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No. 21-10978

United States Court of Appeals
for the
Eleventh Circuit

ANTHONY CAMPBELL, professionally known as
Rackboy Cam,

Plaintiff-Appellee

-v.-

RAYSHAWN LAMA BENNETT, professionally known as
YFN Lucci, et al.,

Defendants,

JUNE JAMES,

Defendant-Appellant.

On Appeal From The United States District Court
For The Northern District Of Georgia, Docket No. 1:18-Cv-01064-CAP.
The Honorable Charles A. Pannell, Jr., Judge Presiding.

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1, the undersigned counsel for Appellee hereby certifies that there are no additional persons who may have an interest in the outcome of this case. The Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellant on May 17, 2021 is complete as filed.

Dated: July 15, 2021

/s/ Christopher W. Niro

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STATEMENT REGARDING ORAL ARGUMENT

Appellee, Anthony Campbell, professionally known as “Rackboy Cam” respectfully disagrees with James on the need for oral argument and will be available if oral argument is held.

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STATEMENT OF ISSUES

- I. Whether the District Court ruled James was properly served with Summons and Complaint.
- II. Whether the First Amended Complaint is the operative pleading.
- III. Whether the District Court properly found all Defendants were partners in creating the Infringing Work.
- IV. Whether the District Court properly ruled James is jointly and severally liable.
- V. Whether the District Court properly ruled Campbell met his burden of proof for actual damages under the Copyright Act.
- VI. Whether the District Court properly awarded Campbell pre-judgment interest.
- VII. Whether the District Court properly awarded Campbell a permanent injunction and running royalty.
- VIII. Whether the District Court properly awarded Campbell his costs.

STATEMENT OF THE CASE

Plaintiff-Appellee Anthony Campbell (“Campbell”) is a musical artist performing under the name “Rackboy Cam”. (R. at 56, ¶ 2). In 2015 Campbell wrote and recorded a music composition entitled “Everything Be Lit”. Campbell is the owner of the copyright for *inter alia* “Everything Be Lit”; the work is registered with the Copyright Office with registration number SR 800-876. (R. at 56 ¶ 3, R. at 58, ¶¶ 19, 20). June James (“James”) is a producer and musician and is signed to Defendant record label Think It’s a Game Records, Inc. (“TIG”). (R. at 56, ¶ 8). Rakim Hasheem Allen (“Allen”) is credited for writing the song “Everyday We Lit” with Rayshawn Lamar Bennett (“Bennett”). (R. at 61, ¶ 39). James is credited as the producer of “Everyday We Lit” and the creator of the music of “Everyday We Lit”. (R. at 61, ¶¶ 41, 42).

In April 2015, Campbell created, wrote, recorded, and released the song “Everything Be Lit”. (R. at 58, ¶ 15). On January 18, 2016, Campbell and Allen performed the song “Everything Be Lit” at Club Onyx in Philadelphia. (R. at 60, ¶ 36). Since December 15, 2016, the Defendant-Appellant’s substantially similar song “Everyday We Lit” has been widely distributed throughout the United States. (the “Infringing Work”) (R. at 62, ¶ 51).

On March 13, 2018, Campbell filed his Complaint against the Defendants for copyright infringement. (R. at 16-37). All Defendants were properly served with the

Summons and Complaint. (*See* Docs. 12, 14, 30, 31, 77; *see* R. at 38). More specifically, James was served with process on May 14, 2018, at his usual place of abode by leaving copies of the summons and complaint with his mother, who confirmed that James resided there. (R. at 38). This required James to file his Answer to the Complaint on or by June 4, 2018. When James failed to timely file an appearance or Answer, on June 8, 2018, Campbell filed his motion for entry of default against James and Bennett. (Doc. 17). On June 12, 2018, James was found in default by the District Court. (*See* Doc. 77).

On June 22, 2018, TIG filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) claiming Campbell's requested statutory damages and attorneys' fees were barred pursuant to 17 U.S.C. § 412 because Campbell failed to file his copyright application for the song "Everything Be Lit" within three (3) months of publication. (Doc. 29). On July 6, 2018, as a matter of course pursuant to Fed. R. Civ. P. 15(a), Campbell filed his First Amended Complaint ("FAC") against all named Defendants for copyright infringement, removing his request for relief of statutory damages and attorneys' fees. (R. at 55-75). Campbell provided copies of the FAC to all served parties via U.S. Postal Service Mail.

On January 28, 2019, Campbell filed his motion for default judgment against Allen and James. (Doc. 59). Almost seven (7) months after being found in default, James filed an appearance and his motion to set aside his default on February 5,

2019. (Docs. 61, 62). On April 10, 2019, the District Court denied James' motion to set aside the default against him. (Doc. 77). In that same order, the District Court denied Campbell's motion for entry of default judgment as premature and stated Campbell may seek a default judgment as to James and Allen when the matter has been resolved with Bennett. (*Id.*).

Subsequently, Campbell entered into separate confidential settlement agreements with TIG and Bennett¹. On March 14, 2019, a Notice of Settlement between Campbell and TIG was filed. (Doc. 72). On May 24, 2019, a Notice of Settlement between Campbell and Bennett was filed. (Doc. 80). On June 11, 2019, Campbell filed Stipulations of Dismissal with prejudice against Bennett and TIG. (Docs. 81, 82). On June 12, 2019, the Clerk entered Dismissal approving the Stipulations of Dismissal with prejudice against Bennett and TIG.

On July 31, 2019, the District Court ordered Campbell to re-file his motion for default judgment against Allen and James, which was to include sufficient evidentiary support for Campbell's request for damages and injunctive relief against Allen and James. (Doc. 84). On August 20, 2019, Campbell timely filed his motion

¹ In James' Initial Brief in support of his argument that there was no partnership between Defendants, James improperly informed this Court and disclosed to the public confidential terms of settlement agreements without first receiving express consent of the parties to the settlement agreement. (Appellant's Br., Procedural History, p. 7; Appellant's Br., Section II(D)(1), p. 26). Due to James' improper disclosure, this Court should disregard James' argument.

for default judgment as to Allen and James. (Doc. 84, 85). On March 5, 2020, the District Court granted in part Campbell's motion for default judgment against Allen and James. (R. at 93-109). In that order, the District Court (1) held that Allen and James are liable for copyright infringement, (2) granted Campbell's request for injunctive relief, pre-judgment interest, (3) held Allen and James jointly and severally liable for the infringement, and (4) awarded a running royalty on all future sales; each relief being within the scope of the pleadings. (*See* R. at 93-109). The District Court also ordered a damages hearing to be held on May 5, 2020. (R. at 109).

Campbell requested the damages hearing be postponed due to the non-service of numerous third-party subpoenas requesting discovery of financial data for the Infringing Work; counsel for James consented to postponing the damages hearing. (Doc. 94). The District Court found good cause to grant Campbell's motion and continued the damages hearing to July 16, 2020. (Doc. 95). On July 2, 2020, Campbell filed his trial brief with supporting royalty statements received from the third-parties under subpoena, along with an affidavit from Mr. Anthony Gottlieb, an expert in music recording revenue and royalty accounting. (R. at 110-125; Sealed R. at 229-250). Campbell's evidence proved that Defendants' gross revenue earned from the Infringing Work – "Everyday We Lit" was \$6,697,068.00. (R. at 113-115). Campbell's evidence also showed he is entitled to pre-judgment interest in the

amount of \$552,920.94 from March 13, 2018 to July 16, 2020 (assuming 7% interest and that the District Court would enter judgment at the damages hearing). (R. at 115). James submitted no contrary evidence, or any evidence whatsoever, to the District Court prior to or during the July 16, 2020 damages hearing.

On July 16, 2020, the District Court held a damages hearing by video conference. (Doc. 107; *see* R. at 148-212). During that hearing, Campbell introduced evidence through expert witness testimony and entered over 1,800 pages of royalty and earnings documents, all of which was introduced into evidence without any objection from James. (R. at 170: 13-20). Gottlieb's testimony and qualifications as an expert was also un-rebutted by James. (R. at 164: 6-16; R. at 166:13-167:5).

On September 2, 2020, the District Court found that the Defendants' gross revenue from the Infringing Work "Everyday We Lit" is \$6,697,068. (R. at 140). The District Court, pursuant to the one satisfaction rule, ordered Campbell to file a notice of settlement with the other defendants in order to reduce the amount awarded and once submitted, "[t]he court will then reduce the profit by that amount and enter judgment on the difference jointly and severally as to Allen and James." (R. at 145). Pursuant to that Order, on September 14, 2020, Campbell filed under seal a notice of filing regarding settlement amounts paid by Bennett and TIG. (Doc. 114).

On October 1, 2020, James prematurely filed a notice of appeal challenging the District Court's September 2, 2020 Order. (Doc. 117). On November 10, 2020, after informing James of the improper filing, Campbell filed a motion to dismiss the appeal for lack of appellate jurisdiction because the September 2, 2020 was not a final order. On January 22, 2021, this Court granted Campbell's motion to dismiss. (Doc. 127). On January 22, 2021, the mandate from this Court issued and returned the matter to the District Court for further proceedings, namely the entry of final judgment. (Doc. 127, p. 1).

On March 2, 2021, the District Court entered final judgment against Allen and James: (1) finding Allen and James willfully infringed Campbell's copyright, (2) entering judgment against Allen and James, jointly and severally, in the amount of \$1,447,720 (gross revenue of the music composition portion, which the FAC alleged was infringed), (3) granting pre-judgment interest rate of 6.25% from March 13, 2018 through March 2, 2021, (4) entering a permanent injunction against Allen and James, (5) awarding a running royalty rate of 50% of each Allen and James' writer's share of royalties generated by "Everyday We Lit" and "Everyday We Lit Remix" in perpetuity; and (6) awarding Campbell his costs incurred in this action in the amount of \$4,576.82. (R. at 227).

On March 23, 2021, James filed his second Notice of Appeal. (Doc. 131). On May 17, 2021, James filed his Initial Brief of Appellant.

SUMMARY OF THE ARGUMENT

The District Court was provided with evidence from only one party, Campbell. The District Court noted that James failed to participate in the litigation and also failed to introduce any evidence during the Damages hearing on July 16, 2020 (or at any point thereafter). James now submits his second appeal through an initial brief rife with misstatements of law and misleading statements of “fact.” James further inappropriately disclosed confidential settlement terms to this Court and the public without receiving express consent from the parties and completely ignored the integrity of confidential matter.

James continues to assert meritless arguments that he was not properly served with the original complaint or the first amended complaint, both of which issues were squarely resolved by the trial court through the plain reading of Rules 4 and 5 of the Federal Rules of Civil Procedure.

James’ Initial Brief continuously conflates Campbell’s burden of proof on damages, which requires a showing of gross revenue, with James’ own burden which is to show deductible expenses to arrive at “profits.” Rather, James continues to argue that Campbell was required to prove all of James’ “profits”. Campbell met his burden of proof through competent evidence and expert testimony. James introduced no contradictory evidence nor did he present any expert testimony to

rebut Campbell's expert. The District Court properly considered the evidence of record to arrive at its final judgment.

James' Initial Brief's wrongly argues that a plaintiff must prove damages before the defendant must show evidence of deductions to arrive at profits. No court has entertained such a concept (James hasn't provided any legal support for his contention) and this Court should similarly decline to do so. Campbell submitted a plethora of documentary evidence and expert testimony in support of his request for damages. James, on the other hand, presented nothing. Therefore, the District Court's judgment awarding damages to Campbell \$1,447,720 should be affirmed.

Finally, James Initial Brief provides no basis that would call into question the District Court's award of pre-judgment interest, an injunction, a running royalty rate, or costs to Campbell. Instead, James misstates Campbell's actual pre-judgment interest amount by citing to a 2019 document and also argues without any evidentiary support that Campbell's counsel perpetrated a fraud on the District Court when they submitted declarations of costs as, in reality being "primarily being attorney[s'] fees."

For the reasons set forth in detail below, Campbell respectfully requests this Court affirm the final judgment entered by the District Court (Doc. 129) and deny James' appeal on all grounds.

ARGUMENT

I. JAMES WAS PROPERLY SERVED ON MAY 14, 2018.

The standard of review for a district court's interpretation of Rule 4 of the Federal Rules of Civil Procedure is *de novo*. *Lepone–Dempsey v. Carroll County Comm'rs*, 476 F.3d 1277, 1280 (11th Cir. 2007).

James' persistent refusal to accept that he was properly served is meritless. The District Court twice rejected James' same argument that he now seeks this Court to endorse. Fed. R. Civ. P. 4(e) states as follows (emphasis added):

(e) Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located **or** where service is made; **or**

(2) doing **any** of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; **or**

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

In *Capitol Records v. Carmichael*, the court found service of process in accordance with Fed. R. Civ. P. 4(e) when the defendant was served with copies of

the summons and complaint at the defendant's dwelling house or usual place of abode by serving the defendant's mother who indicated that both she and defendant lived at that address. 508 F. Supp. 2d 1079, 1081 (S.D. Ala. 2007).

Here, Campbell accomplished service upon James through an identical method. (*See* Doc. 77, pp. 4-5). The sworn and executed affidavit of service filed with the District Court stated that a process server served James on May 14, 2018 by leaving the Complaint and Summons with **his mother and co-resident** at his dwelling or usual place of abode located at 4031 Black Locust Drive, Houston, Harris County, TX 77088 (the "Locust Address"). (R. at 38). In James' first motion to set aside his default, he admitted his mother lives at the Locust Address. (Doc. 62-1, p. 5). James did not contest these facts. In support of his motion to set aside his default, he attached an affidavit, wherein James stated that his "*current* residential address" is 7800 N. Sam Houston Parkway, #3205, Humble, Texas and that his "previous residential address" was 2701 W. Bellfort Ave., #1124, Houston, Texas. (Doc. 62-2) (emphasis added). James' affidavit lacked any dates specifying when he resided at those addresses. (Doc. 62-2). His affidavit then stated as follows:

My residential addresses **are** not:
4031 Black Locust Drive, Houston, Texas 77088
4665 Arlon Park Court, Ellenwood, Georgia 30294

(Doc. 62-2) (emphasis added). James sought avoid the fact of proper service with clever wording of his affidavit. The affidavit, if accepted as true, merely asserted

that the Locust Address is not his *current* address or his most *recent* address; it did not speak to whether the Locust Address was James's address at the time of service. Interestingly later, on June 6, 2018, James listed a different address that starts with 4664 on his Exclusive Recording Artist Agreement with the Hit Cartel Records; however, this address was not listed in his affidavit. (Doc. 68; Doc. 68-2). James' affidavit was nothing more than a tactic to evade admitting James' past or current residential address. The District Court considered James' submission and properly denied the Motion.

James carried the burden of establishing that he was not properly served and has fallen well short of doing so. (Doc. 77). *See also, Carlisle*, 2015 U.S. Dist. LEXIS 88186, at *23). The District Court properly found James failed to rebut the evidence submitted by Campbell. (Doc. 77, p. 6). The District Court further found that James did not provide any evidence showing that he did not reside at the service address with his mother, nor provided any evidence of where he resided on the date of service. (*Id.*). After weighing all the evidence submitted by Campbell and the lack of evidence submitted by James, the District Court found James was properly served according to the Federal Rules of Civil Procedure. (*Id.*).

Now, in a desperate effort to save himself from being liable for his infringement, James makes a public policy argument. (Appellant's Br., p. 34). There, James argues "the court's ruling in this case sets a standard for and

encourages unjust enrichment. The court essentially granted a request for an increased request in damages that was never served upon a defendant.” (*Id.*). James continues, “[t]his judgment encourages more plaintiffs to file and not attempt to serve amended complaints following default to guarantee a bigger windfall.” (*Id.*). Finally, James argues, “[b]y awarding default in this case, the court has permitted and encouraged lazy and improper service.” (Doc. 77, pp. 34-35). James misguided argument completely ignores the plain text of Rule 4(e)(2)(B) of the Federal Rules of Civil Procedure. It also ignores the considered attention given to his submissions and arguments made to the District Court. Similarly, and contrary to public policy, James’ argument would have this Court ignore Rule 4 and allow a defaulting defendant who has shown a complete disregard for the judicial system by waiting months to become active in litigation and “cry poor” in order to avoid liability. James’ efforts to avoid liability are, as the District Court found, without legal support.

Accordingly, this Court should affirm the District Court’s ruling that James was properly served and adjudged to be in default.

II. CAMPBELL’S FIRST AMENDED COMPLAINT IS CONTROLLING AND THE OPERATIVE PLEADING.

The “reasonableness of fees awarded must be reviewed under an abuse of discretion standard.” *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565, 1571 (11th Cir. 1985).

A. Personal Service of the First Amended Complaint on James was not Required.

Service of an amended complaint is not required on a defaulting party so long as the amended complaint does not add claims against the defaulting party. Fed. R. Civ. P. 5(a)(2) (“No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4”.) Service of the FAC adhered to the spirit and letter of Rule 5(a)(2). James now seeks to nullify that Rule.

Because James was properly served on May 18, 2018, personal service of the FAC was not necessary pursuant to the Federal Rules of Civil Procedure. (Doc. 77, p. 9, n.2; R. at 99-100). On June 12, 2018, James was found in default by the District Court. (*See* Doc. 77). Although James knew of the action and default, he took no action after the finding of default was entered. Thereafter, on July 6, 2018, Campbell filed his FAC against all named Defendants for copyright infringement, without adding any new claims against James. (R. at 56, ¶ 1; *see also* R. at 61-63, ¶¶ 39-65). Even though James was found in default before the FAC was filed, Campbell provided a copy of the FAC to James’ known address. Thereafter, James completely ignored the FAC by again failing to appear, answer or otherwise plead in response. (*See* Doc. 77, p. 3; R. at 213).

A court “may not award a default judgment which is more than or different in kind from that requested in the plaintiff’s original complaint.” *Atlanta Gas Light*

Co. v. Semaphore Advert., Inc., 747 F. Supp. 715. 719 (S.D. Ga. 1990). As the District Court stated, “the amended complaint is virtually identical to the original complaint. It asserts no further allegations against Allen and James and seeks no further relief than that of the original complaint.” (Doc. 77, p. 9, n.2). In fact, the FAC was amended to *remove* a claim for statutory damages. Therefore, entry of default judgment on the FAC was proper. (*Id.*).

Accordingly, Fed. R. Civ. P. 5(a)(2) applies such that Campbell was not required to personally serve James with the FAC. James was properly served and purposefully ignored the pending litigation for nearly nine (9) months. His continuous disregard for the judicial process should not be endorsed or rewarded.

B. The First Amended Complaint Requested the Relief Granted by the District Court in its March 2, 2021 Order.

When it was filed on July 6, 2018, Campbell’s FAC specifically requested the Court enter an Order that: (1) final judgment that Defendants willfully infringed his copyrighted song “Everything Be Lit”; (2) an order enjoining Defendants, preliminary and permanently from designing, importing, distributing, promoting, displaying, offering for sale, selling, and publicly performing the Infringing Work “Everyday We Lit”; (3) an order awarding Campbell Defendants’ profits, jointly and severally, from infringing Campbell’s copyrighted song “Everything Be Lit”; and (4) other and further relief as the Court may deem just and proper. (R. at 71-72). Accordingly, on March 2, 2021 the District Court entered default judgment against

Allen and James (1) finding Allen and James willfully infringed Campbell's copyright, (2) entering judgment against Allen and James, jointly and severally, in the amount of \$1,447,720, (3) granting pre-judgment interest rate of 6.25% from March 13, 2018 through March 2, 2021, (4) entering a permanent injunction against Allen and James, (5) awarding a running royalty rate of 50% of each Allen and James' writer's share of royalties generated by "Everyday We Lit" and "Everyday We Lit Remix" in perpetuity; and (6) awarding Campbell his costs incurred in this action in the amount of \$4,576.82. (R. at 227).

The only relief granted by the District Court that was not specifically requested for in the FAC was (1) granting pre-judgment interest, (2) awarding a running royalty, and (3) awarding Campbell's costs incurred. The District Court expressly and separately examined each relief requested by Campbell in his motion for default judgment to see if such relief was within the scope of his FAC. (R. 101-105). Federal Rule of Civil Procedure 54(c) provides, "[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." The District Court did not abuse its discretion in awarding Campbell the relief requested in his FAC and motion for default judgment.

The District Court had the discretion to award Campbell pre-judgment interest. *See City of Milwaukee v. Cement Div., Nat'l Gypsum Co.*, 515 U.S. 189, 194 (1995) (“Although Congress has enacted a statute governing the award of post-judgment interest in federal court litigation, *see* 28 U.S.C. 1961, there is no comparable legislation regarding prejudgment interest. Far from indicating a legislative determination that prejudgment interest should not be awarded, . . . the absence of a statute merely indicates that the question is governed by traditional judge-made principles.”). Therefore, awarding pre-judgment interest was within the scope of the FAC.

A running royalty, while not expressly requested, falls under Campbell’s relief for actual damages because a running royalty is directly tied to Defendants’ profits. The traditional meaning of a royalty is a “payment made to the owner of property for permitting another to use the property.” *Schering-Plough Corp. v. F.T.C.*, 402 F.3d 1056, 1071 (11th Cir. 2005) (citing *Sierra Club, Inc. v C.I.R.*, 86 F.3d 1526, 1531 (9th Cir. 1996)). A running royalty is one that is based on ongoing sales or usage of the copyrighted work. Therefore, awarding a running royalty was within the scope of the FAC.

Federal Rule of Civil Procedure 54(d) provides, “[u]nless a federal statute, these rules, or a court order provides otherwise, costs--other than attorney's fees--should be allowed to the prevailing party. The District Court had the discretion to

“allow the recovery of full costs by or against any party other than the United States or an officer thereof.” 17 U.S.C. § 505. The District Court found Campbell was the prevailing party because James admitted to liability through his default. (R. at 214, 227). Campbell’s attorneys provided sworn declaration establishing his costs. *See* Section IX, *infra*. Therefore, awarding costs was properly within the scope of the FAC.

Therefore, this Court should affirm the District Court’s ruling.

III. JAMES IS JOINTLY AND SEVERALLY LIABLE UNDER THE COPYRIGHT ACT.

Joint and several liability exists for Campbell's actual damages regardless of each defendant's degree of culpability. *Belford, Clarke & Co. v. Scribner*, 144 U.S. 488, 506–507, (1892) (emphasizing that both the printer and publisher of an infringed work were equally liable to the owner of the copyright); *Nelson-Salabes, Inc. v. Morningside Development, LLC*, 284 F.3d 505, 517 (4th Cir. 2002) (articulating the exception to the *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505 (9th Cir. 1985) standard of limiting liability to solely the profit made by an individual, to joint and several liability where there is an instance of partners or practically partners); *Fitzgerald Pub. Co., Inc. v. Baylor Pub. Co., Inc.*, 807 F.2d 1110, 1116 (2d Cir. 1986) (finding the printer-defendant was jointly and severally liable for damages for producing a poster infringing on another’s copyright); *Abeshouse v. Ultragraphics, Inc.*, 754 F.2d 467, 472 (2d Cir. 1985) (finding liability

for a post-breach of contract copyright infringement action); *MCA, Inc. v. Wilson*, 677 F.2d 180, 186 (2d Cir. 1981) (stating generally that all defendants concerned in an infringement action are joint and severally liable); *Sammons v. Colonial Press*, 126 F.2d 341, 344–347 (1st Cir. 1942) (restating the liability standard in *Belford*); *U.S. Media Corp. v. Edde Entertainment Corp.*, 1998 WL 401532 (S.D. N.Y. 1998) (clarifying that an award of a plaintiff’s lost profits is made generally jointly and severally against all defendants who participated in or contributed to the infringement, even if the infringement was not directly involved); *Respect, Inc. v. Fremgen*, 897 F. Supp. 361, 363 (N.D. Ill. 1995) (acknowledging principle but holding printer not jointly liable because it didn't engage in violation of the distribution right, which was the only right being sued upon); *Massapequa Pub. Co. v. Observer, Inc.*, 191 F. Supp. 261 (E.D. N.Y. 1961) finding immateriality to the fact that defendant may have been an innocent infringer).

A defendant who was responsible for only 10% of the infringing activity is responsible for 100% of the damages. William F. Patry, *6 Patry on Copyright* § 22:114 (2021). Any issues involving the relative contributions of the various defendants are left to defendants to work out among themselves. *Id.* James has brought no action for contribution against his partners in the Infringing Work. Rather, to evade personal responsibility for his infringing acts, James attempts to challenge the District Court’s clear and concise findings of joint and several liability.

Campbell’s request for joint and several liability, and the District Court’s subsequent finding of \$1,447,720 in profits adequately measures Campbell’s actual damages pursuant to Section 504(b) of the Copyright Act. 17 U.S.C. §504(b). In copyright infringement cases involving multiple defendants, all infringers are jointly and severally liable for plaintiffs’ actual damages, but each defendant is severally liable for his or its own illegal profit; however, joint and several liability may extend to an infringer’s profits if the defendants act as partners, joint venturers, or partners-in-fact. *Home Design*, 101 F. Supp. 3d 1201, 1217, n.27 *aff’d*, 825 F.3d 1314 (11th Cir. 2016); *see also Frank Music Corp.*, 772 F.2d 505 (reiterating the principles found under 17 U.S.C. § 101(b) and highlighting that “each copyright infringer was severally liable for his or its own illegal profit, and infringers were not jointly liable for profit made by other infringers, ***unless infringers were shown to have acted as partners or practically partners.***”) (emphasis added). Here, James and Allen (along with the previously dismissed Defendants) were partners in the creation and exploitation of the Infringing Work. James submitted no evidence to rebut Campbell’s proofs of joint and several liability.

Thus, the District Court did not err in finding that joint and severable liability was appropriate. The District Court found James acted as a partner in the infringement. (*see* Section IV, *infra*). James, Allen, and Bennett *all* share in the profits from the Infringing Work as partners and therefore, all share in the losses from the infringement.

IV. DEFENDANTS ARE PARTNERS IN THE CREATION AND EXPLOITATION OF THE INFRINGING WORK “EVERYDAY WE LIT” AND LIABLE JOINTLY AND SEVERALLY.

The District Court properly found [twice] that “[b]y defaulting, James and Allen have admitted that they were partners in creating the infringing work.” (R. at 146). Further, as a direct infringer, James is liable for damages proved by Campbell. (R. at 96). In support of its reasoning, the District Court relied on a long line of cases starting with the Supreme Court’s decision in *Belford*, 144 U.S. 488 through *Home Design Services*, 101 F.Supp.3d at 1219.

The District Court held that Defendants (James and Allen) were partners in creating the Infringing Work, thus, joint and several liability of the profits was warranted. (R. at 142). Further, the District Court explicitly relied on the Supreme Court standard in *Belford*, which held that where defendants act as partners or “practically partners”, one defendant may be liable for the profit made by another. *Belford*, 144 U.S. at 507. The *Belford* standard was later addressed by the Ninth

Circuit in *Frank*, finding a printer jointly and severally liable for a publisher's profits since they were "practically partners". *Frank Music Corp.*, 772 F.2d at 519.

James' analysis of the *Frank* case was incomplete and misstated the findings that the District Court made in concluding that Defendants were partners. Moreover, in *Frank*, the Court found that if the Defendant "did earn profits from the production, such as royalties, he is liable for a proportionate amount of these." *Frank Music Corp.*, 772 F.2d at 519. That is exactly what the District Court found here: James earned royalties, along with his partners, Allen, Bennett, and TIG.

James now argues that as a result of the procedural history of the case, namely the fact that James ignored the proceedings for over a year, the District Court had "limited facts" with which to decide the matter. (Appellant's Br., Section III(A)p. 30). James' failure to participate in the case, i.e., James' default, is a significant reason for such "limited facts" as he now complains. Moreover, the facts of record, however characterized by James, are legally sufficient to support the relief ordered by the Court.

James further argues that the District Court "misstated [Campbell's] complaint" when it held that "James created the music for 'Everyday We Lit' and was the producer, rather than just being "credited" as the creator and producer. (Appellant's Br., Section I(B), p. 13). Yet, this is not a matter of dialectics; the *facts* remain the same. James was the **producer** of the Infringing Work. James created

the **music** for the Infringing Work. A song is comprised of its lyrics and its music taken together, here James' role in the production and creation of the Infringing Work makes him liable with his other defendants as partners. There is a convincingly strong correlation between the role that James played in the infringement relative to any other Defendant. Further, the entry of default judgement shows James complete disregard for distinguishing between a partnership as he offered no evidence to separate his own actions from the overall infringement.

James' Initial Brief criticizes the District Court for allegedly making assumptions with Campbell's complaint regarding 'vague' language which was construed in a way not beneficial to James. (Appellant's Br., Section I(B), p. 13-14). The crux of James' misguided argument is that the District Court erred in its analysis of partnership under part of the *Frank* factors. To do so, he relies on an incorrect reading of what constitutes a 'partnership' provided by *Nelson-Salabes*, 284 F.3d at 517. In *Nelson-Salabes*, a 'practical partnership' include evaluating factors such as each person's or entity's role, the degree of direction, and financial interest in the activities of the other(s). *Id.* at 516; *see also GC2 Inc. v. Int'l Game Tech.*, No. 16 C 8794, 2018 WL 5921315, at *3 (N.D. Ill. Nov. 12, 2018) (reiterating these factors); *see also Belford*, 144 U.S. at 507-08 (analyzing the elements for establishing a copartner claim related to the role in illegally profiting from copyright infringement).

Similarly, in order to establish a ‘joint enterprise’, both parties must contribute property or services, have some mutual control over the enterprise, and share or have a community of interest in profits. *Frank Music Corp.*, 772 F.2d at 519. On all three factors established by *Frank* and its progeny, the District Court here found a partnership to exist. This Court should ratify that finding.

Even if the District Court is limited to the admission of the facts that were alleged in the FAC [which it is not], there is still sufficient evidence for the District Court to properly find that James’ role as “credited producer” and “credited creator” of the Infringing Work created a partnership between him, Allen, Bennett, and TIG. The “defaulting defendants are deemed to have admitted the plaintiff’s well-pleaded allegations of fact”. *McCoy v. Johnson*, 176 F.R.D. 676, 679 (N.D. Ga. 1997). Even accepting James’ argument that he was merely “credited” as a producer/creator, James is still liable as a partner with his other co-creators of the Infringing Work. It is undisputed that James contributed his services to create and produce the Infringing Work. As “producer” he clearly exerted control over the enterprise. Further it is undisputed that James shares a community of interest in the profits made from the Infringing Work. The record of this case is devoid of evidence showing that James *did not* contribute services, exert control or profit from the Infringing Work. Accordingly, the District Court reasonably concluded that James exerts great control over the creation and production of the Infringing Work. Thus, even with the alleged

‘limited allegations and evidence’ that James argues, the District Court had sufficient proof to find that James is part of a partnership and is therefore, liable, jointly and severally for the infringement. Had there been any credible evidence to support James’ contentions, it should have been submitted to the trial court at the hearing on damages.

James argues that since the alleged profits can be separable, the District Court erred by applying the partnership standard in *Frank*. (Appellant’s Br., Section II(B), p. 20). James relied on *Sheldon v. Metro-Goldwyn Pictures Corporation*, 309 U.S. 390 (1940), arguing that the subsequent *Frank* standard is only applicable where the court finds it impossible to separate the profits of defendants. (Appellant Br., Section I(B), p. 16). Moreover, in *Sheldon*, the court ratified its previous ruling in *Belford*, that “when the copyrighted portions are so intermingled with the rest of the piratical work that they cannot well be distinguished from it, the entire profits realized by the defendants will be given to the plaintiff.” *Id.* at 401-402. As similar finding is appropriate here.

James further argues, without providing any supporting evidence, that Campbell’s expert witness, Mr. Gottlieb, and the evidence of revenue presented at the hearing, could have adequately been attributed to each individual infringer. (Appellant’s Br., Section I(B), 17). This is wrong. James continues to

misunderstand Campbell's burden to prove damages,² as well as the evidence and testimony provided by Mr. Gottlieb. Mr. Gottlieb's affidavit and testimony concerned the gross revenue generated as a result of the exploitation of the Infringing Work, and the monetary compensation that should be awarded to Campbell. (R. at 232-241; R. at 157-200). James never objected to the admission of the evidence, never objected to Mr. Gottlieb's analysis or conclusions, and never cross-examined Mr. Gottlieb's qualifications as an expert witness, nor the factual bases for his testimony. Thus, the District Court properly relied on the analysis, conclusions and opinions of Mr. Gottlieb. The record demonstrates that Gottlieb's testimony met Campbell's actual burden of proof for damages. Neither Campbell nor any plaintiff in a copyright infringement action bears the burden of assigning any specific infringement allocation amounts between multiple parties. Instead, a plaintiff need only introduce evidence of gross revenue earned by the infringement by the infringers. Here, the District Court properly held that Campbell met his burden.

Importantly, James failed to introduce any evidence to show that he did not individually profit from the Infringing Work. Accordingly, James' failure shows that the copyrighted portions of the Infringing Work are so intermingled, that there cannot be any specific determinations towards specific parties and it is impossible to contribute specific profit allocations accordingly. Thus, it is proper for the Court

² See Section V, *infra*.

to compile all the profits together on a joint and several basis. For these reasons, the Court should affirm the District Court's judgment and hold James liable, jointly and severally for the profits earned by the Infringing Work, namely \$1,447,720.

V. CAMPBELL MET HIS BURDEN OF PROOF FOR ACTUAL DAMAGES BY ADEQUATELY PROVING GROSS REVENUE FOR THE INFRINGING WORK "EVERYDAY WE LIT".

Campbell met his burden of proof of under the Copyright Act, and, therefore, James should be held accountable for his participation in the copyright infringement.

The Copyright Act (17 U.S.C. § 504(b)) is unambiguous that:

“In establishing the infringer's profits the copyright owner is required to present proof only of the Infringer's Gross Revenue, and the Infringer is required to prove his or her deductible expenses and the elements of profits attributing to factors other than the copyrighted work.”

(R. at 134-135 citing 17 U.S.C. §504(b)). The District Court found that Campbell met his burden of proof.

Instead, James now seeks to have this Court abrogate decades of jurisprudence of copyright law and create a rule that requires a District Court to first evaluate evidence and issue a ruling whether a plaintiff has met his burden showing gross revenue *before* ever requiring the burden to shift to a Defendant to introduce evidence of deductible expenses or the elements of profits attributing to factors other than the copyrighted work. This Court should not indulge such a departure from established law.

Under the Copyright Act, “a copyright plaintiff can seek both his actual damages resulting from the infringement, along with any profits of the defendant that are attributable to the infringement.” 17 U.S.C. §504(b); *see Aerospace Serv. Int’l v. LPA Grp., Inc.*, 57 F.3d 1002, 1004 (11th Cir. 1995). Further, in an action for profits attributable to the infringement, the copyright owner is required only to present proof of its actual damages and infringer’s gross revenue, while it is the infringer’s burden to prove deductible expenses and the portion of profits attributable to factors other than the copyrighted work. *Architects Collective v. Pucciano & Eng., Inc.*, 247 F. Supp. 3d 1322, 1370 (N.D. Ga. 2017) (citing *Home Design Servs. v. Hibiscus Homes of Fla., Inc.*, No. 603CV1860ORL19KRS, 2005 U.S. Dist. LEXIS 32788 *16, 2005 WL 3445522, at *5 (M.D. Fla. Dec. 13, 2005)); *See also Data General Corp. v. Grumman Sys. Support Corp.* 36 F.3d 1147, 1173–74 (1st Cir. 1994); *See also Pronman v. Styles*, 645 F. App’x 870, 873 (11th Cir. 2016) (plaintiff must show a causal relationship between the infringement and profits and present proof respectively). “Any doubt as to the computation of costs or profits is to be resolved in favor of the plaintiff.” *Frank Music Corp.*, 772 F.2d at 514. The burden of proving apportionment (*i.e.*, the contribution to profits of elements other than the infringed property), is the defendant’s burden. *Id.* at 518. Here, this Court should reinforce the ruling in *Frank*.

The District Court was correct in finding that Campbell met his burden of proof under the Copyright Act. At the damages hearing, Campbell presented undisputed evidence of the infringers' gross revenue, through approximately 1,800 pages of evidence, and the expert opinion of Mr. Gottlieb. Moreover, James never introduced any evidence showing his deductible expenses or portion of profits attributable to factors other than the copyrighted work. (R. at 129). The District Court addressed James' failure to meet his burden and, accordingly, the District Court's holding should be affirmed.

A. Campbell entered into evidence more than 1,800 pages of royalty reports, an expert's affidavit, and expert testimony at the damages hearing.

Prior to the July 16, 2020 damages hearing, Campbell submitted evidence of the gross revenue earned by the James's Infringing Work. (Doc. 100; R. at 129). Further, during the July 16 hearing, Mr. Gottlieb was qualified and recognized by the Court as an expert pursuant to F.R.E. 702. (R. at 164: 6-16). During the damages hearing, James' counsel chose not to question Mr. Gottlieb's qualifications as an expert (R. at 164:12-14). Campbell also entered Mr. Gottlieb's affidavit concerning the evidence of revenues and the supporting exhibits into evidence without any objection from James. (R. at 166:13-167:5). Further, Mr. Gottlieb testified that the gross revenue earned by the Infringing Work was \$6,697,098. (R. at 167:7-13). The District Court agreed with Mr. Gottlieb's testimony and found that the Gross

Revenue was \$6,697,098. (R. at 217-218). The District Court’s finding was well supported by the evidence of record put forth by Campbell, as well as James’ failure to introduce any contradictory evidence whatsoever. (R. at 139).

B. James provided no evidence to contradict the Court’s findings of Gross Revenue.

Both the District Court’s September 20, 2020 and March 2, 2021 orders make repeated note of James’ failure to introduce any evidence to contradict the damages evidence entered by Campbell: “James presented no evidence of his own to counter this testimony” (R. at 140); “[t]he Defendants have presented no evidence in contradiction”. (R. at 139). Further, “James and Allen have provided the court with no evidence of deductible expenses. Without any deductions, the revenue proven by the plaintiff becomes the defendants’ calculated profit.” (R. at 140; R. at 215, n.3)(citing *F. W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 222, 230 (1952), *Frank Music Corp.*, 772 F.2d at 514 ; *Russell v. Price*, 612 F.2d 1123, 1130–31 (9th Cir. 1979). Indeed, James’ Initial Brief is similarly devoid of any citation to admissible evidence that could have been considered by the District Court in making its damages finding. Accordingly, the District Court’s finding that Campbell met his burden was correct.

James’ Initial Brief repeatedly misstates Campbell’s burden and attempts to argue, without any authority in support, that Campbell was required to prove James’s “profits”. In fact, James argues that “[t]herefore to meet his burden, Campbell was

required to prove James' sole profits from the infringing work." (Appellant's Br., Section II(A), p. 19). Such a proposition is directly contradicted by courts in this judicial circuit and James even cites to a case that holds the opposite of his contention, namely *Home Design*. That same case was cited by the District Court in favor of Campbell, yet now James completely misstates the holding of that case, arguing that "the burden **only** shifts to the Infringing Party, **if and only if**, the copyright owner meets his burden." (Appellant's Br., Section II(A), pp. 18-19) (emphasis added). *Home Design* does not stand for such a proposition. Both the court in *Home Design* and the District Court here restated the plain language of Section 504(b) of the Copyright Act that it is a defendant's burden to prove his deductible expenses, a burden ignored by James before, during and after the damages hearing. (R. 139-140; R. at 215, n.3; *see also Montgomery v. Noga*, 168 F.3d 1282, 1286 (11th Cir. 1999)).

Now, James asks this Court to create new law, contradicting the plain language of §504(b) that would require a District Court to bifurcate its proceedings and first enter a finding whether a plaintiff, like Campbell, has met his or her burden *before* requiring a defendant, like James, to introduce evidence of deductible expenses. Such a finding would only lead to protracted litigation and is completely unsupported by the text of the Copyright Act, and any case law. Indeed, James' failure to cite to any authority in support of his argument is indicative of its merit.

Accordingly, this Court should reject James' argument and find, as the District Court did, that Campbell met his burden in proving gross revenue and James failed to introduce any evidence of deductible expenses.

C. The Court Correctly Relied on Campbell's Evidence of the Gross Revenue Earned by the Infringing Work.

It is not disputed that James infringed Campbell's copyrighted work when he co-created the Infringing Work with Allen, Bennett and TIG. *See Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) ("A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established." (internal quotation marks omitted)). On March 5, 2020, the District Court found James liable for infringing Campbell's copyright, by default. (R. at 95-96; *see also* R. at 126-127; R. at 219-220). In that order the District Court denied James' second attempt to set aside default and concluded that default judgment was appropriate." (R. at 97-100). James then waited nearly seven (7) months, until October 1, 2020 to seek his first, and premature, appeal of the District Court's findings of liability. James' inaction for those seven (7) months results in waiver of this Court evaluating this issue on appeal. Therefore, as the District Court found, James is liable for infringing Campbell's copyright and the only issue that was left to be determined by the District Court was "the amount of damages to be awarded" to Campbell. (R. at 126). The District Court was correct in measuring

damages of this action by the gross revenue of “Everyday We Lit”, as described in further detail *supra* Sections V (A-B).

James’ Brief is replete with errors conflating “profits” which is the burden of a defendant, and “revenue” which is the burden of a plaintiff. In his Initial Brief, James argues incorrectly that “Gottlieb confirmed that the *profits* detailed during his testimony were a combination of James’ *profits*, other named parties in the lawsuit and parties who were not found to have infringed the copyright.” (Appellant’s Br., Section II(B), p. 20-21). James does not cite to Mr. Gottlieb’s actual testimony because the actual text reveals that Mr. Gottlieb testified *only to gross revenue*, and not profits. (R. at 132-140). Similarly, James argues that “the *profits* [Mr. Gottlieb] computed were based on a record that reached double platinum status”. (Appellant’s Br., Section II(B), p. 21). Mr. Gottlieb never testified concerning “profits”. Finally, James argues that “[Campbell] failed to meet his burden of demonstrating *profits* received exclusively by James from Everyday We Lit.” (*Id.*, p. 23). Again, the Copyright Act requires a plaintiff to show only evidence of revenue, not profits. 17 U.S.C. §504(b). Given James repeated misstatement of the burden established by Copyright Act it becomes apparent that James is confused on this area of the law, however the District Court was not confused. The District Court properly evaluated the evidence submitted by Campbell, applied a plain reading of the Copyright Act and noted the absolute lack of evidence submitted by James. (R. at 139).

The District Court reviewed evidence and testimony submitted by Campbell and his expert, Mr. Gottlieb, who testified and submitted evidence showing the *gross revenue* earned by the Infringing Work. (R. at 132-140) (emphasis added). Further, James' argument that he is not liable for *profits* attributed to the dismissed parties (TIG and Bennett) is non-sensical³. (Appellant's Br., pp. 25-27). Again, because of James' failure to submit evidence, no evidence of "profits" was evaluated by the District Court. Rather, evidence of gross revenue earned from the Infringing Work was submitted to the Court and that evidence was the only evidence available for the District Court to arrive at James' profit. The District Court could reach no other conclusion based on the evidence of record.

Put succinctly, Campbell introduced evidence of gross revenue earned by the Infringing Work "Everyday We Lit". Simultaneously, it was James' burden to introduce evidence contradicting Campbell's evidence, and to prove that James may not have earned profit from the Infringing Work. James neglected his burden and failed to introduce any evidence whatsoever, his failure gave the District Court (and now this Court) no other option than to find the gross revenues earned by the Infringing Work to be \$6,697,098. The District Court then appropriately entered

³ The District Court's March 2, 2021 order stated clearly that any amounts paid by TIG and Bennett would be deducted from the final judgment award to be entered later in favor of Campbell due to the one satisfaction rule. (R. at 221). Those amounts were deducted and final judgment was entered. (*Id.*).

judgment against James and Allen in the amount of \$1,447,720 reflecting the profits (based on the gross revenue) of the musical composition. (R. 221).

Again, James infringed Campbell's copyright. He was served with process and failed to appear, answer, or otherwise participate in the case. He only appeared when it became clear that he was liable for damages to Campbell. (R. at 98-99). James' blatant disregard of his responsibilities and the law is no excuse to avoid entry of judgment against him for copyright infringement.

VI. THE DISTRICT COURT PROPERLY GRANTED CAMPBELL PRE-JUDGMENT INTEREST.

Although the Copyright Act does not expressly authorize an award of pre-judgment interest, and Campbell did not expressly ask for it in the First Amended Complaint, the District Court has the discretion to award it as applicable. The Eleventh Circuit has executed and upheld the District Court's discretion to grant such relief because the award is "compensatory in nature and not punitive" and is made through "assessment of all equities". *Habersham Plantation Corp. v. Molyneux*, No. 10-CV-61526-WPD, 2012 WL 13005341, at *2 (S.D. Fla. May 8, 2012)(citing *Osterneck v. ET Barwick Industries, Inc.*, 825 F.2d 1521, at 1536 (11th Cir. 1987)), *See also, SEC v. Lauer*, 2012 WL 1352930*6 (11th Cir., Apr. 19, 2012). Here, the District Court found similarly, that courts around the nation have determined that an award of pre-judgment interest is warranted in copyright cases. (Doc. 129 at pp. 9-10). Moreover, courts have especially favorable awards of interest

with copyright cases that involve willful violations or flagrant misconduct. *See McRoberts Software, Inc. v. Media 100, Inc.*, 329 F.3d 557, 572 (7th Cir. 2003); *Robert R. Jones Assocs., Inc. v. Nino Homes*, 858 F.2d 274, 282 n.8 (6th Cir. 1988).

An award of pre-judgment interest is appropriate under the Copyright Act and is available for willful violations. *Due Process Ltd. v. Alternative Debt Services, Inc.*, No. 3:03cv580, 2007 WL 1428661, at *5 (N.D. Fla. May 14, 2007). In *Due Process*, the plaintiff sued the defendant corporation for copyright infringement for defendant's marketing and selling plaintiff's books and programs by making unauthorized copies. *Id.* at *3. The defendant there was found in default. *Id.* at *1. The plaintiff there sought actual damages from the defendant, but stated that due to the non-compliance with or evasion of discovery requests by some of the defendants, Plaintiff was unable to obtain information necessary to establish actual damages. *Id.* at *3. The plaintiff calculated the defendant's gross revenue based on bank records showing deposits into the defendant's bank account. *Id.* The court found that the plaintiff's damages were liquidated on the date on of the defendant's bank accounts were opened and therefore allowed pre-judgment interest until date of judgment. *Id.* at *5. The case at bar is on all fours with *Due Process*.

The Eleventh Circuit has endorsed the practice of looking to state law provisions to determine the rate for pre-judgment interest. *Lyons v. Georgia-Pacific*

Corp. Salaried Employees Retirement Plan, 196 F. Supp. 2d 1260, 1271 (N.D. Ga. 2002). Georgia statutes provides for pre-judgment interest at a rate of seven percent (7%) per annum simple interest where the rate percent is not established by written contract. O.C.G.A. § 7-4-2(a) (West 2020).

An award of pre-judgment interest serves to make a copyright holder whole, “for damages properly include the forgone use of money of which the [copyright owner] was wrongly deprived.” *Habersham Plantation Corp. v. Art & Frame Direct, Inc.*, No. 10-61532-CIV, 2011 WL 7394511, at *3 (S.D. Fla. Dec. 15, 2011). Whether pre-judgment interest should be awarded on a damage recovery “is a question of fairness resting within the District Court's sound discretion.” *Id.*

Here, affirming the District Court’s award of pre-judgment interest will make Campbell whole without allowing double recovery. Neither James nor Allen participated in the litigation and did not produce any financial documents to show their deductible expenses to establish their gross profits. Now, James attempts to use his lack of participation in discovery as a sword and a shield. James incorrectly misinforms this Court that Campbell did not receive or issue any discovery from any of the Defendants. (Appellant’s Br., p. 4; Section I(B), p. 15; Section III(B), p. 35). In fact, Campbell *did* issue discovery to Bennett and TIG on August 8, 2018. (Doc. 42). On February 22, 2019, Bennett served his written responses to discovery. (Doc. 69). Campbell even filed a motion to compel discovery from Bennett. (Doc. 73).

Further, TIG produced its royalty statements, which was the basis of Campbell's initial damages report. James' misstatements of easily verifiable facts to this Court demonstrates his lack of investigation in preparing his Initial Brief.

Campbell was able to determine the gross revenue of "Everyday We Lit" based on subpoenaed royalty statements from multiple third-parties. Based on those royalty statements, Campbell's damages became certain and fixed starting on September 15, 2017. (*See* Doc. 85-1). As the District Court found, pre-judgment interest can appropriately be calculated from September 15, 2017 until the date of entry of judgment (March 2, 2021). Here, Plaintiff was awarded pre-judgment interest starting when he commenced the action, March 13, 2018 through the date of judgment (March 2, 2021). The District Court had the authority to recompense Campbell through an award of pre-judgment interest. In weighing the factors most relevant to the District Court, and within the scope of judicial discretion, the District Court can consider elements of willful and flagrant copyright infringement. *See Yellow Pages Photos, Inc. v. Ziplocal, LP*, No. 8:12-cv-755-T-26EAG, 2014 WL 2778356, at *2 (M.D. Fla. June 18, 2014) (awarding prejudgment interest "under the general premise that prejudgment interest is presumptively available for willful infringement under the Copyright Act."). James never provided any evidence or mitigation efforts to the contrary. Moreover, under 17 U.S.C. §504(c)(2), the element of "willfulness" can be inferred from defendants' continued infringing

conduct, which is facially clear from the facts as admitted by James on default. Thus, the District Court did not err in its award of pre-judgment interest to Campbell. Therefore, this Court should affirm the District Court's judgment and award Campbell pre-judgment interest of \$268,969.00⁴.

James' Initial Brief misstates the amount of pre-judgment interest applicable to the case at bar. Contrary to James' briefing, Campbell did not agree to limit his pre-judgment interest award to an amount of \$54,953.99. (Appellant's Br., Section IV, p. 35). Campbell's request for \$54,953.99 was part of his brief for default judgment submitted on August 20, 2019 (Doc. 84-1), wherein Campbell calculated pre-judgment interest for the period starting to when he filed his complaint to the filing date of his motion for default judgment and **not** based on the final judgment of the Court on March 2, 2021. (*See* Doc. 84-1, p. 12, n.2). In fact, in that same document, Campbell specifically stated, "[t]he pre-judgment interest will need to be modified once judgment is entered by the [District] Court." (Doc. 84-1, p. 12, n.2). Indisputably, that earlier number was based on a different calculation of damages and at a rate different than that ultimately and properly awarded by the District Court.

⁴ Calculated as follows: Judgment amount \$1,447,720 x 6.25% = \$90,482.50 of interest per year, which equals \$247.89 per day. Case was pending for 1,085 days between March 13, 2018 and March 2, 2021. Therefore, \$247.89 x 1085 = \$268,969.

VII. THE DISTRICT COURT PROPERLY GRANTED CAMPBELL INJUNCTIVE RELIEF.

The grant of injunctive relief is reviewed under an abuse of discretion standard. *Alabama-Tombigbee Rivers Coal. v. Dep't of Interior*, 26 F.3d 1103, 1106 (11th Cir. 1994) (citing *Centel Cable Television Co. v. Thomas J. White Dev. Corp.*, 902 F.2d 905, 910 (11th Cir.1990); *see also Smith v. Am. Int'l Life Assurance Co.*, 50 F.3d 956, 958 (11th Cir. 1995).

Now, James renews his baseless argument that a request for an injunction against James is made for the first time in the motion for default and is outside the scope of the pleadings. (*See* Doc. 88-1, p. 13). Campbell has continuously met his burden of establishing a valid claim for injunctive relief, and the District Court correctly awarded injunctive relief. (R. at 225). The Copyright Act also specifically provides for injunctive relief, permitting a plaintiff to seek relief where there is both history of infringement and substantial threat of continued infringement. *Walt Disney Co. v. Powell*, 897 F.2d 565, 567-68 (D.C. Cir. 1990); *see* 17 U.S.C. §502(a). As the District Court here stated, a valid claim must allege that: (1) the plaintiff suffers irreparable harm; (2) the claim succeeds on the merits; (3) a balancing of competing claims of injury to the parties; and (4) consideration of the public interest. (R. 223-224 citing *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 392 (2006); *Warren Pub., Inc. v. Microdos Data Corp.*, 115 F.3d 1509, 1516 (11th Cir. 1997).

Campbell sufficiently demonstrated that there is irreparable injury as a result of the infringement. By its nature, “copyright infringement is presumed to give rise to irreparable injury.” *Capitol Record, Inc. v. Zahn*, No. 3:06-0212, 2007 WL 542816, *4 (M.D. Tenn. Feb. 16, 2007); *see also Am. Family Life Ins. Co. v. Assurant, Inc.*, No. 1:05-cv-1462-BBM, 2006 WL 4017651, at *12 (N.D. Ga. Jan. 11, 2006) (“[I]n the Northern District of Georgia, it has plainly been held that, once a copyright holder has made out a *prima facie* case of copyright infringement, irreparable injury is presumed.”) In addition, plaintiff must sufficiently allege that (1) absent an injunction, it will suffer irreparable harm, and (2) that a sufficiently strong causal nexus related the alleged harm to the alleged infringement.” *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012) (emphasis added); *see also Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 981-82 (9th Cir. 2011) (stressing the emphasis on “sufficient causal connection” between irreparable harm and infringement). Moreover, the threat must be a real or immediate threat of imminent harm in the future. *See Jacobson v. Katzer*, 609 F.Supp. 2d 925, 937 n.3 938 (N.D. Cal. 2009).

As stated by the District Court, the very nature of a copyright infringement action naturally suggests irreparable injury. (R. at 223). Thus, the default judgement satisfies the element on the success of its merits. *See Caribbean Produce Exchange v. Caraiibe Hydro-Trailer, Inc.*, 65 F.R.D. 46, 48 (D.P.R. 1974) (“Where a court

determines default, liability to plaintiff is established and the plaintiff is not required to establish his right to recover.”)

James now argues that Campbell neglected to present any evidence that there was any conduct that established a causal nexus, indicated future harm (Appellant’s Br., Section V, p. 39). However, a song that is substantially similar to and created by copying, which will continue to be played and infringed upon, certainly demonstrates irreparable harm. The District Court properly weighed this factor in Campbell’s favor.

James’ further argument that Campbell’s interest is solely economic in nature and is not “irreparable” is flawed. (Appellant’s Br., Section V, p. 39). Without awarding injunctive relief, James’ will continue to willfully infringe and profit from his admitted and adjudicated wrongdoing.

In weighing the competing claims vis-à-vis injuries to the parties, the District Court correctly found that the hardship to Campbell outweighs that of James, especially due to the fact that without the injunction, the defendants may continue to perform the Infringing Work. (R. at 224). Further, the District Court found that an injunction does not prevent James from engaging in further work and/or pursuing success in the future. Thus, there is truly no detriment to James, rather any detriment is born by Campbell in being able to exercise his right to the copyright and disseminate his own creative work. “Failure to issue the injunction would harm the

plaintiff by, at a minimum, forcing it to compete with an infringer.” *Am. Family Life Ins.*, 2006 U.S. Dist. LEXIS 8781, at *57.

Finally, the public interest is satisfied pursuant to Section 502 of the Copyright Act, because the interest is to uphold copyright protection. *Artista Recordings, Inc. v. Beker Ent., Inc.*, 208 F. Supp. 2d 1310, 1314 (S.D. Fla. 2003). Indeed, Article I Section 8, clause 8 of the Constitution of the United States imbues Congress with the power, *inter alia*, to promote the “[P]rogress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”. (U.S. Const. art. I, § 8, cl. 8). It was through this power that Congress wanted to reward individuals seeking to protect their interest in intellectual property, thereafter this became the Copyright Act. Centuries of jurisprudence did not alter this tenet. “Once the plaintiff in a copyright infringement action has established a likelihood of success on the merits, there is seldom any question of whether the entry of an injunction will serve the public interest.” *Am. Family Life Ins.*, 2006 U.S. Dist. LEXIS 8781, at *58; *see also Found. For Lost Boys & Girls of Sudan, Inc. v. Alcon Entm’t, LLC*, No. 1:15-cv- 00509-LMM, 2016 U.S. Dist. LEXIS 183684, at *28 (N.D. Ga. March 22, 2016) (“[T]he public interest favors the protection of copyrights.”).

Accordingly, Campbell has met his burden and the injunction entered was appropriate relief from the District Court and should be affirmed by this Court.

VIII. THE DISTRICT COURT PROPERLY GRANTED CAMPBELL A RUNNING ROYALTY.

James' Initial Brief argues that Campbell should not be awarded a running royalty on Defendants' continued infringement because of public policy concerns. (Appellant's Br., Section VI, p. 43). James' argument is not persuasive. A running royalty will continue to compensate Campbell for the continued harm caused by the continued exploitation of the Infringing Work.

“Because a running royalty is, in part, analogous to a permanent injunction, the appropriate facts to consider in assessing this relief are similar to those that apply to a request for an injunction.” *Williams v. Bridgeport Music, Inc.*, No. LA CV13-06004 JAK (AGR_x), 2015 WL 4479500, at *42 (C.D. Cal. July 14, 2015). Here, the District Court properly found in favor of Campbell's claims and awarded him a running royalty on the future exploitations of the Infringing Work. Additionally, to establish entitlement to a running royalty, the movant must demonstrate actual success on the merits, the balance of hardship must warrant a remedy in equity, the public interest must favor the imposition of a running royalty, the legal remedy of retrospective, compensatory relief must be inadequate (demonstrated threat of future infringement), and the royalty rate must be “plain and easily calculable”. *Id* at 43.

To serve judicial economy, Campbell will not repeat the arguments from Section VII *supra* here. The District Court found irreparable harm to Campbell, and that Campbell's claim would succeed on the merits were sufficiently established.

The continued infringement by James is one that is unfavorable to Campbell (and is not to James). As such, the public interest would only be served by upholding damages on a running basis in favor of Campbell and would align with precedent seeking to remedy willful infringement of a copyright and protect the holders' interest. Thus, and subsequent to the District Court's discretion, the running royalty based on James and Allen's infringement is appropriate.

IX. THE DISTRICT COURT PROPERLY GRANTED CAMPBELL HIS COSTS.

Once again, James tries to mislead this Court concerning the District Court's award to Campbell of \$4,576.82 in court costs. James Initial Brief argues, for the first time, that this award is *primarily being attorney fees*. (Appellant's Br., Section VII, p. 44). The Eleventh Circuit "has repeatedly held that 'an issue not raised in the district court and raised for the first time in an appeal will not be considered by this court.'" *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1331 (11 Cir. 2004) (internal citations omitted). Therefore, this Court should not consider James' arguments regarding the District Court's award of costs. However, if this Court considers James' arguments, Campbell responds as follows.

On August 4, 2020, both attorneys for Campbell filed declarations regarding *costs* incurred in connection with this litigation in support of Campbell's Proposed Findings of Fact and Conclusions of Law. (R. at 119-124). Neither attorney requested their fees be paid. Indeed, James' argument appears solely to impugn the

integrity of Campbell's counsel by arguing, without any evidentiary support, that both Mr. Hill and Mr. Niro submitted declarations that, in actuality, included sums for attorneys' fees, rather than costs incurred. They did not. If James has any legitimate reason to question the veracity of the declarations submitted by Campbell's counsel, he would have provided the basis in his Initial Brief or raised it with the District Court in a post-judgment brief pursuant to Fed. R. Civ. P. 60.

Rather than provide any such evidence, James for the first time advances an argument that, at best, is a misunderstanding of the operation of Section 412 of the Copyright Act. Section 412 only prohibits an award of statutory damages or of *attorney's fees* as part of Sections 504 and 505, not costs under Section 505. *See* 17 U.S.C. §412. Indeed, James cites no case to support his argument, namely because none likely exist.

Because Campbell understood the operation of Section 412 on his claim, Campbell's FAC does not seek an award of attorneys' fees as relief. Had Campbell been entitled to and sought attorneys' fees, it would be well in excess of \$4,576.82. Instead, the District Court properly evaluated both Section 412 and 505 of the Copyright Act, acknowledged the declarations of Campbell's counsel describing the *costs* incurred in the action and properly awarded Campbell his *costs* of \$4,576.82. This Court should affirm the award of costs by the District Court.

CONCLUSION

For the reasons set forth above, Appellee, Anthony Campbell, professionally known as “Rackboy Cam” respectfully requests this Court affirm the District Court’s Order and Judgment (1) finding Allen and James willfully infringed Campbell’s copyright, (2) entering judgment against Allen and James, jointly and severally, in the amount of \$1,447,720, (3) granting pre-judgment interest rate of 6.25% from March 13, 2018 through March 2, 2021, in the amount of \$268,968, (4) entering a permanent injunction against Allen and James, (5) awarding a running royalty rate of 50% of each Allen and James’ writer’s share of royalties generated by “Everyday We Lit” and “Everyday We Lit Remix” in perpetuity; and (6) awarding Campbell his costs incurred in this action in the amount of \$4,576.82.

* * * * *

Respectfully submitted this 15th day of July, 2021.

/s/ Christopher W. Niro _____

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,207 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 32-4.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type.

Respectfully submitted this 15th day of July, 2021.

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