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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 PRESTON D. MARSHALL,

No. C 10-1665 SI

9 Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO FILE FOURTH  
AMENDED COMPLAINT**

10 v.

11 JOHN HUFFMAN IV, *et al.*,

12 Defendants.  
13 \_\_\_\_\_/

14 Plaintiff's motion for leave to file a fourth amended complaint is scheduled for a hearing on  
15 January 13, 2012. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is  
16 appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth  
17 below, the Court GRANTS the motion. The fourth amended complaint shall be filed no later than  
18 **January 13, 2012**. The January 13, 2012 case management conference is rescheduled to **March 2,**  
19 **2012 at 3:00 pm.**  
20

21 **DISCUSSION**

22 Plaintiff Preston Marshall, now represented by new counsel, seeks to file a fourth amended  
23 complaint to correct mistakes made by his former counsel in the third amended complaint, as well as  
24 to streamline this case by deleting unnecessary or improper causes of action included in the third  
25 amended complaint. One proposed amendment is the addition of UMG Recordings, Inc. ("UMG") as  
26 a defendant; Island Def Jam Music, a division of UMG, was previously dismissed from the second  
27 amended complaint after plaintiff's former counsel failed to oppose Island Def Jam Music's motion to  
28 dismiss and represented to the Court that plaintiff did not wish to pursue his claims against Island Def

1 Jam Music. The second amended complaint alleged, *inter alia*, a claim against Island Def Jam Music  
2 Inc. for copyright infringement of a sound recording, while the proposed fourth amended complaint  
3 seeks to allege a claim against UMG for copyright infringement of a musical composition. Plaintiff has  
4 filed a declaration in support of the instant motion stating that he was unaware his previous counsel had  
5 failed to oppose Island Def Jam Music’s motion to dismiss, that he never told his previous lawyer that  
6 he did not want to pursue his claims against UMG, and that he still wants to pursue his claims against  
7 UMG.

8 UMG argues that plaintiff should not be permitted to amend the complaint to add UMG back  
9 as a defendant because the Court granted Island Def Jam Music Group’s motion to dismiss “without  
10 leave to amend.” UMG argues that such a dismissal operates as a dismissal with prejudice, and relatedly  
11 that the proposed fourth amended complaint against UMG is barred by res judicata. UMG also asserts  
12 that plaintiff’s motion is an “improper end-run” around the high standard governing a motion for  
13 reconsideration, that the alleged incompetence of plaintiff’s former counsel does not permit plaintiff to  
14 resuscitate claims against UMG that have been dismissed, and that plaintiff and his counsel should be  
15 sanctioned for unreasonably multiplying proceedings in this case by filing the instant motion to amend.

16 The Court concludes that plaintiff should be permitted to file the proposed fourth amended  
17 complaint. Ordinarily, the Court would have granted plaintiff leave to amend his claims against Island  
18 Def Jam Music Group when the Court granted the motion to dismiss the second amended complaint.  
19 The only reason the Court dismissed plaintiff’s claims against Island Def Jam Music Group without  
20 leave to amend was because plaintiff’s former counsel stated at the December 9, 2010 hearing that  
21 plaintiff did not want to pursue his claims against that defendant. In light of the unusual situation  
22 presented here, the Court finds that it is in the interest of justice to allow plaintiff to amend the  
23 complaint. Granting leave to amend is consistent with the liberal policy in favor of allowing amendment  
24 unless it is clear that “the pleading could not possibly be cured by the allegation of other facts.” *Lopez*  
25 *v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (citations and internal quotation marks omitted). UMG  
26 does not contend that the proposed amendment is futile, and plaintiff seeks to allege a new and different  
27 copyright claim than the claim that the Court dismissed in the December 9, 2010 order. Further, given  
28 the early stages of this litigation, UMG will not be prejudiced by the amendment. Although this case

1 has been pending for some time, it is still at the pleadings stage and none of the defendants have been  
2 served with the third amended complaint.


3 The Court also finds that sanctions against plaintiff are not warranted. The Court disagrees with  
4 UMG's assertions that plaintiff and his new counsel are vexatiously multiplying proceedings. The Court  
5 believes it is in all of the parties' interests to move forward with this litigation in an expeditious and  
6 cooperative fashion. Relatedly, with regard to UMG's contention that plaintiff should have filed a  
7 motion for reconsideration instead of a motion for leave to amend, the Court finds that given the  
8 procedural posture and circumstances of this case, plaintiff did not act improperly.

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10 **CONCLUSION**

11 Accordingly, the Court GRANTS plaintiff's motion for leave to file a fourth amended complaint.  
12 Docket No. 51. The fourth amended complaint must be filed no later than **January 13, 2011**. Plaintiff  
13 shall promptly serve the complaint on all defendants. The Court will hold a case management  
14 conference on **March 3, 2012 at 3:00 pm**.

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16 **IT IS SO ORDERED.**

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18 Dated: January 8, 2012

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21 SUSAN ILLSTON  
22 United States District Judge  
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