



I.

Background

The First Amended Complaint (Docket No. 436) alleges copyright infringement by the use of the sound recording and composition titled "100 Miles and Running" in the movie "I Got the Hook-Up," which plaintiffs allege contains an infringing "sample" of their composition and sound recording titled "Get Off Your Ass and Jam." The original complaint in this action was a massive document almost one thousand pages in length that alleged close to five hundred causes of action against approximately eight hundred defendants (Docket Entry No. 1). The Court severed the case by count into 476 surviving cases (the "Bridgeport Cases") by Order dated July 25, 2001 (Docket Entry No. 349) and ordered that amended complaints be filed in each of the severed actions. The remaining defendants in this action are Dimension Films LLC, No Limit Films, LLC ("No Limit") and Miramax Film Corp. ("Miramax").

A. The Parties' Submissions

In order to control the amount of paperwork to be processed by the Clerk's office, the Court established a procedure by which parties were allowed to file the text of a pleading in the lowest numbered Bridgeport Case and file notices in the other Bridgeport Cases to which the same motion applied identifying the case number and docket entry where the full text of the

pleading is filed.<sup>1</sup> Pursuant to such practice, the parties herein rely on the following submissions filed in Bridgeport Case No. 3:01-0698 (Bridgeport Music, Inc. v. EMI April Music, Inc.)<sup>2</sup>:

- Defendant No Limit Films ("No Limit") have adopted the Motion for Partial Summary Judgment ("Defendants' Joint Motion") (App. 1), Supporting Memorandum ("Defendants' Joint Memorandum") (App. 2), Statement of Undisputed Facts (App. 3), and Declaration of Russell Taber (App. 4) filed in Case No. 3:01-0698, Docket Entry Nos. 73-77, by numerous defendants; and
- Plaintiffs Bridgeport and Southfield have filed the full text of their pleadings – Cross-Motion for Summary Judgment ("Plaintiffs' Cross-Motion") (App. 5), Response to Defendants' Motion for Partial Summary Judgment and Memorandum in Support of Cross-Motion for Summary Judgment ("Plaintiffs' Memorandum") (App. 6), Response to Defendants' Statement of Undisputed Facts (App. 7), Plaintiffs' Statement of Undisputed Facts ("SUF") (App. 8) and Accompanying Exhibits (App. 9), and the Declaration of Jane Peterer ("Peterer Declaration") (App. 10) – in Case No. 3:01-0698, Docket Entry Nos. 81-86.

No Limit has also filed in this case the Declaration of Robert L. Sullivan (Docket No. 489) and a Memorandum (Docket No. 488) in opposition to plaintiffs' cross-motion, which seeks denial of plaintiff's motion or, in the alternative, a stay pursuant to Fed. R. Civ. P. 56(f) until such time as defendant receives discovery from plaintiffs that it claims it needs to respond to plaintiffs' motion. The Sullivan Declaration incorporates by reference the Declaration of Chris Vlahos filed in Case No. 3:01-698 (Docket No. 104), which is attached hereto as App. 11.

Miramax filed a response to Plaintiffs' Cross-Motion (Docket No. 486), which argues that plaintiffs' motion should be denied because: (1) plaintiff Southfield has no ownership

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<sup>1</sup> This procedure was terminated by Judge Higgins at the Mar. 16, 2002, case management conference. These motions were filed prior to the conference.

<sup>2</sup> Copies of all relevant pleadings filed in Case No. 3:01-698 are attached hereto, designated herein as "App. \_\_\_" and are to be filed with this Report to complete the docket for this case.

interest in the composition at issue; (2) Bridgeport has not presented any evidence with regard to ownership of the sound recording of "Get Off Your Ass and Jam," therefore it is not entitled to summary judgment; and (3) Bridgeport's evidence of ownership of the composition is of questionable admissibility and validity. Alternatively, Miramax seeks the opportunity to depose Ms. Peterer regarding the authenticity of plaintiffs' exhibits prior to any ruling on plaintiffs' motion.

B. Defendant's Motion for Partial Summary Judgment

The defendant's motion for partial summary judgment seeks a ruling by the Court that the outcomes of certain prior lawsuits in Florida<sup>3</sup>, California and New York do not (a) preclude defendant from challenging the issue of plaintiffs' purported ownership of the allegedly infringed works; or (b) relieve plaintiffs of their burden to prove their claim to title in those works.

Defendants' Joint Motion (App. 1).

C. Plaintiffs' Cross-Motion for Partial Summary Judgment

Plaintiffs Bridgeport and Southfield seek partial summary judgment as to their ownership of the composition "Get Off Your Ass and Jam." Plaintiffs' Cross-Motion (filed in Case No. 3:01-698, Docket No. 81). The motion does not address plaintiffs' ownership of the sound recording of "Get Off Your Ass and Jam" (which is alleged in the First Amended Complaint (Docket No. 453, ¶ [65]) to be owned by plaintiffs Westbound Records and/or Nine Records). The issue of ownership of the allegedly infringed sound recording, therefore, it not before the Court at this time.

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<sup>3</sup> Clinton v. Boladian, Case No. 4:99cv242 (N.D. Fla.) (the "Florida Litigation").

## II.

### Summary Judgment Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment may be rendered if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law."

In order to prevail, the movant has the burden of proving the absence of a genuine issue of material fact as to an essential element of the opposing party's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). The substantive law governing the claims will identify which facts are material. In determining whether the movant has met its burden, the Court must view the evidence in the light most favorable to the non-moving party. Matsushita Electric Indus. v. Zenith Radio Corp., 475 U.S. 574, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

In order to defeat the motion, the non-moving party is required to show, after an adequate time for discovery, that there is a genuine issue of fact as to every essential element of that party's case upon which it will bear the burden of proof at trial. Celotex Corp., 106 S. Ct. at 2553. In making this showing, the non-moving party may not merely rest on conclusory allegations contained in the complaint, but must produce affirmative evidence supporting its claims. Id. In order to create a genuine factual issue, the non-moving party must show "there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986).

## III.

### Defendant's Motion for Partial Summary Judgment

As an initial matter, both No Limit and Miramax argue that plaintiff Southfield is not alleged in the First Amended Complaint as having any ownership interest in the composition, and therefore its claims should be dismissed. After reviewing the record, the undersigned finds no evidence of any ownership right asserted by Southfield, and recommends that Southfield's claims based on ownership of the composition be dismissed.

Defendant's motion raises the specter of issue and/or claim preclusion (formerly known, respectively, as collateral estoppel and res judicata), and seeks a ruling from the Court that defendants are not precluded by outcomes in prior litigation from challenging plaintiffs' ownership of the allegedly infringed works. Plaintiffs asserted at a case management conference held before the Magistrate Judge on January 7, 2002, that either rulings or consent judgments in the prior litigations would prove their ownership claims. Plaintiffs did not make, nor did the Magistrate Judge seek, an offer of proof at that time. Plaintiffs' assertion did lead the Magistrate Judge to invite the defendants in the Bridgeport Cases to submit summary judgment motions on the issue of ownership. See Order filed January 16, 2002, in Case No. 3:01-765, Docket No. 46. However, instead of arguing that issue and/or claim preclusion cannot be applied to the facts in this case, defendant chose to seek a ruling that they not be precluded from making this argument in the future. Plaintiffs are correct that defendants' motion did not present any facts upon which the undersigned could apply the law of issue and/or claim preclusion, and therefore the portion of defendants' motion that seeks a ruling that defendants are not precluded by prior litigation from challenging plaintiffs' ownership should be denied.

Initially, neither plaintiffs nor any of the defendants asserted in their moving papers that any of these rulings have a preclusive effect against the defendants. However, in their reply memorandum (Docket No. 508), plaintiffs assert that the court's ruling in the Florida Litigation "ends as a legal matter any dispute between Plaintiffs and [the musician George] Clinton" as to ownership of "Get Off Your Ass and Jam," and that the defendants have no standing to challenge plaintiffs' ownership claim. In other words, plaintiffs are asserting that the court's finding as to ownership in the Florida Litigation precludes defendants from raising any defects in plaintiffs' proof of ownership in this action. While plaintiffs seek to cast the issue as one of standing, it is also a matter of claim and/or issue preclusion. That issue was not adequately briefed by plaintiffs, and plaintiffs specifically stated in their initial memorandum in support of their cross-motion that they were not raising any issues of claim or issue preclusion (App. 6 at 11). Therefore, plaintiffs should not be allowed to raise that issue in reply.

As a matter of copyright law, the initial burden in this case is on the plaintiff to prove its ownership of the copyright as one of two essential elements of copyright infringement. See Feist Publications v. Rural Tel. Serv., 499 U.S. 340, 361 (1991) (plaintiff must prove ownership of a valid copyright and copying of original constituent elements of work); Ellis v. Diffie, 177 F.3d 503, 506 (6<sup>th</sup> Cir. 1999). In response to defendant's motion, plaintiffs attempt to limit defendant's ability to challenge plaintiffs' proof of ownership by asserting that defendant, as a third party to any agreement transferring ownership from the author to plaintiffs, has no standing to challenge the validity of the transfer. The cases cited by plaintiffs almost all deal with a

challenge to the transfer for failure to fulfill the Copyright Act's "statute of frauds" provision<sup>4</sup> requiring that the transfer be memorialized in a writing signed by the author. See Great Southern Homes, Inc. v. Johnson & Thompson Realtors, 797 F. Supp. 609, 611 (M.D. Tenn. 1992) ("it would be anomalous to permit a third party infringer to invoke [section 204(a)] against the licensee") (quoting Eden Toys v. Florelee Undergarment Co., 697 F.2d 27, 36 (2d Cir. 1982)); Imperial Residential Design v. Palms Dev. Group, 70 F.3d 96, 99 (11<sup>th</sup> Cir. 1995) ("it would be unusual and unwarranted to permit a third-party infringer to invoke section 204(a) to avoid suit for copyright infringement"); Sabroso Publ'g v. Caiman Records Am., 141 F. Supp. 2d 244, 228 (D.P.R. 2001) (transferee submitted written evidence ratifying and confirming transfer in satisfaction of section 204(a); in dicta, court noted that other courts have barred defendants from raising section 204(a) as a defense where no controversy existed between transferee and transferor); Kenbrooke Fabrics v. Soho Fashions, 690 F. Supp. 298, 301 (S.D.N.Y. 1988) (court ruled defendant had not met burden of proving transfer documents did not meet section 204(a) requirements; in dicta, court noted that Second Circuit had held that defendant could not invoke section 204(a) where no dispute existed between copyright holder and licensee). While the remaining case relied upon by plaintiffs, Hart v. Sampley, states the proposition that third party defendants do not have standing to challenge the validity of a copyright transfer, the Hart court cites the Eden Toys case for its holding regarding section 204(a), and offers no other support for its proposition. Hart v. Sampley, 1992 U.S. LEXIS 21478, \*4-5 (D.D.C. 1992); but see Dahlen

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<sup>4</sup> Section 204(a) of the Copyright Act provides that: "A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent." 17 U.S.C. § 204(a).

v. Mich. Licensed Beverage Ass'n, 132 F. Supp. 2d 574, 580 (W.D. Mich. 2001) (third party defendants barred from challenging validity of copyright transfer from plaintiff's sister to plaintiff based on lack of consideration where no evidence presented that either sister questioned validity of transfer).

Plaintiffs must meet their initial burden of establishing ownership of a valid copyright. Feist Publications, 499 U.S. at 361. There is nothing in the record that supports limiting defendants' right to point out deficiencies in plaintiffs' proof. Whether the cases cited by plaintiffs act to bar challenges to the validity of transfer documents other than for failure to meet the requirements of section 204(a) need not be decided here. As discussed below, issues of material fact as to plaintiffs' chain of title exist, obviating the need to address the validity of the agreements that plaintiffs claim transfer ownership to them. Therefore, the portion of defendants' motion that seeks a ruling that plaintiffs bear the initial burden of proving chain of title should be granted.

#### IV.

##### Plaintiffs' Offer of Proof of Ownership

In support of Bridgeport's ownership claim, plaintiffs<sup>5</sup> rely on the following documents (App. 9), which are described in plaintiffs' Statement of Undisputed Facts (App. 8) as follows:

- A copyright registration certificate for "Get Off Your Ass and Jam" filed with the U.S. Copyright Office on Oct. 12, 1977 (Plaintiffs' SUF ¶ 9) (App. 9, Ex. A);
- A Songwriter's Agreement entered into between George Clinton and Bridgeport dated Mar. 3, 1975 (Plaintiffs' SUF ¶ 25) (App. 9, Ex. B);

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<sup>5</sup> As discussed earlier, it appears that only Bridgeport has any purported ownership interest in the composition at issue here, however, for simplicity's sake, plaintiffs will continue to be referred to in the plural.

- An agreement entered into between Bridgeport, George Clinton and Clinton's company, Malbiz Music, on Mar. 4, 1982 (Plaintiffs' SUF ¶ 1) (App. 9, Ex. F);
- An "addendum" to the Mar. 4, 1982, agreement entered into between Bridgeport, Clinton and Malbiz Music on Dec. 2, 1983 (Plaintiffs' SUF ¶ 2) (App. 9, Ex. E); and
- An agreement entered into between Bridgeport and Ruthless Attack Muzick on Dec. 22, 1998 (Plaintiffs' SUF ¶ 4) (App. 9, Ex. O).

In addition to the documents attached to its Statement of Undisputed Facts, plaintiffs proffer the Peterer Declaration (App. 10), which states that the documents are "a true and exact copy" (¶ 4) and that they are documents "that plaintiffs produced in response to discovery requests of defendants" (¶ 3). The Peterer Declaration does not provide any other basis for admitting these documents into evidence.

Extrinsic evidence of authenticity is required for admission of all documents that are not otherwise self-authenticating. Fed. R. Evid. 901, 902. The Peterer Declaration offers no evidence to establish that the documents relied upon by plaintiffs are what they appear to be, or that the documents fall into any of the categories for self-authentication under Fed. R. Evid. 902.<sup>6</sup> Documents that are offered for the truth of the matter asserted are by their nature hearsay. Fed. R. Evid. 801. In order to be admissible, a foundation must be laid showing that a hearsay document meets an exception to the hearsay rule, such as the business record exception. See,

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<sup>6</sup> The document that defendant relies on to emphasize the point that Peterer, who started administering the Bridgeport catalog in 1983 at the earliest, has no personal knowledge as to many of the documents she seeks to place before the Court, is a partial, unauthenticated copy of a transcript from Peterer's deposition in another case. Defendant's Response Memorandum at 4 (Docket No. 488); Declaration of Chris Vlahos, Ex. A (Case No. 3:01-698, Docket No. 104) (App. 11). This seems to be a case of the pot calling the kettle black. Nonetheless, the deficiencies in the Peterer Declaration are obvious without relying on defendant's exhibit.

e.g., Fed. R. Evid. 803. The Peterer Declaration does not lay a foundation for the admissibility of any hearsay documents.

The only document submitted by plaintiffs that is properly authenticated and admissible is a certified copy of the registration certificate for "Get Off Your Ass and Jam." Section 410(c) of the Copyright Act states:

In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

17 U.S.C. § 410(c). Where, as here, the plaintiff is not the original author, he must establish the chain of title from author to plaintiff. If the plaintiff has registered the copyright in his name as assignee of the copyright holder, the registration certificate is *prima facie* evidence of the validity of his copyright and of the facts stated therein, and it is the defendant's burden<sup>7</sup> to controvert plaintiff's chain of title. See Melville B. Nimmer and David Nimmer, 3 Nimmer on Copyright § 12.11[C], at 12-171 (1978); The Urantia Found. v. Burton, No. K 75-255 CA 4, 1980 WL 1176, \*2 (W.D. Mich. Aug. 27, 1980). However, if the plaintiff is an assignee of a previously registered copyright, the burden falls on him to establish a chain of title. 3 Nimmer on Copyright § 12.11[C], at 12-171. The presumption of validity means that "only those specific facts which

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<sup>7</sup> If defendants were barred from challenging the validity of ownership, the presumption of validity arising from registration certificate would be irrebuttable, which the case law makes clear it is not. See, e.g., Hi-Tech Video Productions, Inc. v. Capital Cities/ABC, Inc., 58 F.3d 1093, 1095 (6<sup>th</sup> Cir. 1995) (presumption of validity of copyright rebutted by showing that video was not "work made for hire" as described on registration certificate). Defendants are free, therefore, to point out any discrepancies between the facts contained in the registration certificate and other admissible evidence. Urantia Found., 1980 WL 1176 at \*3.

are effectively challenged by the defendant need be proven by the plaintiff possessing a certificate of registration." Urantia Found., 1980 WL 1176 at \*3. "Once the plaintiff overcomes the evidence showing the inaccuracy in its Certificate of Registration it is once more entitled to a presumption in favor [of] the validity of its copyright." Id. at \*4.

Plaintiffs have produced two different certificates of registration for "Get Off Your Ass and Jam." Neither of these documents is a certified copy, and therefore neither is properly authenticated.<sup>8</sup> This is reason alone to deny plaintiffs' motion for summary judgment as to this work. It should be noted that the presumption of validity only attaches to a certificate for a copyright registered within five years of first publication. 17 U.S.C. § 410(c). The second certificate lists first publication as Jan. 1, 1978, and a registration date of Mar. 16, 1993, more than fifteen years later. Therefore, if plaintiffs are relying on the second certificate to establish ownership, the Court is free to require them to offer additional proof of the facts stated in the certificate, such as explaining why the work was registered twice and any other discrepancies that may exist between the two documents.

The registration certificates show Bridgeport as the copyright claimant and George Clinton as the author. Plaintiffs have also proffered a songwriter's agreement (App. 9, Exhibit B) that does not show the same author as the registration certificates. Exhibit B is an agreement

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<sup>8</sup> Plaintiffs originally produced a copy of a registration certificate dated Oct. 12, 1977, that is not certified (App. 1, Ex. A). Plaintiffs produced a copy along with their reply papers of a registration certificate dated Mar. 16, 1993, that they claimed was a certified copy recently obtained from the U.S. Copyright Office (Docket No. 511, Ex. A). However, there is no certification from the U.S. Copyright Office that proves that it is a bona fide copy of the records of that office. Plaintiffs do not explain why the certification is missing. The Magistrate Judge is surprised that at this late stage in the proceeding plaintiffs do not have readily at hand the properly certified registration certificate that is the basis of their case.

between "Parliament-Funkadelic" and Bridgeport that purports to transfer ownership of the work to Bridgeport, and the agreement repeatedly refers to "Parliament-Funkadelic" as the author of the work. The songwriter's agreement does not indicate that Clinton was the sole author of the work; it actually indicates the contrary.<sup>9</sup> Yet, the registration certificates list Clinton as the composition's sole author. Thus, an issue of fact exists as to whether the copyright certificates accurately reflect the author(s) of the work.

Even if plaintiffs' other documentation were properly authenticated and admissible, these documents do not resolve the discrepancy between the registration certificates and the songwriter's agreement. On its face, the 1982 Agreement (App. 9, Ex. F) does not by itself apply to "Get Off Your Ass and Jam." The 1983 Addendum (App. 9, Ex. E) purports to transfer to Bridgeport all compositions written by Clinton prior to March 4, 1982 that are "not vested by a binding written agreement in another publisher." Exhibit A to the 1983 Addendum contains a long list of compositions subject to that agreement, but that list does not include "Get Off Your Ass and Jam." Plaintiffs do not provide any other evidence that shows that the parties intended

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<sup>9</sup> The preamble of the agreement is between "Parliament-Funkadelic (hereinafter jointly and severally referred to as 'Writer') and Bridgeport. Paragraph 6 states, "In the event that there is more than one such creator referred to herein, all sums stated to be payable hereunder to the Writer(s) shall be paid to such creators as follows: Parliament-Funkadelic." The signature line of the agreement next to "Writer" lists both George Clinton and Parliament-Funkadelic.

the 1983 Addendum to govern the copyright for "Get Off Your Ass and Jam."<sup>10</sup> These documents do not answer the question of who authored the work.

Even if these documents are shown to apply to the composition in question, the transferor for both the 1982 Agreement and the 1983 Addendum is Malbiz Music, not George Clinton individually or Parliament-Funkadelic. The chain of title is thus incomplete because, based on Exhibits A and B, either Clinton individually or Parliament-Funkadelic as a group authored the work, and plaintiffs offer no document or other evidence showing a transfer of ownership from Clinton and/or Parliament-Funkadelic to Malbiz Music.<sup>11</sup>

Exhibit O is an agreement between Bridgeport and Ruthless Attack Muzick ("RAM") granting a license to RAM for use of samples of Bridgeport compositions in its work "Eazy-Duz-It." One of the sampled compositions is "Get Off Your Ass and Jam." This document, if

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<sup>10</sup> Plaintiffs rely on the ruling in the Florida Litigation as further evidence of ownership. However, the court did not enumerate the compositions to which its ruling on ownership applied. The court ruled that pursuant to the 1982 Agreement, as modified by the 1983 Addendum, Clinton on behalf of Malbiz Music assigned 100 percent of all rights in compositions owned by Malbiz that were created prior to Mar. 4, 1982 (App. 9, Exhibit R at 185-189). Plaintiffs have not offered any evidence that establishes that "Get Off Your Ass and Jam" is a composition that was owned by Malbiz as of Mar. 4, 1982.

<sup>11</sup> The witnesses' statements from the Florida Litigation bench trial (Exhibit R to Plaintiffs' SUF) regarding the relationship between Clinton and Malbiz are out-of-court statements that are presumably being offered for the truth of the matter asserted – Bridgeport Music's ownership of the composition at issue – without first showing that the statements fall under an exception to the hearsay rule. Fed. R. Evid. 801. Even if the Court were to consider these statements, the plaintiffs' motion must fail.

The judge in the Florida Litigation assumed, for the purposes of his ruling, the existence of an assignment of rights from Clinton to Malbiz Music. See Exhibit R at 189 (App. 9). It does not appear that any evidence was offered at the trial that established this assignment as a matter of fact. It is not for the Court to connect the dots of a chain of title for the plaintiffs. The plaintiffs must do that as part of their case in chief.

properly authenticated, only proves that Bridgeport believes it is the legal owner of the copyright, and that it has held itself out to others as the owner. While it goes to Bridgeport's "state of mind," it does not establish ownership, and its relevance on the ownership issue is minimal.

Defendants raise these discrepancies in the chain of title found in plaintiffs' documents but also complain that these documents are not properly before the Court because of plaintiffs' failure to authenticate and provide a foundation for admissibility. In order to rebut plaintiffs' presumption of validity, the burden is on defendants to proffer evidence in admissible form, thus the presumption must stand until such time as defendants present controverting evidence. See Urantia Found., 1980 WL 1176 at \*5. Both sides in this case are trying to skate by basic admissibility foundations. However, the discrepancy shown in the documents as to who initially owned "Get Off Your Ass and Jam" the gaps in the chain of title raise material issues of fact sufficient to defeat plaintiffs' motion for partial summary judgment.

#### IV.

#### Conclusion

The undersigned recommends that the portion of defendant's motion seeking dismissal of plaintiff Southfield's claims be **GRANTED**, the portion of defendant's motion seeking a ruling that it is not precluded by prior litigation from challenging plaintiffs' ownership of the copyright to "Get Off Your Ass and Jam" be **DENIED**, the portion of defendant's motion seeking a ruling that plaintiffs bear the initial burden of proving chain of title to the copyright be **GRANTED**, and that plaintiffs' motion for partial summary judgment as to its ownership claim to the work "Get Off Your Ass and Jam" be **DENIED**. Defendant's motion for a stay pursuant to Fed. R. Civ. 56(f) should be denied as moot. Plaintiffs' request for oral argument on the issue of

defendants' standing to challenge the validity of the copyright transfers (Docket No. 508) should also be denied.

Under Rule 72(b) of the Federal Rules of Civil Procedures, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections thereto with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 111 (1986).

  
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JOE B. BROWN  
United States Magistrate Judge