

Selected docket entries for case 21-10978

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05/17/2021	 Appellant Brief	2	Appellant's brief filed by June James. [21-10978] (ECF: Dana Stith Gray)

No. 21-10978-HH

United States Court of Appeals

for the

Eleventh Circuit

ANTHONY CAMPBELL, professionally known as Rackboy Cam,

Plaintiff-Appellee,

– v. –

RAYSHAWN LAMA BENNETT, *et al.*,

Defendants,

JUNE JAMES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF GEORGIA IN CASE NO. 1:18-CV-01064-CAP, CHARLES A. PANNELL,
U.S. DISTRICT COURT JUDGE

INITIAL BRIEF OF APPELLANT

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

Defendant-Appellant June James, by his undersigned counsel and pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, files this certificate of interested persons.

Defendant-Appellant is not a publicly held corporation and has no parent corporations, affiliates, or subsidiaries with an interest in the outcome of this case. Other identifiable interested parties to the action are:

1. Allen, Rakim Hasheem – Defendant in District Court Action
2. Hill, J. Stanton – Counsel for Plaintiff-Appellee
3. James, June – Defendant-Appellant
4. Niro, Christopher W. – Counsel for Plaintiff-Appellee
5. Nunneker, Ashley – Counsel for Defendant Rakim Hasheem Allen
6. Pace, Hayden R. – Counsel for Defendant Rakim Hasheem Allen
7. Pannell, Jr., Honorable Charles A. – Presiding District Court Judge
8. Stith-Gray, Dana M. – Counsel for Defendant-Appellant

Respectfully submitted this 17th day of May 2021.

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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully submits that this appeal is not appropriate for oral argument. The facts and legal arguments are adequately presented in the briefs and record, the governing law is well established, and the Court's decisional process will not be significantly aided by oral argument in this appeal.

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STATEMENT OF JURISDICTION

The District Court had subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it presents a federal question.

The District Court entered the final judgment, appealed from, on March 2, 2021. Defendant-Appellant filed his notice of appeal on March 23, 2021. This appeal is timely pursuant to FRAP 4(a)(1).

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal is from a final order disposing of all claims against all parties.

STATEMENT OF THE ISSUES

- I. Whether the court erred in granting joint and several liability for actual damages on the basis of infringer's profits under the Copyright Act.
- II. Whether the court erred in ruling that Campbell met its burden of proof for actual damages under the Copyright Act.
- III. Whether the court's ruling is within the scope of default judgment.
- IV. Whether the court's awarding and calculation of prejudgment interest was proper.
- V. Whether the court's awarding of a permanent injunction and running royalty was proper.
- VI. Whether the court's awarding of attorney's fees was proper.

STATEMENT OF THE CASE

A. BACKGROUND

Plaintiff-Appellee Anthony Campbell (“Campbell”) filed a complaint against Rayshawn Lamar Bennett p/k/a “YFN Lucci,” Rakim Hasheem Allen p/k/a “PnB Rock,” June James (“James”) and Think It’s A Game Records, Inc. (“TIG”) alleging copyright infringement of his song “Everything Be Lit.” (Doc. 1-pp. 1-19).¹ Campbell, professionally known as Rackboy Cam, is a performing artist and copyright owner of the song “Everything Be Lit.” (Doc. 1-pp. 1-2).² Rayshawn Lamar Bennett (“Bennett”) is an artist performing under the name YFN Lucci. (Doc. 1-p. 2). Bennett is signed to TIG. *Id.* Rakim Hasheem Allen (“Allen”) is an artist performing under the name PnB Rock. *Id.* Allen is signed to Atlantic Records. *Id.* Defendant-Appellant James is a producer and musician. *Id.*

In April 2015, Campbell alleged he created, wrote, recorded, and released

¹ With the exception of the hearing, all facts herein are from the complaint and admitted only on the basis of default.

² The District Court’s order references the amended complaint when discussing the factual background of this case. However, Campbell never served James with the amended complaint as required by the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(m). As the amended complaint was entered following the default and no attempt was made to serve it, James will only reference the complaint.

the song “Everything Be Lit.” (Doc. 1-p. 4). Campbell avers that according to Bennett, Bennett and Allen jointly came up with the song “Everyday We Lit,” which was released on December 15, 2016. (Doc.1-pp. 7, 8). Campbell further avers that James is credited with creating the music for “Everyday We Lit.” (Doc. 1-p. 7). Campbell does not allege that James acted in partnership with Bennett and Allen or came up with the song “Everyday We Lit.” (Doc. 1-pp. 1-19). The song “Everyday We Lit” was included on an album titled “Long Live Nut.” (Doc. 1-pp. 52-53). Campbell obtained a copyright for a compilation of songs containing “Everything Be Lit” that has first date of publication of November 18, 2016 and effective date of January 22, 2018. (Doc. 1-1).

Campbell contends that the songs, “Everything Be Lit” and “Everyday We Lit” are similar. (Doc. 1-p. 10). Specifically, he asserts that the lyrics in the songs are similar, the hooks to both songs are substantially similar and both songs start and end with the hook and repeating the same three words. (Doc. 1-p. 15). Campbell further avers that the subject matter discussed in both songs are similar. *Id.* He avers that they both discuss jewelry, cars, and women. (Doc. 1-pp. 15-16).

Neither James nor Allen filed an answer in response to Campbell’s complaint. On March 5, 2019, the District Court issued an order granting Campbell’s motion for default judgment against James and Allen. (Doc. 91). In that order, the District Court determined that it did not have enough evidence to

calculate damages and schedule the matter for a hearing on damages, which was ultimately held on July 16, 2020. (Doc. 91-p. 17). At no time during litigation did Campbell propound discovery on any named Defendant.

During the hearing, Campbell only presented evidence demonstrating the gross revenue of “Everyday We Lit.” (Doc. 124-pp. 18-54). Specifically, Campbell presented testimony from his retained expert witness, Anthony Gottlieb (“Gottlieb”). (Doc. 124-pp. 11-56). Notably, Gottlieb testified that the gross revenue he calculated was for the total copyright of “Everyday We Lit” and not just profits of the alleged infringers. (Doc. 124-pp. 40-41). Therefore, the gross revenue detailed at the hearing included profits from parties/entities who were not named as Defendants in Campbell’s lawsuit and are, therefore, presumed not to have infringed the copyrighted work. Gottlieb did not provide any evidence regarding the profits of the individual alleged copyright infringers. (Doc. 124-pp. 40-54). Moreover, Gottlieb confirmed that his gross revenue calculation was based on “Everyday We Lit” reaching double platinum status. (Doc. 124-pp. 45-46). However, “Everyday We Lit” only reached gold status. (Doc. 124-p. 57). At no time during the hearing did Campbell present any evidence regarding the gross revenue solely attributed to James. (Doc. 1-pp. 1-66). At no time during the hearing or with any supportive documentation did Campbell present a breakdown of the gross amount into sound recording and musical composition. *Id.* Campbell

also failed to present evidence regarding any partnership between James and any other alleged infringer during the hearing. *Id.*

B. PROCEDURAL HISTORY

As detailed herein, on March 13, 2018, Campbell filed his complaint against the original Defendants, including James. (Doc. 1). On May 15, 2018, Campbell filed a return of service executed reflecting service of the complaint on James. (Doc. 13). Campbell filed a motion for clerk's entry of default on June 8, 2018. (Doc. 17). The motion was granted and, on June 12, 2018, default was entered on behalf of James. (Doc. 21). On July 6, 2018, Campbell filed an amended complaint that was not served on James. (Doc. 32).

On January 25, 2019, Campbell submitted a motion for default judgment against James and Allen. (Docs. 54, 55). The motion was withdrawn and resubmitted on January 28, 2019. (Docs. 58, 59). On February 5, 2019, James filed a motion to set aside the default. (Doc. 62). On February 11, 2019, James submitted a response in opposition to Plaintiff's motion for default. (Doc. 66). Campbell filed his response to set aside the default judgment on February 19, 2019. (Doc. 68). Campbell filed his reply brief in support of his motion for default against James and Allen on February 25, 2019. (Doc. 70). James submitted his reply in response of the motion to set aside the default judgment on March 5, 2019.

(Doc. 71). On April 10, 2019, the court issued an order that, in pertinent part, denied James' motion to set aside the default judgment and dismissed Campbell's motion for default against James and Allen as premature, stating that Campbell can refile with evidentiary proof once the claims against the other defendants had been resolved. (Doc. 77).³

After settling with Bennett and TIG, Campbell entered dismissals on June 12, 2019. (Doc 81; Doc 82). Over six weeks later the court ordered Campbell to re-file his motion for default judgment with evidentiary support for injunctive relief and requests for damages. (Doc. 83). On August 20, 2019, Campbell filed a renewed motion for default against James and Allen. (Doc. 84). James responded in opposition on September 3, 2019 and Campbell's reply brief was submitted on September 13, 2019. (Docs. 88, 90). On March 5, 2020, the court entered an order finding that Campbell's amended request for recovery in his unserved amended complaint was within the scope of recovery in default judgment. (Doc. 91). The court scheduled a hearing on May 5, 2020 to determine the damages. (Doc. 91-p. 17). Campbell filed a motion to adjourn the hearing in order to get responses for subpoenas that were sent in March 2020 for his damages. (Doc. 92).

³ Campbell entered into a confidential settlement with Defendants Bennett and TIG. The claims against these Defendants were dismissed with prejudice. (Docs. 81, 82).

Campbell submitted a trial brief on July 2, 2020 with an exponential increase in figures. (Doc. 99). The court held the hearing on damages on July 16, 2020. On August 5, 2020, Campbell filed a proposed finding of facts. (Doc. 110). James submitted his post-trial brief on August 10, 2020. (Doc. 111).

By order, issued on September 2, 2020, the District Court determined that the Defendants' profits from the infringing work, "Everyday We Lit," are \$6,697,068.00. (Doc. 113-p. 21). Pursuant to the one-satisfaction rule, the court indicated that it would reduce this amount by the settlement amounts paid to Campbell by Bennett and TIG. The court directed Campbell to file a notice by September 21, 2020 to inform the court of the amounts to be applied. *Id.* Campbell filed a document providing only minimal lump sum amounts that are filed under seal. (Doc. 114). The District Court issued a final order on March 2, 2021 using a different breakdown and calculation than what was previously indicated, arriving at the amount of \$1,487,720. (Doc. 129). The District Court also granted prejudgment interest at the rate of 6.25% starting from March 13, 2018 through the entry date of the final judgment, an injunction restricting the performance of the work in question and a 50% running royalty from the date of judgment. *Id.* James filed a notice of appeal on March 23, 2021. On April 7, 2021 Defendant Allen entered a motion to set aside judgment citing the same basis as James, as with

James, Campbell served an incorrect address and his mother's place of abode despite him being an adult individual and not residing there. (Doc 135).

C. STANDARD OF REVIEW

The issues presented require multiple standards of review. With the exception of prejudgment interest, the issues before the Court are mixed questions of law and fact. This Court reviews the factual issues using the clear error findings of fact standard. For the questions of law, this court reviews the standard of review is *de novo*. "We review the historical facts found by the District Court for clear error, and we review the application of law to those facts *de novo*." *Marcoski v. Rath*, 718 F. App'x 910, 911 (11th Cir. 2017).

The issue of prejudgment interest requires the abuse of discretion standard. *Werner Enters., Inc. v. Westwind Maritime Int'l, Inc.*, 554 F.3d 1319, 1328 (11th Cir. 2009). The abuse of discretion standard gives a district court a range of choice, so long as that choice does not constitute a clear error of judgment. *Id.*

SUMMARY OF ARGUMENT

This Court should reverse the District Court's judgment because it exceeds the standards provided under the Copyright Act and case law. In this regard, the court inappropriately determined that James was in partnership with Allen, despite Campbell failing to aver in the complaint or present any evidence during the

hearing of any partnership between James and any other named Defendant. Next, the court erred in finding that Campbell met his burden or establishing James' profits for purposes of damages. Third, the judgment is not supported by the default judgment standard as the court improperly applied the remedies requested in an unserved, amended complaint. Fourth, the court's award of prejudgment interest is improper, awarding an interest on an amount that has not been substantiated and even if it was, it is improper to start it from the date prior to the alleged earned value. Next, the awarding of the injunction and running royalty were both unfounded and based Campbell's voluntary decision to release other parties without protecting those rights. Lastly, the court's granting of attorney's fees is outside of the Copyright Act.

ARGUMENT

I. JOINT AND SEVERAL LIABILITY IS NOT APPLICABLE TO ACTUAL DAMAGES ON THE BASIS OF AN INFRINGER'S PROFITS UNDER THE COPYRIGHT ACT

The Copyright Act provides the selection of either statutory or actual damages in cases of infringement. While Campbell may be within his right to select actual damages as a remedy, the Copyright Act does not provide joint and several liability to profits. Campbell must select either joint and several liability for statutory damages or pursue the recovery of profits individually against each Defendant.

A. The Copyright Act only applies joint and several liability to statutory damages and limited case law has provided joint and several liability to Plaintiff's actual damages but not to an infringer's profits.

The bulk of the case law on this issue exists outside of the 11th Circuit. While the court cites *Home Design Services, Inc. v. Turner Heritage Homes, Inc.*, 101 F. Supp. 3d 1201, 1217 n.27 (N.D. Fla. 2015) as a standard, joint and several liability is not a subject matter in the case and it is a footnote in that case which references a landmark case outside of this jurisdiction, *Frank Music Corporation v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505 (9th Cir. 1985). The court uses the standard in this case to arrive to a joint and several liability application to Campbell's demand for actual damages for this case. However, this standard does not apply for several reasons.

It must be stated that *Frank Music v. Metro-Goldwyn-Mayer, Inc.* clearly provides that defendants do not share liability for each other's profits. "When a copyright is infringed, all infringers are jointly and severally liable for plaintiffs' *actual damages*, but each defendant is severally liable for his or its own illegal *profit*; one defendant is not liable for the profit made by another." *Frank*, 772 F.2d at 519. (Emphasis in original).

Campbell has not provided any actual damages; he is only pursuing the profits of the infringers. The court in *Frank* makes a distinct difference between

the joint liability of the damages versus the infringer's profits, which is applicable to the current case. Plaintiff has not submitted a request for actual damages outside of the profits of the infringers. Thus, on its face, the joint and several liability for his damage request is not applicable. During the hearing, the court even stated that each party would be held accountable for their own profits. "Well, it's my belief this morning that---- well, it may be jointly and severally in one regard. When you do damages, you break them down individually, but we'll see how this goes." (Docket 124-pp. 4-5). Campbell did not present any evidence in the hearing to support the court's change of belief of this well-cited standard in either the arguments by counsel or testimony by his expert. The only information presented at the hearing was the alleged profit calculations by the expert. Campbell did not testify, nor did he call anyone who could speak to the facts alleged by the complaint. James was called to the stand and Campbell did not elicit any testimony from him that could support any deviation from this standard. In fact, Campbell's counsel declined the opportunity to cross-examine James. (Doc. 124-p. 57). Thus, the court should have limited its finding to the bare facts of the complaint, which support the court's initial theory of the individual liability for profits.

B. The court erred in finding a partnership relationship exists between James and Allen.

The Defendants are not partners pursuant to established case law. The court asserted a partnership role in its order (Doc. 113-p. 18) basing its analysis on *Belford Clarke Co. v. Scribner*, 144 U.S. 488 (1892). A deep dive into this case shows that it is not applicable in the instant matter, especially due to the absence of fact in default. *Belford* has been cited in *Frank* briefly to indicate that a printer was held jointly and severally liable for a publisher's profits since they were "practically partners." *Frank*, 772 F.2d at 519. However, a further look into that case shows there was a contract between the publisher and printer that was the basis of their partnership. This argument was the key to what held all of the defendants liable. *Belford*, 144 U.S. at 507-508. The court in *Frank* furthers the analysis by examining another printing case, *Sammons v. Colonial Press, Inc.*, where the court found joint liability was inapplicable where a printer was paid a fixed price for their work regardless of profit. *Sammons v. Colonial Press, Inc.*, 126 F.2d 341, 342 (1st Cir. 1942).

The court in *Frank* goes a step further to create factors for the court to consider when determining if a partnership exists. In that case, the court actually remanded the case back to the District Court to consider whether the parties worked closely together in creating the infringing work. *Frank*, 772 F.2d at 519.

One of the key factors the court was also to consider was “whether [the defendant] was an employee or independent contractor rather than a *partner*.” *Id.* (Emphasis added). In addition to this key requirement, the court was also to consider whether there was a fixed salary or if the defendant bore any risk or loss on the production. *Id.*

James is in default in this case so the court has limited facts on his involvement to decide this matter. The evidence that the court used to create a partnership with James was limited to its summary of facts stating, “James created the music for ‘Everyday We Lit’ and also produced the song.” (Doc. 113-p. 18). However, this is a misstatement of the complaint. It actually states verbatim “Defendant James is credited as the producer of ‘Everyday We Lit,’” and “Defendant James is credited as the creator of the music of ‘Everyday We Lit.”” (Doc. 1-pp. 41-42). This actual language used by Campbell is more passive and lacks true description of an action on the part of James, which is typical when a plaintiff is initiating an action and is uncertain of the underlying facts. The court’s restatement of Campbell’s complaint is more affirmative than what Campbell provided himself. The court’s interpretation and assertion of action is outside the bounds of the default judgment as will be detailed later. Notably missing in the court’s analysis is one of the other few paragraphs that mentions James – Campbell’s aversion that James is signed to TIG. (Doc. 1-p. 2). Given the limited

mentions of James in the complaint, why would the court miss this one? This fact should have been key to the partnership analysis, as the term “signed” is vague and colloquial. It could represent either an employment or independent contractor status and even a fixed salary, thus placing James outside of any partnership as established by case law. The court erred by missing this in its partnership analysis.

Further, the court’s analysis and ultimate application of the limited facts presents more questions than answers. When and how did James and Allen interact? What was the basis of their agreement or arrangement? Were they the only alleged partners? What role did the other parties play? Did a partnership exist there? What does it mean to be credited for a work? Does the Plaintiff have proof that the work was actually completed by James? The list of questions presented by the apparent absence of facts is endless, thus making the court’s decision to create this relationship unsupported.

Case law requires much more than what the court used to create a partnership. The court has vacated judgments where the lower court has failed to support an assertion of the engagement of a practical partnership. *Nelson-Salabes, Inc. v. Morningside Development*, 284 F.3d 505, 517 (4th Cir. 2002) (the trial court erred finding that the profits managing agent of a company was subject to joint and several liability due to the court’s lack of fulfillment of *Frank* partnership factors). There is nothing in the facts admitted by default that binds James contractually to

Allen to indicate either the presence or absence of an employment or independent contractor relationship. In fact, there is nothing presented by Campbell that indicates the absence of a fixed salary or payment for the submission of the music that Campbell only states he was *credited* for. There is nothing indicating that James had any risk or loss on the production of the work. There is nothing that even places James in the same room or the same state as any of the parties during the time the work was created. There is no establishment or details of James' role as a producer. There is no evidence of any arrangement that reaches the level of comparison of this matter to any of the well-established case law.

Since this matter is before the Court by virtue of a default judgment, Campbell is limited to the admission of the facts that were presented in the complaint and all of this information is simply missing. Further, even if discovery was performed in the case, James still would not qualify as a partner in any way using the factors provided. An important note on this point is that Campbell had the opportunity to conduct discovery against two parties in this action and nothing has been provided to the court to supplement a partnership relationship. If James did have a significant role in the creation of the work, that would have been disclosed in some manner if appropriate discovery was conducted.

The court's order highlights the actions of Allen much more so than James. "Allen repeatedly heard Campbell's song 'Everything Be Lit' and even performed

it with Campbell, thereby obtaining special access to the work. Allen then jointly with Bennett came up with the lyrics for the infringing work ‘Everyday We Lit.’” (Doc. 113-p. 18). Again, this matter is before the court on a default judgment, and any information to support this assertion or relationship would have resulted from discovery. However, it is interesting that Campbell purposefully stated that Allen worked *jointly* with a previous defendant, Bennett, implying a direct partnership in creating the lyrics that infringed his copyright. To make matters even more interesting, Bennett also denied a relationship with James (Doc 34-p. 8). Then, Campbell gives a brief statement about James, not placing him in the arena of any of the other parties. The court ignores the absence of this implication with James and manages to create a partnership using a two-sentence mention. The court clearly erred in making that determination with the limited support it received.

Additionally, the partnership standard was used by the court in *Frank* in subsequent matters where the court found it impossible to separate the profits of defendants. *Sheldon v. Metro-Goldwyn Pictures Corporation*, 309 U.S. 390 (1940). “The court ruled that when the copyrighted portions are so intermingled with the rest of the piratical work ‘that they cannot well be distinguished from it.’” *Id.* at 401. This standard does not apply here. First, looking solely to the complaint, Campbell has identified where the responsibility for the lyrics lies – with Bennett and Allen. He then clearly identifies James as being credited for the music, which

was never the subject of the copyright claim. Second, Campbell's proffered evidence of figures presented at the hearing included alleged payment amounts to multiple parties. While the amounts are incorrect, there was a semblance of division of parties and their alleged profits. Thus, there is no need for the profits to be compiled together on a joint and several basis using a standard that roles cannot be separated and identified. Further, even if that was the case, Campbell must be subject to the default judgment standard, as well. The inability to distinguish the roles between parties as a result of no discovery is an effect that must be accepted in matters pertaining to a default judgment. Campbell only gets the benefit of admitted facts, not the presumption of what could have been presented.

For these reasons James requests that the Court finds that joint and several liability is inapplicable to Campbell's request for actual damages via infringer profits.

II. THE PLAINTIFF DID NOT MEET THE INITIAL BURDEN OF PROOF 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); *Aerospace Serv. Int'l v. LPA Grp., Inc.*, 57 F.3d 1002, 1004 (11th Cir. 1995). The Copyright Act provides that the owner of the copyright has the burden of proving the gross revenue of the infringers. "With

respect to profits, the plaintiff must show a causal relationship between the infringement and profits and must also present proof of the infringer's gross revenue." *Pronman v. Styles*, 645 F. App'x 870, 873 (11th Cir. 2016).

In this case, the court inappropriately held James accountable for proving his deductible expenses prior to Campbell meeting his burden of establishing James' gross revenue, which is contrary to the applicable law.

A. Campbell did not meet his burden of presenting James' gross revenue attributable to the infringement.

The plaintiff has the burden of proving the amount of damages he seeks to recover. *Wallace v. The Kiwi Grp., Inc.*, 247 F.R.D. 679, 681 (M.D. Fla. 2008). Recovering an infringer's profits in a copyright infringement case is a two-step process, wherein the burden begins with the copyright holder, but shifts to the copyright infringer. *See* 17 U.S.C. § 504(b); *see also Thornton v. J. Jargon Co.*, 580 F. Supp. 2d 1261, 1278-79 (M.D. Fla. 2008). First, the copyright owner must present proof of the infringer's gross revenue from the infringement. 17 U.S.C. § 504(b); *Thornton*, 580 F. Supp. 2d at 1279. If the plaintiff meets its burden, the burden then shifts to the infringer. *Id.* The infringer must then prove "his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." *Home Design Services*, 101 F. Supp. 3d at 1217. Thus, the

burden only shifts to the infringing party, if, and only if, the copyright owner meets his burden.

During the damages hearing, Campbell presented profits for “Everyday We Lit” in the amount of \$6,697,068.00, which allegedly represented the gross profits of the infringing work. (Doc. 124-p. 21). Based on this evidence, the Court concluded that \$1,487,720 was attributed to the music composition and \$5,209,348 was to the sound recording. (Doc. 129-p.6). Notably, Plaintiff did not present such evidence at the evidentiary hearing. More importantly, this number does not reflect the specific profits for James. As detailed herein, James was not in a partnership with any named Defendant. Therefore, to meet his burden, Campbell was required to prove James’ sole profits from the infringing work. Campbell failed to do so. In fact, he failed to present any evidence of James’ profits as a consequence of his alleged infringement during the hearing despite doing so in previous submissions to the Court.⁴ Instead, Campbell presented evidence of the purported total profit of “Everyday We Lit.” Campbell did not separate James’ profits from those of Allen’s, dismissed parties or unnamed parties to the action. Applicable law provides that James is not liable for profits made by other parties. *See Frank*, 772

⁴ The previous profits submitted by Campbell demonstrated less profits than those represented during the hearing.

F.2d at 519. Thus, to meet his burden, Campbell was required to produce evidence of James' individual profits which he failed to do.

As Campbell failed to prove profits attributable solely to James, he has failed to meet his burden, thus invalidating his claim to actual damages.

B. The District Court erred in finding that Campbell met his burden.

“With respect to profits, the plaintiff must show a causal relationship between the infringement and profits, and must also present proof of the infringer’s gross revenue.” *Pronman*, 645 F. App’x at, 873. The court’s finding that Campbell met his burden is incongruent with law requiring a copyright owner to show the profit of each infringer. *See Frank*, 772 F.2d at 519. The court erroneously allocated the total profits of “Everyday We Lit” to James and Allen despite Campbell failing to show they actually received those profits. Instead, the court allowed Campbell to present evidence of gross profits of “Everyday We Lit,” which included profits of not only Defendants who were dismissed and whose profits should not be considered, but also profits of entities who were not named parties to the lawsuit and are thus presumed to not have infringed the copyrighted work. Campbell’s expert, Gottlieb, confirmed that the profits detailed during his testimony were a combination of James’ profits, other named parties to the lawsuit

and parties who were not found to have infringed the copyright. (Doc. 124-pp. 40, 48-50).

Further, the evidence presented by Campbell during the hearing did not support the profits computed by Gottlieb. For example, during the damages hearing, Gottlieb testified that the profits he computed were based on a record that had reached double platinum status. (Doc. 124-pp. 45-46). Not only was there no evidence that “Everyday We Lit” reached even platinum status, when Gottlieb was questioned by James, he changed his testimony indicating that he could not certify it had even reached the initial platinum level. (Doc. 125-p. 45). More importantly, not only did James in his testimony confirm that “Everyday We Lit” only reached gold status, he also produced evidence from the Recording Industry Association of America (“RIAA”) indicating so. (Doc. 124-p. 56). This information was disregarded by the court. Another example, Gottlieb explicitly stated that he was charged to find revenue for all parties, not just defaulting Defendants, thus indicating Campbell never intended to present adequate profit information (Doc. 124-pp. 40-45). In another instance, Gottlieb acknowledged on the record that he did not provide an actual calculation or support of his figures. (Doc. 124-pp. 49-50).

Even if Campbell was correct in including figures from all of the parties, which he was not, Gottlieb acknowledged that some of the figures may have been

counted more than once, thereby making his profit calculation inaccurate. (Doc. 124-pp. 50-51). Specifically, he detailed that he computed separate figures for TIG and Kobalt, TIG's administrator, when in fact, they are the same and should only have been counted once. (Doc. 124-p. 54). He also admitted the possibility that the total for TIG could have been included in the figure for Warner. (Doc. 124-p. 51). Thus, not only did Campbell fail to demonstrate profits specific to James, he also failed to present adequate evidence regarding actual gross revenue for "Everyday We Lit."

In light of the foregoing, the court's finding that Campbell met his burden is contrary to law and contradictory to evidence submitted by Campbell.

C. Since Campbell did not meet his burden of showing the copyright infringer's gross revenue, James was not required to prove his deductible expenses.

"If the plaintiff meets its burden, the infringer must then prove 'his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.'" *Home Design Services*, 101 F. Supp. 3d at 1217. The copyright owner, thus, has the burden of demonstrating some causal link between the infringement and particular profit before the burden-shifting provisions of § 504(b) apply. *See Bonner v. Dawson*, 404 F.3d 290, 294 (4th Cir. 2005). Thus,

only after a copyright owner meets his burden does the burden shift to the infringer.

Campbell falters at the first step of the inquiry. He failed to meet his burden of demonstrating profits received exclusively by James from “Everyday We Lit.” Therefore, James was not required to present evidence regarding his deductible expenses. To meet his initial burden of showing profits of the infringer, Campbell presented profits of “Everyday We Lit.” However, Campbell offered nothing regarding the relationship between James’ alleged infringement and his profits. It would be woefully unreasonable and improper for the court to require James to show deductible expenses and the elements of profit attributable to factors other than the copyrighted work for other named Defendants and parties not named in the lawsuit. It would be akin to asking the CEO of a subsidiary to provide his personal household expenses and deducting them from the gross profits of his parent company. Not only does the math and request not make sense, it conflicts with case law and the required burden of proof. As Campbell did not meet his burden of establishing profits, the burden did not shift to James.

D. The Court erred in including profits of a party who was never considered an infringer in plaintiff's calculations for damages under the Copyright Act.

In addition to actual damages, a copyright owner is also entitled to recover “any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” 17 U.S.C. § 504(b). To establish the infringer’s profits, “the copyright owner is required to present proof only of the infringer’s gross revenue.” *Id.* In this case, Campbell has not alleged that he suffered any actual damages. His alleged damages are solely based on Defendants’ profits attributable to their infringement of “Everyday Be Lit.” “In such situations, each defendant is only liable to the copyright [P]laintiff to the extent of its own profits derived from the infringing activity.” *Nelson-Salabes, Inc.*, 284 F.3d at 517.

Campbell’s profits computation included profits for multiple parties, which included profits of named Defendants, parties who had been dismissed from the action and entities that were not named as parties. The District Court awarded damages based upon Campbell’s represented computation for all profits of “Everyday We Lit,” which is contrary to the application of joint and several liability in a copyright infringement case. *See Frank*, 772 F.3d at 519.

1. The court inappropriately considered profits of individuals who were dismissed from the case.

In computing back wages, Campbell presented evidence regarding the aggregate profits of parties having been dismissed from the action. Based on evidence presented by Campbell, the court awarded damages that included profits of Bennett and TIG. (Doc. 124-p. 40). Although damage liability is joint and several, liability for profits is several only. *MCA, Inc. v. Wilson*, 677 F.2d 180, 186 (2d Cir. 1981). Therefore, James is not liable for any profits attributed to the dismissed parties. Thus, the inclusion of Bennett and TIG's profits into James' gross revenue was improper.

Notwithstanding, the District Court imposed joint and several liability on James and Allen for the full aggregate profits of "Everyday We Lit." However, as detailed herein, Campbell failed to argue or otherwise present any evidence demonstrating that the named Defendants were engaged in a practical partnership. There was nothing to support the court's finding that Defendants were in a partnership. Therefore, the judgment against James should be exclusively based on his profits, which Campbell failed to demonstrate.

Moreover, even if James was in partnership with the other named Defendants to this action, which he was not, the confidential settlement entered into between Campbell, Bennett and TIG barred any additional recovery for their

profits as the settlement constituted a release of claims against Bennett and TIG. Therefore, any profits from “Everyday We Lit” must be reduced not only by the actual settlement amounts but by the total profits attributed to Bennett and TIG.

2. The court inappropriately considered profits of individuals who were never parties to the case.

Campbell’s profit calculations include profits of individuals who were not named as parties to the lawsuit and are, thus, presumed to have not infringed on Campbell’s copyrighted work. (Doc. 124-pp. 40, 48). In testimony provided by Gottlieb, he confirmed that the gross revenue he computed included profits of entities and individuals not considered a Defendant to Campbell’s legal action or an infringer of the copyrighted work. (Doc. 124-p. 48). Specifically, Gottlieb’s gross revenue included profits for Hit Cartel, Warner Chappell Music, Kobalt Music and Warner Brothers, along with other artists and their companies. (Doc. 124-pp. 48, 50-53). None of these entities were named as Defendants in Campbell’s action. Thus, it can be reasonably presumed that if Campbell did not identify these parties as Defendants in his lawsuit, they did not infringe on his copyright.⁵ Therefore, their profits should not be included in any profits of the infringing parties.

⁵ Campbell filed an amended complaint and failed to identify any additional Defendants. He had ample opportunity to identify Hit Cartel, Warner Chappell,

Thus, even if James was determined to be in a partnership and subject to joint and several liability for the profits of “Everyday We Lit,” the gross revenue should have been limited to only those parties that were found to have infringed on Campbell’s copyright. However, Campbell failed to produce any evidence of profits for the individual Defendants or those who were considered to actually have infringed on the copyrighted work.

3. James is only liable for his own profits.

It has been well-established in case law and herein that liability for profits is not joint and several. “In such situations, each defendant is only liable to the copyright plaintiff to the extent of its own profits derived from the infringing activity.” *Nelson-Salabes, Inc.*, 284 F.3d at 517. Where multiple defendants are jointly and severally liable for alleged actual damages from copyright infringement, a plaintiff is only allowed to recover once for a single wrong and not multiple awards of actual damages from each defendant. *BUC Int’l Corp. v. Int’l Yacht Council Ltd.*, 517 F.3d 1271, 1278-79 (11th Cir. 2008).

The court disregarded applicable law in finding that James was liable for all damages resulting from the infringement. Pursuant to prevailing law, Campbell

Music, Kobalt Music and Warner Brothers as additional infringers, but failed to do so.

may only recover profits from James for his individual acts of alleged infringement. The court's finding that James is liable for all damages caused by the alleged infringement, including damages resulting from unnamed parties, is indeed contrary to binding legal authority.

III. THE COURT'S RULING IS OUTSIDE OF THE SCOPE OF A DEFAULT JUDGMENT

It is important to note that none of the cases pertaining to joint and several liability or actual damages in the court's order are default judgment cases. Further, none of the cases that imply a partnership relationship are limited to such brief facts. "While a defaulted defendant is deemed to 'admit the plaintiff's well-pleaded allegations of fact,' he 'is not held to admit facts that are not well-pleaded or to admit conclusions of law.'" *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005). "[A] default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover." *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1204 (5th Cir.1975).

A. The court's calculation of damages deviates from the well-stated standard and purpose of a default judgment.

It is well-established that the plaintiff is limited to the facts of the complaint in a default judgment. The court in *Cotton* held that a defendant is "entitled to contest the sufficiency of the complaint and its allegations to support the

judgment.” *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005). The major problem with the court’s order in this case is that it ignores the fact this case is before it as a result of a default judgment. There were limited facts before it, especially as it pertains to James. The court lacked sufficient information to make the decision regarding partnership and joint and several liability that is required by established case law. As previously discussed, the court’s order implied the creation of a partnership to the facts that were limited to “James created the music for ‘Everyday We Lit’ and also produced the song.” (Doc. 113-p. 19). To further the stretch – as previously stated these facts contain an increased interpretation from the wording that was actually before it, which states James is simply credited. The court also ignored the presumed relationship that indicates an employment or independent contractor status between James and TIG (Doc. 1-p. 2). Further, the court did not indicate the production of any evidence that supplemented the complaint and warranted the changing of its understanding of the law as presented at the onset of the hearing. Campbell could have presented the additional evidence of a partnership to support the court’s assertion of joint and several liability for the infringer profits. The court even initially appeared to expect to see such evidence as indicated by the statement, “But we’ll see how this goes.” (Doc. 124-p. 5). Campbell’s failure to provide support for his alleged joint and

several entitlement should not have been overcome with the court's expansion of the meaning of selected statements of the complaint.⁶

Plaintiff does not benefit from discovery or assumption; it must be clearly stated facts. We must look at the references of James and his actions. Outside of the caption, he is mentioned *three* times in a 94-paragraph complaint. This is the same for the unserved amended complaint. It is also important to note the contrast of the detail of facts of James versus Allen. Campbell had virtually no information on James when he initiated this matter and the court should rule accordingly. The court's order used these limited facts to create a partnership between two Defendants who have never even met. There is nothing in the facts that indicate collaboration or joint action with James. The facts pertaining to James literally state that he is credited with creating the music, which is commonly done in separate venues and prior to the addition of lyrics. There is nothing plainly stated that James interacted with any of the parties. There is nothing that states what James did in his role as producer. There is nothing that states James directly had any interaction with Plaintiff or his work. Furthermore, there is nothing that states

⁶ Although Campbell's primary revision to the unserved amended complaint was the addition of joint and several liability for James' profits to his requested relief, the lower court has previously ruled that defaulting Defendants are still subject to the modifications.

that James even wrote a lyric to the work in question. It is against the standard of a default judgment for the court to give Campbell the benefit of discovery in its ruling.

While Campbell's tactics, method of service, and arguments are questionable⁷, James acknowledges that the court has been adamant in finding his in default and answer was not submitted which technically puts him in default. However, Campbell and the court are limited to the facts that have been admitted on his behalf. The creation of a joint tortfeasor relationship is not supported by the facts in the complaint and is well beyond the scope of a default judgment.

B. The court improperly uses the amended complaint as the basis for default judgment.

As previously stated, Campbell entered the default on James and Allen following the service of the complaint. (Doc. 17). Following that TIG filed a Motion to Dismiss on the basis of Campbell not obtaining copyright registration until over a year after he claimed infringement. (Doc. 29). Campbell responded by amending his defective complaint and intentionally did not attempt to serve the complaint on James and Allen. (Doc. 32). When James attempted to raise this

⁷ Defendant Allen has recently entered a motion to set aside the Default Judgment. He has presented evidence that Campbell used his mother's address to serve him even though he does not reside there. (Doc 135). Campbell admits in his response that this is the same issue that James presented. (Doc 136).

argument in the court appeared to find ways to justify the relief for Campbell. (Doc. 91).

The 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, 710 (S.D. Ga. 1990). The court uses this same quote as its alleged basis for using the amended complaint to award damages in this default judgment. (Doc. 91). While the law was correct, the court’s application and reasoning were improper.

First, the court blatantly disregarded the law that it relied on in *Atlanta Gas Light Co.* as it goes without explanation that holding a defendant responsible on a joint and several basis would result in greater responsibility and a higher damage amount than individual responsibility. This automatically makes the judgment more than what was requested in the original complaint. In this ruling the court was standing in the shoes of the plaintiff as opposed to objectively examining the facts before it. The court did not question or examine the reasoning of why the amended complaint was never served. Campbell did not even reference any service attempts on the defaulted defendants. (Doc. 32 p. 20-21).

Second, the court’s justification using James’ knowledge that there was a possibility of joint and several application because of the statutory damages is severely flawed. (Doc. 91, pp. 12-13). The court ruled that despite Campbell only

requesting joint and several liability for actual damages in his amended complaint that James should have known that it was possible since the Copyright Act expressly provides for joint and several recovery for statutory damages. *Id.* The problem with this reasoning is that it does not take into account that Campbell is not entitled to statutory damages due to his failure to obtain a copyright registration within the timeline of the U.S. Copyright Act. The U.S. Copyright Act provides that statutory damages cannot be provided where the effective date of a registration was three months after the first publication of the work or one month after the owner has learned of the infringement. 17 USC § 412. Even with the default standard of a defendant admitting the facts, Campbell's own submissions indicates that the alleged infringement happened within days of his notice of publication. (Doc. 1-1). Campbell's certificate of registration provides the Date of First Publication as November 18, 2016. (Doc. 1-1). It further provides that the effective date of registration for his copyright for his work was January 22, 2018. (Doc. 1-1). As indicated by Campbell in his complaint, the song in question was published and widely released throughout the United States on December 15, 2016. (Doc. 1-p. 50). However, registration did not occur until well over a year later, putting him well beyond the timeline required for a request of statutory damages. An objective, fact-finding view of the record and application of the law would have provided this insight. As a result of his failure to abide by the timelines, the

joint and several liability was not possible as expressly indicated in the Copyright Act. Despite what the Copyright Act provides regarding joint and several liability, on its face Campbell's initial complaint was defective and did not warrant statutory damages. Thus, the court's ruling and misapplication of James' statement regarding joint and several liability for statutory damages was improper.

Not only is it against case law, but this judgment is also against public policy. First, 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. At minimum, the court should have conducted an inquiry into the lack of service as opposed to justifying and rewarding it. This judgment encourages more plaintiffs to file and not attempt to serve amended complaints following default to guarantee a bigger windfall. Second, the judgment rewards questionable service tactics and punitive awards against defendants with minimum actions in a complaint. Campbell knowingly served the parents of two adult individuals and flippantly remarks that the arguments are "oddly familiar," while failing to acknowledge that he is the common denominator. (Doc. 136 p. 2). The court failed to give any consideration to James' evidence that he was not served at his address. (Doc. 77). The court entered a default judgement against James, despite Campbell's failure to meet the

service requirements of the Federal Rules of Civil Procedure. By awarding default in this case, the court has permitted and encouraged lazy and improper service.

Last, the awarding of the large sum, an injunction, royalty, and prejudgment interest all without discovery should be viewed as excessive and punitive for a default judgment, especially when a defendant appears and actively defends against the default. The court's judgment does not encourage litigation on its merits. For these reasons, the final judgment is outside of the standard of default judgment.

IV. THE COURT ERRED IN GRANTING PREJUDGMENT INTEREST TO CAMPBELL

The trial court awarded Campbell prejudgment interest of 6.25 percent per year on the judgment amount of \$1,447,720. (Doc. 129-p. 15). The trial court's decision to provide prejudgment interest has multiple issues. First, Campbell does not request prejudgment interest in neither his Complaint nor Amended Complaint. It is not until his motion for default judgment does Campbell request prejudgment interest, and at that point Campbell calculated the amount to be \$54,953.99. (Doc. 90-pp. 11-12). Although James questioned the calculations, Campbell affirmed that this was the correct amount. *Id* at 13.

Second, the court has discretion in determining whether to award prejudgment interest. However, there are some standards provided by case law

that indicate when a court may be outside of its discretion in doing so. In Georgia, “the prejudgment interest period generally covers any delays in legal proceedings that prevent the final entry of judgment.” *Veolia Water N. Am. Operating Servs., LLC v. City of Atlanta* (11th Cir. 2018). This is because “[t]he purpose of prejudgment interest is to compensate the injured party for the delay in receiving money damages.” *Id.*

Campbell has not displayed any urgency in this matter. Not only did he wait over a year from his purported infringement to register his copyright and file this action, he also requested and caused multiple delays that would impact his claim for prejudgment interest. First, the docket contains multiple instances where an extension was requested or granted by Campbell with Bennett and TIG. (Doc. 21; Doc. 25; Doc 50; Doc. 52; Doc. 65). Then, after settling with TIG and Bennett, he waited almost 90 days to file his renewed motion for default judgment, only after being prompted by the court to do so. (Doc. 83; Doc. 84). Following the hearing being scheduled Campbell requested a consent motion to extend the hearing date sixty days after the original date. (Doc. 94). Campbell has not displayed any urgency in resolving this matter and should not get the benefit of an award that is aimed to compensate for delays. Instead, Campbell has been the cause of all the delays in this matter and thus is not entitled to prejudgment interest.

Next, the court held that the income and damages requested changed throughout the matter. When Campbell's substantially higher number was questioned after the hearing, the trial court acknowledged that an additional year of revenue was presented. (Doc. 113-p. 14). This alleged revenue was after Campbell's complaint was filed. The court's statement poses two challenges to prejudgment interest. First, it indicates that the value of the damages was not realized at the time the action was filed thus complicating and invalidating the calculation of interest on a damage amount running from the day the matter was filed. Second, if the court wishes to enforce this method of calculation, the higher amount shows that the delay was beneficial to Campbell, which indicates that according to case law in this circuit prejudgment interest is not warranted.

Last, the court's granting and calculation of prejudgment interest in this matter is not in the interest of public policy as it discourages judicial efficiency. It is ultimately awarding Campbell in multiple ways for his delays. It is an abuse of discretion to allow Plaintiff to cause delays, benefit from an alleged appreciated amount as the basis for the interest and ultimately receive interest for the entire duration.

V. THE COURT ERRED IN FINDING THAT CAMPBELL IS ENTITLED TO INJUNCTIVE RELIEF.

Campbell did not meet his burden of establishing entitlement injunctive relief. The Copyright Act provides that a court “may ... grant ... injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a). However, the Supreme Court “has consistently rejected ... a rule that an injunction automatically follows a determination that a copyright has been infringed.” *eBay, Inc v. MercExchange, L.L.C.*, 547 U.S. 388, 392-93 (2006) *see also Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1359 (Fed. Cir. 2013) (“An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course”); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“An injunction should issue *only* where the intervention of a court of equity is essential in order effectually to protect property rights against injuries otherwise irreparable”) (internal quotation omitted). Under *eBay*, Campbell “must satisfy a four-factor test before [the] court may grant [injunctive] relief.” *eBay*, 547 U.S. at 391. Campbell must prove, with specific, non-speculative evidence: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public would not be disserved by a

permanent injunction.” *Id.* Campbell did not satisfy the four-factor test for obtaining injunctive relief.

First, Campbell has not met his burden of demonstrating that he will suffer irreparable injury without an injunction. To establish the irreparable harm factor, Campbell must establish **both** ... (1) that absent an injunction, it will suffer irreparable harm, and (2) that a sufficiently strong causal nexus relates 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) (no injunction for copyright infringement where plaintiff failed to demonstrate “sufficient causal connection” between irreparable harm and infringement). To prove irreparable harm, Campbell must establish a real or immediate threat of imminent harm in the future. *See Jacobsen v. Katzer*, 609 F.Supp. 2d 925, 937 n.3 938 (N.D. Cal. 2009). During the evidentiary hearing, Campbell failed to present any evidence showing that there was any continuing or ongoing conduct by James that indicates future harm is imminent. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 162-63 (2010) (permanent injunction improper when it does not “guard against any present or imminent risk of likely irreparable harm”). Simply asserting that injunctive relief is warranted is not sufficient. In fact, such conclusory statement is not evidence of *any* harm – let alone “irreparable” harm – that he would suffer without

any injunction. Moreover, the court's reason for finding that Campbell has suffered to irreparable injury is contradicted by applicable law. Contrary to the district court's finding, a violation of "the right to not use [a] copyright" does not inherently establish irreparable harm. *Garcia v. Google, Inc.*, 786 F.3d 733 (9th Cir. 2015). Any alleged injury to Campbell's interest is solely economic in nature and is therefore not "irreparable," because it can be remedied by money damages. *See Williams v. Bridgeport Music Inc.*, LACV1306004JAKAGR, 2015 WL 4479500, at *4 (C.D. Cal. July 14, 2015), *citing Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991). With no evidence of irreparable injury, Campbell has no right to injunctive relief.

Second, there is no evidence to suggest that the monetary remedies are inadequate to compensate the Campbell. *See eBay*, 547 U.S. at 391. Indeed, Campbell has an adequate remedy at law. Under the Copyright Act, a copyright holder may recover either actual damages and the infringer's profits or statutory damages. 17 U.S.C § 504(a). The district court's award of damages for James alleged copyright infringement demonstrates that monetary damages are available to fully compensate Campbell.

Third, Campbell cannot show that the balance of hardship tips in his favor. If the court denied Campbell's request for injunctive relief, there would be no discernible effect on Campbell whatsoever. In fact, Campbell made no effort to

address the specific hardship he will face. More specifically, Campbell failed to present any evidence showing he would be precluded from performing the copyrighted work or otherwise profiting from the copyrighted work. He did not present a scintilla of evidence showing any lost sales in his copyrighted work. Conversely, James would be crippled by an injunction. Indeed, precluding James from performing the copyrighted work would cause much more harm than the alleged harm facing Campbell. While the court noted that James continued to work in the recording industry and had other platinum certifications for other works, he failed to detail any income derived by James by such work. As the hardship faced by Campbell is nonexistent, the balance must tip in favor of James.

Lastly, an injunction would be contrary to the public interest. As has been a consistent issue throughout this action, Campbell failed to present any evidence showing that the public interest would be served by entry of the requested injunction. Instead, the District Court based its finding on the potential of confusion between “Everything Be Lit” and “Everyday We Lit.” However, Campbell did not present any evidence of confusion between “Everything Be Lit” and “Everyday We Lit” as asserted by the court. As there is nothing in the record to suggest any confusion among the copyrighted works at issue in this case, it would be a disservice to enjoin future sales and exploitation of “Everyday We Lit” by James. The public would be disserved by a permanent injunction.

The lack of any irreparable harm, coupled with adequate remedies under the law, a balance of hardship that weighs in favor of James, and public interest not warranting injunction defeats Plaintiff's request for injunctive relief. To be entitled to a permanent injunction, Campbell was required demonstrate that all four *eBay* factors are present. *eBay*, 547 U.S. at 291. Campbell failed to meet his burden. Therefore, his request for injunctive relief should be denied.

VI. THE COURT'S AWARD OF A RUNNING ROYALTY WAS IMPROPER

A running royalty is not appropriate in this case. Courts have held that a continuing royalty may be an appropriate alternative to the "harsh and drastic" remedy of injunctive relief under "special circumstances." *Williams v. Bridgeport Music, Inc.*, LACV1306004JAKAGR, 2015 WL 4479500, at *39 (C.D. Cal. July 14, 2015), citing *Abend v. MCA, Inc.*, 863 F.2d 1465, 1479 (9th Cir.1988). A running royalty is an equitable remedy that is less severe than a permanent injunction. *Williams v. Bridgeport Music, Inc.*, LACV1306004JAKAGR, 2015 WL 4479500, at *42 (C.D. Cal. July 14, 2015). Because a running royalty is, in part, analogous to a permanent injunction, the appropriate factors to consider in assessing this relief are similar to those that apply to a request for an injunction. *Williams v. Bridgeport Music, Inc.*, LACV1306004JAKAGR, 2015 WL 4479500, at *42 (C.D. Cal. July 14, 2015). 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, *i.e.*, there must be demonstrated threat of future infringement, and the royalty rate must be “plain and easily calculable.” *Id.* at 43.

Although the court granted Campbell’s request for a default judgment against James, Campbell failed to prove all elements for a running royalty. Specifically, Campbell failed to show that the public interest favors the imposition of a running royalty or that the legal remedy of retrospective, compensatory relief must be inadequate, *i.e.*, there must be demonstrated threat of future infringement. Campbell did not produce any evidence showing that the public interest would be served by a running royalty. Moreover, there is nothing to suggest that the compensatory remedy available is inadequate or that James will infringe the copyrighted work in the future. Instead of basing its decision on the evidence present, the court based its award of a running royalty on the lack of permanent injunction against other parties. (Doc. 129-pp. 13-14). James should not be penalized for Campbell’s decision to dismiss those parties from this action without pursuing an injunction.

At no point during the evidentiary hearing did Campbell show that he was entitled to actual damages, injunctive relief, or a running royalty. The district court

stood in Plaintiff's shoes and made a decision using manufactured evidence to award Campbell damages. Campbell has been awarded damages even after he failed to properly serve James the amended complaint or meet his burden of proving damages. The record does not show that a running royalty is warranted.

VII. THE TRIAL COURT ERRED IN GRANTING ATTORNEY'S FEES TO CAMPBELL

The trial court awarded Campbell \$4,576.82 in court costs, with this amount primarily being attorney fees. As with statutory damages, the Copyright Act provides that attorney's fees cannot be provided where the effective date of a registration was three months after the first publication of the work or one month after the owner has learned of the infringement. 17 U.S.C. § 412. As previously highlighted in the default judgment section, Campbell failed to register his copyright according to the timeline provided in the Copyright Act. Thus, the trial court should have denied Campbell's request for attorney's fees.

CONCLUSION

For all the foregoing reasons, James respectfully requests this Court to reverse the District Court's grant of actual damages, prejudgment interest, permanent injunction, running royalty and attorney's fees for Campbell.

Dated: May 17, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this brief contains 10,237 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 Office Word 2010 in 14-point Times New Roman type.

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2021, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system. I also hereby certify that the foregoing document is being served this day on all counsel of record identified on the Service List in the manner specified, via transmission of Notices of Electronic Filing generate by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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