIFF WILL NOT SUFFER IRREPARABLE HARM WITHOUT** 17 **THIS EXTRAORDINARY RELIEF**

18 This Court cannot issue an injunction in the absence of a finding that Plaintiff  
19 is likely to suffer irreparable harm. *See Winter v. Natural Resources Defense*  
20 *Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 375-76 (2008) (discussing the Supreme  
21 Court’s “frequently reiterated standard requir[ing] plaintiffs seeking preliminary  
22 relief to demonstrate that irreparable injury is *likely* in the absence of an injunction”)  
23 (emphasis in original). It is clear, however, from Plaintiff’s Motion, that he would  
24 not suffer any “irreparable” harm in the absence of an injunction. Indeed, Plaintiff  
25 appears to believe that he is not obligated to supply any evidence of harm at all;  
26 instead, according to Plaintiff, this Court may merely *presume* harm from his  
27 (defective) infringement claims. The law does not support this presumption, and

1 any presumption in this case would be negated by Plaintiff’s twenty-month delay in  
2 bringing this motion. (See Dkt. No. 15.)

3 **A. Plaintiff is Not Entitled to a Presumption of Irreparable Harm**

4 Despite Plaintiff’s assertion otherwise, this Court may not merely assume  
5 irreparable harm simply because this is a copyright infringement case. Indeed,  
6 injunctive relief has *never* been automatic, even in a case of copyright infringement.  
7 See *Abend v. MCA, Inc.*, 863 F.2d 1465 (9th Cir. 1988) (finding infringement but  
8 declining to enjoin distribution of defendant’s film where the plaintiff “can be  
9 compensated adequately for the infringement by monetary compensation”).  
10 Moreover, the validity of any presumption of harm has been called into serious  
11 question by the Supreme Court’s decisions in *eBay Inc. v. MercExchange, L.L.C.*,  
12 547 U.S. 388 (2006), in which the Court held expressly that there can be no  
13 presumption of irreparable harm with respect to *permanent* injunctions in  
14 intellectual property cases, see 547 U.S. at 394, and *Winter*, in which the Court  
15 rejected the standard then in effect in the Ninth and other Circuits, pursuant to which  
16 an injunction could be entered based only on a “possibility” of irreparable harm  
17 where the plaintiff demonstrated a strong likelihood of prevailing on the merits.<sup>1</sup>  
18 See *Winter*, 555 U.S. at ---, 129 S.Ct. at 375-76. Since *eBay* and *Winter*, courts in  
19 this District and elsewhere have cast serious doubt on the validity of the  
20 presumption of irreparable harm in assessing the need for *preliminary* relief. See,  
21 e.g., *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197,  
22 1212-13 (C.D. Cal. 2007) (Wilson, J.) (citing cases and observing that “a significant  
23 number” of courts have determined that the presumption no longer applies); see also  
24 *Aurora World, Inc. v. Ty Inc.*, No. CV09-08463, 2009 WL 6617192, at \*37 (C.D.

25 \_\_\_\_\_  
26 <sup>1</sup> Of course, as Plaintiff has failed to establish that he is likely to prevail on the  
27 merits at all, let alone demonstrate a *strong* likelihood, this standard would not have  
applied in this case.



1 Cal. Dec. 15, 2009) (Morrow, J.) (declining to apply presumption of irreparable  
2 harm in trademark case).<sup>2</sup>

3 Even if irreparable harm could be presumed in some cases, that presumption  
4 has been rebutted here. A presumption merely “shifts the ultimate burden of  
5 production ... onto the alleged infringer”—it does not override the evidence on the  
6 record. *See Reebok Intern. Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1556 (Fed. Cir.  
7 1994). A presumption of irreparable harm is rebutted by delay in bringing a motion  
8 for an injunction, or where monetary damages alone are sufficient to compensate the  
9 plaintiff. *High-Tech Medical Instrumentation, Inc. v. New Image Industries, Inc.*, 49  
10 F.3d 1551, 1556-57 (Fed. Cir. 1995) (applying presumption of irreparable harm, but  
11 finding presumption rebutted based upon seventeen-month delay in bringing action  
12 and an absence of evidence that monetary damages would be inadequate); *see also*  
13 *Protech Diamond Tools, Incorporation v. Liao*, 2009 WL 1626587, \*6 (N.D. Cal.  
14 June 8, 2009) (acknowledging the existence of a presumption of harm, but finding  
15 presumption rebutted that where the plaintiff had waited two years after the alleged  
16 infringement to file a complaint, and then waited another five months to file a  
17 motion for a preliminary injunction).

18 As discussed below, it is clear that any presumption of harm has been negated  
19 by Plaintiff’s unexplained twenty-month delay in filing this Motion, and any harm  
20 Plaintiff may have suffered can be easily addressed through monetary damages.

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<sup>2</sup> *Summit Entertainment, LLC v. Beckett Media, LLC*, No. CV 09-8161, 2010 WL 147958 (C.D. Cal. Jan. 12, 2010) (Gutierrez, J.), the unpublished district court case on which Plaintiff relies, is not to the contrary. In *Summit Entertainment*, the Court, after noting case law describing this “presumption,” went on to make a factual determination that the plaintiff had, in fact, demonstrated that irreparable harm was likely. *See id.* at \*4.



1 delay in bringing action “a substantial period of delay that militates against the  
2 issuance of a preliminary injunction”); *see also Protech Diamond Tools*, 2009 WL  
3 1626587 at \*6 (finding “delay alone...sufficient to undermine the Plaintiff’s claim  
4 of immediate, irreparable harm”).

5 The absence of irreparable harm to Plaintiff is further bolstered by Plaintiff’s  
6 failure even to *register* his work in the eleven years since it was created. *See Pringle*  
7 Decl., ¶ 5 (stating that he created the derivative of “Take a Dive” in 1999, but  
8 registered the work with the Copyright Office in 2010). As Pringle had registered  
9 previous works with the Copyright Office, *see id.*, ¶ 4, he was well-aware of the  
10 steps he needed to take to invoke the Copyright Act’s protections. Nevertheless,  
11 Pringle proceeded to submit CDs with his unregistered work to music labels,  
12 internet websites, and virtually anyone else who would listen. *See id.*, ¶ 7. If  
13 Pringle himself could not be bothered to make even the most basic efforts at  
14 protecting his work despite more than a decade of distribution, he cannot now claim  
15 that further distribution of “I Gotta Feeling” would harm him irreparably.<sup>3</sup>

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18 <sup>3</sup> *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001), on which  
19 Plaintiff relies, is not to the contrary. In *Napster*, the Ninth Circuit held that the  
20 activities of the Napster file-sharing service, which allowed users to download  
21 copyrighted sound recordings for free, had an irreparable “deleterious effect on the  
22 present and future digital download market” for such recordings. 239 F.3d at 1017.  
23 This case does not concern an entire *market*, as was the case in *Napster*, but a single  
24 work, which Plaintiff concedes he has never sold. Similarly inapposite is *Taylor*  
25 *Corp. v. Four Seasons Greetings, LLC*, 403 F.3d 958 (8th Cir. 2005), in which the  
26 court concluded that the plaintiff’s decision not to seek monetary relief did not  
27 preclude it from obtaining a permanent injunction following trial—particularly  
28 where, as in that case, the defendants’ use of the plaintiff’s copyrighted greeting  
cards precluded the plaintiff from making any use whatsoever of that material  
thereafter. *Id.* at 962, 967-68.

1                   **2. Plaintiff All But Concedes His Harm Can Be Addressed**  
2                   **Through Money Damages**

3                   It is axiomatic that, for an injunction to issue, the harm to be prevented must  
4 be *irreparable*—in other words, not redressible through money damages alone. *See,*  
5 *e.g. Calmar, Inc. v. Emson Research, Inc.*, 838 F. Supp. 453, 455-56 (C.D. Cal.  
6 1993) (Tevrizian, J.) (holding that plaintiff was not irreparably harmed where the  
7 defendant was “financially sound and capable of satisfying [any] monetary damage  
8 award”); *see also Abend*, 863 F.2d at 1479 (declining to enjoin further distribution  
9 of the film *Rear Window* because the Plaintiff could “be compensated adequately for  
10 the infringement by monetary compensation”).

11                  Here, after waiting nearly two years since the Song was released, Plaintiff  
12 now seeks an injunction on the grounds that, to date, the Defendants have reaped  
13 “millions of dollars of profit” from exploitation of the Song. *See Mot.* at 21. If  
14 Plaintiff can establish that the Song infringes his work (which, for the reasons set  
15 forth in the Oppositions filed by UMG’s co-Defendants, he cannot), it is clear that  
16 what he seeks is not the protection of his work for some higher purpose, but a share  
17 of the Defendants’ profits arising from the use of that work. Such harm can  
18 unquestionably be ameliorated with monetary damages, and Plaintiff is therefore not  
19 entitled to an injunction.

20 **III. THE BALANCE OF HARDSHIPS WEIGHS AGAINST THE**  
21 **PROPOSED INJUNCTION**

22                  Plaintiff asks this Court to (i) prohibit UMG from manufacturing or  
23 distributing any additional copies of the Black Eyed Peas album, “The E.N.D.”,  
24 which contains the Song, (ii) require UMG to remove the Song from digital  
25 distribution, such as through iTunes, (iii) prohibit UMG from entering into any  
26 further third-party license agreements and (iv) to place all profits relating to the  
27

1 Song in an escrow accounting pending resolution of this case.<sup>4</sup> Not only does  
2 Plaintiff fail to offer any evidence of irreparable harm, but it is clear from his motion  
3 that UMG would suffer disproportionately if his requested injunction should issue.

4 An injunction may not issue unless the balance of harms favors the moving  
5 party. *See International Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 822  
6 (9th Cir. 1993). Where, as in this case, the Plaintiff fails to establish a likelihood of  
7 success on the merits of his claim, he is not entitled to an injunction unless he can (i)  
8 demonstrate that there are “serious questions” going to the merits *and* that the  
9 balance of hardships tips sharply in his favor. *Id.*

10 The balance of harms sharply favors the denial of Plaintiff’s Motion. The  
11 Song, “I Gotta Feeling” was the second – and by far the highest-selling, single from  
12 the Black Eyed Peas’ immensely popular album, “The E.N.D” (the “Album”). *See*  
13 Youssef Decl., ¶¶ 2, 3. Should, as Plaintiff requests, the Defendants be prohibited  
14 from manufacturing or shipping albums containing the Song, UMG would suffer at  
15 least hundreds of thousands of dollars in damage, including costs relating to revising  
16 the Album’s artwork, remastering the Album and manufacturing new copies of the  
17 Album and the loss of the ability to sell more than \$100,000 worth of existing, but  
18 yet undistributed, copies of the album. *Id.*, ¶ 3. In addition, because of the “I Gotta  
19 Feeling’s” vast popularity, it is likely that a significant number of consumers would  
20 decline to purchase a copy of the Album that did not include “I Gotta Feeling,”  
21 which would cause UMG to suffer further – if unquantifiable – losses. Youssef  
22 Decl., ¶¶ 3, 4.

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24 <sup>4</sup> Plaintiff offers no legal or factual support for his request that Defendants’ profits  
25 be placed in escrow—a remedy usually reserved for circumstances where the  
26 defendant is of questionable financial health. *See, e.g. Sargent v. American*  
27 *Greetings Corp.*, 588 F. Supp. 912, 925 (D.Ohio. 1984) (rejecting request for  
preliminary injunction to escrow proceeds from sale of alleged infringing works,  
where the plaintiff failed to demonstrate a likelihood of success on the merits and  
where the defendant was financially healthy).

28

1           UMG would also suffer a substantial loss of goodwill with retailers – both  
2 traditional record stores and digital retailers such as iTunes– if it could no longer sell  
3 “I Gotta Feeling.” *Id.*, ¶¶ 3-4. For traditional retailers, this loss of goodwill could  
4 have implications for UMG ability to place other product in those stores in the  
5 future. *Id.* at ¶ 4; *see also Trust Co. Bank v. Putnam Publ'g Group, Inc.*, 5  
6 U.S.P.Q.2d 1874, 1877 (C.D.Cal. 1988) (Stotler, J.) (refusing to enjoin publication  
7 of book alleged to infringe “Gone with the Wind” where, among other things, an  
8 injunction would damage the defendant’s “goodwill with wholesalers and retailers  
9 would be damaged” and would have an adverse effect on the defendant’s ability to  
10 obtain shelf space at stores).

11           UMG would be harmed even further if, as Plaintiff suggests, it were to be  
12 prohibited from licensing “I Gotta Feeling” for use in films, television programs,  
13 commercials and video games (collectively, “Ancillary Exploitations”). *See*  
14 Declaration of Tom Rowland (“Rowland Decl.”), ¶ 2. “I Gotta Feeling” is one of  
15 UMG’s top revenue generating recordings over the past several years, having  
16 generated more than \$650,000 in license revenue from Ancillary Exploitations. *Id.*  
17 ¶ 4. UMG conservatively estimates that “I Gotta Feeling” will generate at least an  
18 additional \$300,000 in Ancillary Exploitation revenue over the next two years—  
19 revenue that would not be directly replaced if UMG were enjoined from further  
20 licensing activity. *Id.*, ¶ 5.

21           These harms, balanced against the minimal harm Plaintiff would suffer should  
22 “I Gotta Feeling” continue to be distributed, weigh *against* the issuance of an  
23 injunction. *See, e.g. LucasFilm Ltd. v. Media Market Group, Ltd.*, 182 F.Supp.2d  
24 897, 901 (N.D. Cal. 2002) (denying motion for preliminary injunction where the  
25 balance of hardships did not tip sharply in the plaintiff’s favor); *Chase-Riboud v.*  
26 *Dreamworks, Inc.* 987 F. Supp. 1222, 1233 (C.D. Cal. 1997) (refusing to enjoin the  
27 release of the film “Amistad” where, although the Plaintiff had raised serious

1 questions to the validity of her claim, the defendants had invested heavily in the  
2 film, and release was imminent).<sup>5</sup>

3 **IV. A PRELIMINARY INJUNCTION WOULD NOT SERVE THE PUBLIC**  
4 **INTEREST**

5 Where an injunction goes beyond the parties, carrying with it a potential for  
6 public consequences, the “public interest” becomes relevant to whether an  
7 injunction should issue. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir.  
8 2009). Plaintiff argues conclusorily that “[t]here is a public interest in upholding  
9 intellectual property rights such as copyright protections,” that favors an injunction  
10 in this case. *See* Mot. at 22. In each of the cases Plaintiff cites to support his  
11 position, however, the plaintiff had established a clear likelihood of success on the  
12 merits—which is not present here. *See Concrete Machinery Co. Inc. v. Classic*  
13 *Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988) (“an issue of public policy  
14 rarely is a genuine issue if *the copyright owner has established a likelihood of*  
15 *success.*”)(emphasis added)); *Autoskill Inc. v. Nat’l Education Support System, Inc.*,  
16 994 F.2d 1476 (10th Cir. 1993) (likelihood of success established); *Apple Computer,*  
17 *Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d. Cir. 1983) (copying  
18 admitted).

19 Moreover, none of the cases Plaintiff relies on makes any substantial finding  
20 regarding the public interest, or even suggests (as Plaintiff argues) that the public’s  
21 interest in upholding copyright protection will always support an injunction on  
22 \_\_\_\_\_

23 <sup>5</sup> Plaintiff’s reliance on *Canopy Music, Inc. v. Harbor Cities Broad., Inc.*, 950 F.  
24 Supp. 913 (E.D. Wis. 1997), is misplaced. The court in *Canopy Music* enjoined  
25 radio station from broadcasting recordings of compositions owned by the plaintiffs  
26 after the plaintiff’s public performance license was terminated. 950 F. Supp. at 915.  
27 The fact of infringement was not in dispute (indeed, the station was in default)—the  
only question was whether the equities favored an injunction—and the station was  
unlikely to suffer any significant harm if enjoined. Here, unlike *Canopy*, Plaintiff  
has not established any likelihood of success on the merits, and the harm to UMG if  
it were to be enjoined would be substantial.

1 behalf of a claimed copyright holder. Indeed, the Ninth Circuit and courts in this  
2 District have *denied* injunctive relief where, although the plaintiff established a  
3 likelihood of success on its infringement claim, the public’s interest in access to an  
4 artwork outweighed the need to protect the plaintiff’s rights. In *Abend*, for example,  
5 the Ninth Circuit found that because “an injunction could cause public injury by  
6 denying the public the opportunity to view a classic film” (Alfred Hitchcock's *Rear*  
7 *Window*), monetary damages would adequately compensate the plaintiff for any  
8 infringement. 863 F.2d at 1479. Similarly, in *Trust Co. Bank*, Judge Stotler denied  
9 a preliminary injunction that would have prohibited the publication a work alleged  
10 to infringe *Gone with the Wind*, citing the “strong public interest favoring the  
11 publication of books and novels.” 5 U.S.P.Q.2d at 1877. This same public interest  
12 supports allowing the public access to a popular song like “I Gotta Felling”, and  
13 denial of Plaintiff’s request for a preliminary injunction.

14         Neither can Plaintiff obtain a preliminary injunction in this case as part of his  
15 apparent one-man effort to “help maintain and further the integrity of the music  
16 business.” Mot. at 23. The burden is on *Plaintiff* to establish that he is entitled to an  
17 injunction *in this case*. See *Aurora World*, 719 F.Supp.2d at 1125 (providing that  
18 the Plaintiff must make a “clear showing” that he is entitled to injunctive relief). A  
19 injunction that withdraws a hit song from public access before the Court has  
20 determined infringement (indeed, where a finding of infringement is unlikely) does  
21 not promote copyright protection or the integrity of the industry. Instead, it creates a  
22 vehicle for unsuccessful artists to extort payment from defendants based on false  
23 and unproven claims.<sup>6</sup>

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25 <sup>6</sup> Plaintiff’s attempt to ground his injunction based upon “widespread reports” of  
26 other infringement claims against Black Eyed Peas (despite the absence of *any*  
27 finding of infringement) is both improper and completely without basis in fact or  
law.

28



1 **V. TO PROTECT UMG, PLAINTIFF WOULD HAVE TO POST AN**  
2 **IMMENSE BOND**

3 Finally, any injunction issued in this case must be supported by a substantial  
4 bond. Although Plaintiff claims that this Court may dispense with the bond  
5 requirement entirely, the Federal Rules *require* Plaintiff to post a bond “to pay the  
6 costs and damages sustained by any party found to have been wrongfully enjoined  
7 or restrained.” Fed. R. Civ. P. 65(c). The purpose of the bond requirement is  
8 threefold: (1) to discourage the moving party from seeking preliminary injunctive  
9 relief to which it is not entitled; (2) to assure the court that if it errs in granting such  
10 relief the moving party rather than the wrongfully-enjoined party will bear the cost  
11 of the error; (3) to provide a wrongfully-enjoined party a source from which it may  
12 readily collect damages without further litigation and without regard to the moving  
13 party’s solvency. *Nintendo of America, Inc. v. Lewis Galoob Toys, Inc.* 16 F.3d  
14 1032, 1037 (9th Cir. 1994). “When setting the amount of security, district courts  
15 should err on the high side. . . . [A]n error in the other direction produces  
16 irreparable injury, because the damages for an erroneous preliminary injunction  
17 cannot exceed the amount of the bond.” *Mead Johnson & Co. v. Abbott*  
18 *Laboratories*, 201 F.3d 883, 888 (7th Cir. 2000).

19 Plaintiff seeks to avoid his obligation to post a bond entirely, relying on  
20 authorities wholly inapposite to the case before this Court. In *Northwestern Bell*  
21 *Tel. Co. v. Bedco of Minn, Inc.*, 501 F. Supp. 299 (D. Minn. 1980), for example, the  
22 defendant used photocopies of advertisements from the plaintiff’s Yellow Pages  
23 directory in materials it used to try to solicit advertisers for its competing directory.  
24 The court enjoined the use of these photocopies (but not defendant’s non-infringing  
25 efforts to compete with the plaintiff) and declined to post a bond, holding that no  
26 bond was required “[c]onsidering the strength of the case presented by plaintiff” and  
27 the absence of any substantial harm suffered by the defendant as a result of the

1 injunction. *Id.* at 304. Where, as in this case, the Plaintiff has not made out a strong  
2 case of infringement, and where there is substantial evidence of the harm to UMG  
3 accruing from the injunction, it would be an abuse of this Court’s discretion to  
4 decline to order a bond. *See Frank’s GMC Truck Center, Inc. v. General Motors*  
5 *Corp.*, 847 F.2d 100, 103 (3d Cir. 1988) (holding that “absent circumstances where  
6 there is no risk of monetary loss to the defendant, the failure of a district court to  
7 require a successful applicant to post a bond constitutes reversible error”).

8         In each of the other cases cited by Plaintiff, the injunction was granted to  
9 individuals or non-profit organizations that sought relief from government action on  
10 behalf of the public interest. *See, e.g., Save our Sonoran, Inc. v. Flowers*, 408 F.3d  
11 1113, 1126 (9th Cir. 2005) (discussing the Ninth Circuit’s “long-standing precedent  
12 that requiring nominal bonds is perfectly proper in public interest litigation” and  
13 affirming \$50,000 bond securing injunction against construction in Sonoran desert);  
14 *Barahona-Gomez v. Reno*, 167 F.3d 1228 1237 (9th Cir. 1999) (declining to require  
15 that class of undocumented immigrants post a bond to secure injunction staying  
16 deportations, particularly in the absence of evidence that injunction caused  
17 government any harm); *Cal ex. rel. Van De Kamp v. Tahoe Regional Planning*  
18 *Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (declining to require bond in  
19 environmental action, “where requiring security would effectively deny access to  
20 judicial review”); *Friends of the Earth v. Brinegar*, 518 F.2d 322 (9th Cir. 1975)  
21 (reversing \$4,500,000 bond imposed in injunction obtained by non-profit against  
22 government construction, noting that unreasonably high bond requirements would  
23 undermine statutory mechanisms for environmental enforcement); *see also Santa*  
24 *Rosa Mem. Hosp. v. Maxwell-Jolly*, 380 Fed. Appx. 656, 658 (9th Cir. 2010) (citing  
25 *Save Our Sonoran*, and finding that a challenge to Medicaid reimbursement rates  
26 falls within the “public interest” exception to the bond requirement). None of these  
27

