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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

SA MUSIC, LLC, et al.,

Plaintiffs,

v.

APPLE INC., et al.,

Defendants.

Case No. 2:19-cv-04073-JFW-RAO

**PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT DISMISS ALL DEFENDANTS EXCEPT APPLE, INC.**

Plaintiffs respectfully submit this response to this Court's Order to Show Cause (Docket # 218) why the court should not exercise its discretion and sever and dismiss

the claims against all of the defendants except Apple, Inc. ("Apple"). For the reasons discussed herein, Plaintiffs consent to the proposed severance and dismissal except propose that the Court, rather than sever all Defendants but Apple, allow Plaintiffs to proceed with respect to the Forty-Second Claim against Defendants Apple, Isolation Network Inc. ("Ingrooves"), Genepool Distribution Ltd. ("Genepool") and Ideal Music Limited ("Ideal").

**A. Background**

The First Amended Complaint ("FAC") pleads 307 separate claims for copyright infringement against 66 defendants. Each claim arises from infringements of Plaintiffs' copyrighted musical works committed by a separate "distribution chain", usually a label, a distributor, and an online music store. The FAC describes how the infringements have occurred and alleges that the members of each distribution chain are jointly and severally liable for the infringements associated with that chain. FAC ¶¶ 151-176.

While Plaintiffs believe that the claims against all Defendants in this action arise from the same series of transactions or occurrences and that questions of law or fact common to all defendants will arise in the action, they do not oppose severance and dismissal without prejudice of certain Defendants. Plaintiffs respectfully acknowledge the Court's conclusion that, as currently constituted, the FAC is "unwieldy and will present a severe strain on the Court's limited resources." Dkt. 219. Plaintiffs accept the Court's proposed course of action to dismiss certain defendants form the case so as to narrow the scope of the claims but respectfully submit that the Court's proposal to dismiss all defendants except Apple would not be the most efficient way to proceed.

Consistent with the Court's Order to Show Cause why joinder is proper under FRCP 20(a)(2), Plaintiffs submit that the most efficient way to divide and proceed

with these claims is by distribution chains, as the entities in each chain are jointly and severally liable for the alleged infringements and would be properly joined in one action. See 17 USC § 504(c)(1). Plaintiffs propose to proceed in this action on the Forty-Second Claim in the First Amended Complaint against the distribution chain comprising Apple, Ingrooves, Genepool, and Ideal.

**B. Joinder of Apple, Ingrooves, Genepool and Ideal is Proper**

Joinder of defendants who are alleged to be jointly and severally liable for copyright infringement is proper. "Courts have long held that in patent, trademark, literary property, and copyright infringement cases, any member of the distribution chain can be sued as an alleged joint tortfeasor. Since joint tortfeasors are jointly and severally liable, the victim of trademark infringement may sue as many or as few of the alleged wrongdoers as he chooses," *Lockheed Martin Corp. v. Network Solutions, Inc.*, No. CV 96–7438 DDP (ANx), 1997 WL 381967, *3 (C.D. Cal. Mar. 19, 1997)(internal citations omitted). Members of a common distribution chain are jointly and severally liable for infringement and can be permissively joined under Rule 20. See *Lockheed Martin Corp. v. Network Solutions, Inc.*, No. CV 96–7438 DDP (ANx), 1997 WL 381967, *3 (C.D. Cal. Mar. 19, 1997); see *LMNO Cable Group, Inc. v. Discovery Communications LLC*, 2017 WL 8932167 (C.D. Cal 2017) ("It is clear that where defendants are alleged to be jointly liable, they may be joined under Rule 20 because the [Rule 20] transaction-or-occurrence test is always satisfied." (citing *Temple v. Synthes Corp.*, 498 U.S. 5, 7, 111 S.Ct. 315, 112 L.Ed.2d 263 (1990) (per curium) (noting that a joint tortfeasor is a permissive party). *See Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 519 (9th Cir. 1985)("[w]hen a copyright is infringed, all infringers are jointly and severally liable for plaintiffs' actual damages…").

Where there is some factual commonality among infringement claims, this suffices to satisfy the "same transaction, occurrence or series of transactions or occurrences" test. *See Brighton Collectibles, Inc. v. RK Texas Leather Mfg.*, No. 10–CV–419–GPC (WVG), 2013 WL 2631333, *3 (S.D. Cal. June 11, 2013) ("Typically, ... a party 'must assert rights or have rights asserted against them, that arise from related activities—a transaction or an occurrence or a series thereof' "). Thus, "claims that arise out of a systematic pattern of events and have a very definite logical relationship" meet the "same transaction" requirement. *Id.* (internal quotation marks omitted).

Where one defendant has supplied infringing goods to other defendants, or multiple infringers have supplied goods to a common retailer, the claims arise out of the "same transaction" for purposes of Rule 20. *Brighton Collectibles*, at *3–4. See also, *N. Face Apparel Corp. v Dahan,* 2014 WL 12596716, at *6 (CD Cal Mar. 14, 2014)("members of a common distribution chain are jointly and severally liable for trademark infringement, and can be permissively joined under Rule 20"); *Bravado International Group Merchandising Services v. Jin O. Cha et. al.*, 2010 WL 2650432 (C.D.Cal 2010); *Arista Records, LLC v. Does 1-4,* 589 F.Supp.2d 151, 155 (D.Conn.2008) ("The 'same transaction' requirement [of Rule 20(a)(2)] means that there must be some allegation that the joined defendants 'conspired or acted jointly.'").

**C. The Forty-Second Claim Should Proceed in this Action**

Plaintiffs respectfully submit that the Court should sever and dismiss, without prejudice, all defendants and claims except those in the Forty-Second Claim against Apple, Ingrooves, Genepool, and Ideal. FAC ¶¶ 1-234, 317-318, Exhibit B-42. The FAC alleges that these defendants are properly joined as jointly and severally liable members of a distinct distribution chain that distributed 39 pirated recordings of

copyrights owned by Plaintiffs SA Music, LLC and William Kolbert as trustee of the Harold Trust. (See FAC, Exh. B-42). Ideal is the record label that reproduced and distributed the infringing recordings to Genepool (a subdistributor) which, in turn, distributed the recordings to Ingrooves (a distributor) which, in turn, distributed them to Apple for sale in its online music store.

Apple is a corporation organized under the laws of the State of California with a place of business at 1 Apple Park Way in Cupertino, California. FAC, ¶ 27. Isolation Network, Inc. is a corporation organized under the laws of the State of California with a place of business at 15821 Ventura Blvd # 420, Encino, CA. FAC, ¶ 39. Jurisdiction and venue are therefore both appropriate in this district. *Martenson v. Koch*, 942 F.Supp. 983, 993-997 (N.D.Cal 2013); *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1126 (9th Cir. 2010)(venue is proper wherever defendant is subject to personal jurisdiction). Genepool and Ideal Music are both business entities organized and doing business in the United Kingdom. FAC, ¶¶ 46, 51. Venue for foreign corporations is governed by the general venue statute, which provides that "a defendant not resident in the United States may be sued in any judicial district." 28 U.S.C. § 1391(c)(3).

Judicial economy will be facilitated if the Court allows this cause of action to proceed because the claims within it arise from the same series of transactions and occurrences and there are common core questions of law and fact including: (1) plaintiffs' ownership of the copyrights; (2) whether the same 39 recordings distributed by each of member of the distribution chain were pirated; and (3) whether the same 39 recordings in the distribution chain infringed Plaintiffs' copyrights. If these parties are severed, Plaintiffs will be required to put on the same evidence in as many as four different trials as to the same issues. In addition, there is no prejudice to these Defendants because multiple separate trials for each member of the distribution chain

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