

1 Scott Alan Burroughs (SBN 235718)
scott@donigerlawfirm.com
2 Frank Trechsel (SBN 312199)
ftrechsel@donigerlawfim.com
3 Benjamin F. Tookey (SBN 330508)
4 btookey@donigerlawfirm.com
5 DONIGER / BURROUGHS
6 603 Rose Avenue
7 Venice, California 90291
Telephone: (310) 590-1820

8 Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 CLEVELAND CONSTANTINE
12 BROWNE; ANIKA JOHNSON as
13 personal representative of THE ESTATE
14 OF WYCLIFFE JOHNSON; and STEELY
& CLEVIE PRODUCTIONS, LTD.,

15 Plaintiffs,

16 v.

17 RODNEY SEBASTIAN CLARK
18 DONALDS; *et al.*,

19 Defendants.
20

Case No: 2:21-cv-02840-AB-AFM
Hon. André Birotte Jr. Presiding

**PLAINTIFFS’ OPPOSITION TO
DEFENDANT CAMILO
ECHEVERRI’S MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION AND
FAILURE TO STATE A CLAIM**

**[Declaration of Frank R. Trechsel;
Request for Judicial Notice; and
Application to File Exhibits Under
Seal filed concurrently herewith]**

Date: September 22, 2023
Time: 10:00 a.m.
Courtroom: 7B

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 2

III. FACTUAL BACKGROUND 2

IV. ARGUMENT 5

A. Camilo is subject to specific personal jurisdiction in California 5

1. Camilo purposefully directed his activities towards California 6

i. Camilo acted intentionally 7

ii. Camilo expressly directed his infringing conduct towards California 7

iii. Camilo knew that harm would be felt in forum state 9

2. Plaintiff’s claims arise from activities directed toward California 9

3. Exercising personal jurisdiction over Camilo comports with fair play and substantial justice 10

4. Venue transfer is unwarranted 14

B. The SCAC meets the pleading standards for copyright infringement and contributory liability 17

1. The SCAC provides proper notice and is not a “shotgun” pleading 17

2. Plaintiffs’ sufficiently plead facts to support copyright infringement against Camilo 20

i. Plaintiffs sufficiently plead access 21

ii. A 12(b)(6) motion is improper to challenge substantial similarity 22

iii. Plaintiffs sufficiently alleged that the Subject Works are original and protectible 24

iv. The Subject Works are protectible and scenes a faire does not disturb that protectability 26

3. Plaintiffs sufficiently alleged contributory infringement 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Plaintiffs should be granted the ability to conduct jurisdictional
discovery and amend its pleading30

V. CONCLUSION31

TABLE OF AUTHORITIES

Page(s)

Cases

Adobe Sys. Inc. v. Blue Source Grp., Inc.,
125 F. Supp. 3d 945 (N.D. Cal. 2015)10

A.J. Indus., Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.,
503 F.2d 384 (9th Cir.1974).....16

Alfred v. Walt Disney Co.,
821 F. App’x 727 (9th Cir. 2020)29

Amaru Ent., Inc. v. Heritage Cap. Corp.,
2022 WL 18142555 (C.D. Cal. Nov. 30, 2022).....16

Anderson v. Angelone,
86 F.3d 932 (9th Cir. 1996).....18

Argonaut Ins. Co. v. MacArthur Co.,
2002 WL 145400 (N.D.Cal. 2002)17

Art Attacks Ink, LLC v. MGA Enter. Inc.,
581 F.3d 1138 (9th Cir. 2009).....22

Astor-White v. Strong,
733 F. App’x 407 (9th Cir. 2018).....24

AT&T Co. v. Compagnie Bruxelles Lambert,
94 F.3d 586 (9th Cir. 1996.).....5

Axiom Foods, Inc. v. Acerchem Int’l, Inc.,
874 F.3d 1064 (9th Cir. 2017).....6

Balistreri v. Pacifica Police Dept.,
901 F.2d 696 (9th Cir. 1988).....18

Bancroft & Masters, Inc. v. Augusta Nat’l Inc.,
223 F.3d 1082 (9th Cir. 2000).....5

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007)18

Bernal v. Paradigm Talent & Literary Agency,
788 F. Supp. 2d 1043 (C.D. Cal. 2010)23, 24

Bite Tech, Inc. v. X2 Impact, Inc.,
2013 WL 871926 (N.D. Cal. 2013)16

Brayton Purcell LLP v. Recordon & Recordon,
606 F.3d 1124 (9th Cir. 2010).....6, 9, 17

Brayton Purcell LLP v. Recordon & Recordon,
361 F. Supp. 2d7, 11

Burger King v. Rudzewicz,
471 U.S. 462 (1985).....6, 7, 11, 12

Cahill v. Liberty Mut. Ins. Co.,
80 F.3d 336 (9th Cir. 1996).....18

1 *Callaway Golf Co. v. Corp. Trade, Inc.*,
 2010 WL 743829 (S.D.Cal. 2010)16

2 *Campbell v. United States*,
 3 365 U.S. 85 (1961)23

4 *Carsey-Werner Co., LLC v. Brit. Broad. Corp.*,
 2018 WL 1083550 (C.D. Cal. 2018).....6

5 *Cavalier v. Random House, Inc.*,
 297 F.3d 815 (9th Cir. 2002).....22

6 *Cheng v. Boeing Co.*,
 7 708 F.2d 1406 (9th Cir.).....17

8 *Chiate v. Morris*,
 972 F.2d 1337, 1992 WL 197591 (9th Cir. 1992)24

9 *CollegeSource, Inc. v. AcademyOne, Inc.*,
 653 F.3d 1066 (9th Cir. 2011.).....13

10 *Colt Studio, Inc. v. Badpuppy Enter.*,
 11 75 F. Supp. 2d 1104 (C.D. Cal. 1999)13

12 *Commodity Futures Trading Comm. v. Savage*,
 611 F.2d 270 (9th Cir. 1979).....15

13 *Continental Grain Co. v. The Barge FBL-585*,
 364 U.S. 19, 80 S.Ct. 1470, 4 L.Ed.2d 1540 (1960).....15

14 *Coremetrics, Inc. v. Atomic Park.com, LLC*,
 15 370 F. Supp. 2d 1013 (N.D. Cal. 2005)11

16 *Core-Vent Corp. v. Nobel Indus. AB*,
 11 F.3d 1482 (9th Cir. 1993).....11

17 *Crispin v. Christian Audigier, Inc.*,
 2010 WL 11508342 (C.D. Cal. 2010).....19

18 *Decker Coal Co. v. Commonwealth Edison Co.*,
 19 805 F.2d 834 (9th Cir. 1986).....17

20 *Durham Prods, Inc. v. Sterling Film Portfolio, Ltd., Series A*,
 537 F.Supp. 1241 (S.D.N.Y.1982).....15

21 *Esquer v. StockX, LLC*,
 2020 WL 3487821.....16

22 *Etereo Spirits, LLC v. James R. Ling*,
 23 2021 WL 3914256 (C.D. Cal. 2021).....19

24 *Ets-Hokin v. Skyy Spirits, Inc.*,
 225 F.3d 1068 (9th Cir. 2000).....28

25 *Fed. Deposit Ins. Corp. v. British-American Ins. Co.*,
 828 F.2d 1439 (9th Cir. 1987).....5

26 *Feist Publ’ns, Inc. v. Rural Tel. Servs. Co.*,
 27 499 U.S. 340 (1991).....21

28 *Figueroa v. Gates*,
 120 F.Supp.2d 917 (C.D.Cal. 2000)5

1 *Fleener v. Trinity Broad. Network*,
 203 F. Supp. 2d 1142 (C.D. Cal. 2001)28

2 *Freidman v. Popsugar, Inc.*,
 3 2018 WL 6016963 (C.D. Cal. Oct. 29, 2018).....7

4 *Gray v. Hudson*,
 28 F.4th 87 (9th Cir. 2022)25

5 *Gray v. Perry*,
 2018 WL 3954008 (C.D. Cal. Aug. 13, 2018).....22, 23

6 *Hall v. Swift*,
 2021 WL 6104160 (C.D. Cal. Dec. 9, 2021)25

7 *Hawkins v. Gerber Prod. Co.*,
 8 924 F. Supp. 2d 1208 (S.D. Cal. 2013).....16

9 *Hayes v. Minaj*,
 2013 WL 11328453 (C.D. Cal. 2013).....28

10 *Holland Am. Line Inc. v. Wartsila North Am.*,
 11 485 F.3d 450 (9th Cir. 2007).....10

12 *Asahi Metal Indus. Co. v. Sup. Ct., the Supreme Court.*,
 480 U.S. 102 (1987)12

13 *Jason v. Fonda*,
 526 F. Supp. 774 (C.D. Cal. 1981)22

14 *Jean Royere SAS v. Edition Mod.*,
 15 2022 WL 20275667 (C.D. Cal. 2022).....19

16 *Jolly v. Purdue Pharma L.P.*,
 2005 WL 2439197 (S.D. Cal. 2005)15

17 *Keeton v. Hustler Mag. Inc.*,
 465 U.S. 770 (1984)7

18 *Kregos v. Associated Press*,
 19 937 F.2d 700 (2d Cir. 1991).....28

20 *Leatherman v. Tarrant Cty. Narcotics Intel. & Coordination Unit*,
 507 U.S. 163, (1993).....19, 20

21 *Lions Gate Ent. Inc. v. TD Ameritrade Servs. Co.*,
 170 F. Supp. 3d 1249 (C.D. Cal. 2016)13

22 *Livewirecyber, Inc. v. Lee*,
 23 2017 WL 4786087 (C.D. Cal. Aug. 3, 2017).....21

24 *Lopez v. Smith*,
 203 F.3d 1122 (9th Cir. 2000).....18

25 *Mason v. County of Orange*,
 251 F.R.D. 562 (2008)21

26 *Mavrix Photo, Inc. v. Brand Techs., Inc.*,
 27 647 F.3d 1218 (9th Cir. 2011)..... Passim

28 *MGM Studios Inc. v. Grokster, Ltd.*,
 243 F. Supp. 2d 1073 (C.D. Cal. 2003)6, 9

1 *Mid America Title Co. v. Kirk*,
 991 F.2d 417 (7th Cir.1993).....20

2 *Nichols v. Club for Growth Action*,
 235 F. Supp. 3d 289 (D.D.C. 2017)25, 26

3 *Ochoa v. J.B. Martin & Sons Farms, Inc.*,
 4 287 F.3d 1182.....6

5 *Oracle Am., Inc. v. Google Inc.*,
 750 F.3d 1339 (Fed. Cir. 2014).....28

6 *Owens v. Kaiser Found. Health Plan, Inc.*,
 244 F.3d 708 (9th Cir. 2001).....32

7 *Panavision Int’l, L.P. v. Toeppen*,
 8 141 F.3d 1316 (9th Cir. 1998).....10

9 *Perfect 10, Inc. v. Cybernet Ventures, Inc.*,
 167 F. Supp. 2d 1114 (C.D. Cal. 2001)19, 20

10 *Perfect 10, Inc. v. Vias Int’l Serv. Ass’n*,
 494 F.3d 788 (9th Cir. 2007).....30

11 *Prunte v. Universal Music Group*,
 484 F.Supp.2d 32 (D.D.C. 2007)26

12 *Rentmeester v. Nike, Inc.*,
 883 F.3d 1111 (9th Cir. 2018).....24, 25

13 *Rio Props Inc. v. Rio Int’l Interlink*,
 284 F.3d 1007 (9th Cir. 2002).....9

14 *Roberts v. Synergistic Int’l, LLC*,
 676 F. Supp. 2d 934 (E.D. Cal. 2009).....10

15 *Savage v. Tweedy*,
 2012 WL 6618184 (D. Or. Dec. 13, 2012) (denying motion21

16 *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*,
 806 F.2d 1393 (9th Cir. 1986).....32

17 *Schwarzenegger v. Fred Martin Motor Co.*,
 374 F.3d 797 (9th Cir. 2004).....5, 7

18 *Skidmore*,
 952 F.3d.....23, 24, 25, 26

19 *Smith v. AMC Networks, Inc.*,
 2019 WL 402360 (C.D. Cal. Jan. 31, 2019)24

20 *Smith v. Jackson*,
 84 F.3d 1213 (9th Cir. 1996).....29

21 *Sollberger v. Wachovia Sec., LLC*,
 2010 WL 2674456 (CD. Cal. 2010).....20, 21

22 *STX, Inc. v. Trik Stik, Inc.*,
 708 F.Supp. 1551 (N.D. Cal. 1988)15

23 *Swirsky v. Carey*,
 376 F.3d 841 (9th Cir. 2004).....24, 26, 28

24

25

26

27

28

1 *Three Boys Music Corp. v. Bolton*,
 212 F.3d 477 (9th Cir. 2000).....22

2 *Unicolors, Inc. v. H&M Hennes & Mauritz LP*,
 3 2016 WL 10646311 (C.D. Cal. 2016).....18

4 *Washington v. ViacomCBS, Inc.*,
 5 2020 WL 5823568 (C.D. Cal. 2020).....28

6 *West Marine*,
 7 2012 WL 479677.....14

8 *Western Digital Technologies, Inc. v. Board of Regents of the University of Texas*
 9 *System*,
 2011 WL 97785 (N.D. Cal. 2011)16

10 *Williams v. Bridgeport Music, Inc.*,
 2014 U.S. Dist. LEXIS 182240 (C.D. Cal. 2014).....28

11 *Williams v. Gaye*,
 12 895 F.3d 1106 (9th Cir. 2018).....26

13 *Yahoo! Inc.*,
 433 F.3d.....10

14 *Ziegler v. Indian River County*,
 64 F.3d 470 (9th Cir. 1995).....5

15 *Zindel as Tr. for David Zindel Tr. v. Fox Searchlight Pictures, Inc.*,
 815 F. App’x 158 (9th Cir. 2020)23, 24, 25

16 Statutes

17 28 U.S.C. § 1406 and § 140415

18 § 1406.....17, 15

19 Cal. Civ. Proc. Code § 410.105

20 Rules

21 Fed. R. Civ. P. 8(a).....18

22 Fed. R. Civ. P. 8(a)(2).....18

23 Fed. R. Civ. P. 8(d)(1).....18

24 Fed. R. Civ. P. 15(a).....32

25 Rule 818, 19, 20

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Before this court are two questions:

4 1. Is jurisdiction and venue proper in the Central District of California in a
5 copyright case when a defendant directs the infringing work towards California, did
6 business through concerts and advertisements in California, and profited from the
7 distribution, streaming, downloading, and sale of the infringing work by exploiting the
8 California market?

9 2. Does a complaint sufficiently allege copyright infringement when it
10 provides notice of Plaintiffs’ original works at issue, how they were accessed and
11 copied, and by whom?

12 The answer to both is “yes.” Defendant Camilo Echeverri p/k/a Camilo’s
13 (“Camilo”) primary argument against jurisdiction is that he lives and works in
14 Florida, and therefore, lacks sufficient contacts for California to assert either general
15 or specific personal jurisdiction over him, but this is belied by the allegations in the
16 Second Amended Consolidated Complaint (“SCAC”). When considering the unique
17 posture of this case, including the consolidation, it is clear that this forum is the most
18 reasonable and fairest forum for resolution. Because jurisdiction is proper in this
19 Court, venue is as well.

20 Camilo’s position that the SCAC is insufficient based on the particularity
21 standard and that the Plaintiffs fail to allege actual copying of original and protectible
22 elements of the Subject Works¹ likewise fail. Plaintiffs adequately plead a claim of
23 copyright infringement against Camilo and sufficiently allege Subject Works
24 protectable. Camilo’s position that they are unprotectible or *scenes a faire* fail. The
25 Motion should be denied.

26 _____
27 ¹ Plaintiffs allege that they own and registered the copyrights in both the musical
28 composition and sound recording for *Fish Market*, the musical composition for
Dem Bow, and the sound recording for *Pounder Dub Mix II* (“*Pounder*”)
(collectively “Subject Works”).

1 **II. PROCEDURAL HISTORY**

2 Plaintiffs initially filed three separate actions (1) an initial case on April 1,
3 2021, (2) another case in this district on October 19, 2021, and (3) another in the
4 southern district of New York on May 16, 2022. *See* Central District of California,
5 Case No. 2:21-cv-08295-AB-AFM (“Fonsi Case”); Southern District of New York,
6 Case No. 1:22-cv-03997-AT, later Central District of California, Case No. 2:22-cv-
7 03827-AB-AFM (“Yankee Case”). On May 31, 2022, the Yankee Case was
8 transferred to this District. Id. Dkt. 20.

9 Eventually, all cases were transferred to this District. The Defendants then
10 named in this action moved to consolidate all three cases. Dkt. 89. On July 15, 2022,
11 the Fonsi Case and Yankee Case were consolidated with this action under this
12 action’s case number. Dkt. 93, 99. On August 25, 2022, counsel for the then named
13 and served Defendants and Plaintiffs met and conferred regarding Plaintiffs’ intent to
14 file an amended complaint to expand the scope of Plaintiffs’ claims to include
15 additional works and additional defendants because the case could not progress if
16 Plaintiffs were forced to consolidate new actions involving the Subject Works each
17 time they filed a new suit, which was their intent. Dkt. 112. Plaintiffs then filed the
18 First Consolidated Amended Complaint and subsequently the operative SCAC on
19 April 21, 2023. Dkt. 305.

20 **III. FACTUAL BACKGROUND**

21 Plaintiffs Cleveland Constantine Browne p/k/a “Clevie” and Wycliffe Anthony
22 Johnson p/k/a “Steely” are renowned musicians who performing and produced as
23 “Steely and Clevie.” SCAC ¶173. In 1989, Steely and Clevie wrote and recorded the
24 song *Fish Market*. SCAC ¶179. They own the copyright for *Fish Market*’s sound
25 recording and composition, which are registered with the U.S. Copyright Office.
26 SCAC ¶177, 189. *Fish Market* is an original work that includes, among other things,
27 original drum work that differentiates it from prior works. SCAC ¶180. *Fish Market*
28 features, *inter alia*, a programmed kick, snare, and hi-hat playing a one bar pattern;

1 percussion instruments, including a tambourine playing through the entire bar, a
2 synthesized ‘tom’ playing on beats one and three, and timbales that play a roll at the
3 end of every second bar and free improvisation over the pattern for the duration of
4 the song; and a synthesized Bb (b-flat) bass note on beats one and three of each bar,
5 which follows the aforementioned synthesized ‘tom’ pattern. *Id.*

6 Steely and Clevie co-authored *Dem Bow* with Shabba Ranks and co-own the
7 song’s composition copyrights. SCAC ¶181. The composition for *Dem Bow* is
8 registered with the U.S. Copyright Office. *Id.* In 1990, after *Dem Bow*’s release and
9 success, the derivative work *Pounder Riddim* was created by Ephraim Barrett² and
10 Denis Halliburton, the latter of which performed the *Dem Bow* and *Fish Market*
11 composition to create a new work. SCAC ¶182. The *Pounder Riddim* was then used
12 to create the sound recordings of *Pounder Dub Mix II* (“*Pounder*”). *Id.* For the
13 *Pounder Riddim*,³ and the derivative *Pounder* Denis Halliburton copied *Dem Bow*’s
14 instrumental, sound, arrangement, and composition, including the drum pattern,
15 the drum components, including the kick, snare, hi-hat, tom and timbales as well as
16 the full bassline. SCAC ¶183. The composition played by Halliburton is virtually
17 identical to *Fish Market*. SCAC ¶183. Thus, the *Fish Market* composition is
18 necessarily captured in the sound recordings for *Pounder*. *Id.* A transcript of a
19 portions of *Fish Market* is shown below. Any copying, interpolating, or sampling of
20 the *Pounder* is a copying or interpolation of *Fish Market*’s composition. SCAC ¶188.

21 ///

22 ///

23 ///

24

25

26 ² Ephraim Barrett’s estate was added as a Plaintiff in the SCAC through its
27 executor Carl Gibson (referred to herein as “Barrett Estate”). SCAC ¶6.

28 ³ The term “riddim” in Reggae Dancehall refers to an instrumental track that can be
used to record multiple different songs. The term “riddim” in dancehall, similar to
the term beat in hip hop, encompasses the entire track without vocals.

Fish Market

Steely & Clevie

1
2
3
4
5
6
7
8
9
10

The musical score for 'Fish Market' is written for a drum set and a bass line. The time signature is 2/4. The score is divided into two measures by a vertical bar line. The instruments and their parts are as follows:

- hi hat:** A steady quarter-note pattern.
- tambourine:** A complex rhythmic pattern with eighth and sixteenth notes and accents.
- timbale 1:** A pattern of eighth notes with accents.
- timbale 2:** A pattern of eighth notes with accents.
- tom:** A pattern of quarter notes with accents.
- snare:** A pattern of eighth notes with accents.
- kick:** A pattern of quarter notes.
- Bass:** A simple bass line with quarter notes.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Camilo is responsible for the creation and exploitation of 19 works (collectively, the “Infringing Works”) that infringe on Plaintiffs’ copyrights in the Subject Works. SCAC ¶¶385-388, Exhibit A. Camilo’s “sampling” (direct extraction and reproduction) of *Fish Market* and/or *Pounder* establishes access by way of striking similarity, if not virtual identity. SCAC ¶667. Camilo infringed Plaintiffs’ rights in *Fish Market* by sampling the recording of *Fish Market* and/or *Pounder* and reproducing such sample in some of the Infringing Works. SCAC ¶668. Camilo also infringed Plaintiffs’ rights in *Fish Market* by making a direct copy of the composition of *Fish Market* and using that copy in one or all of the Infringing Works. SCAC ¶669. The details of which Subject Work and how it is alleged in the SCAC to have been infringed by each Infringing Work are identified in Exhibit 1 to the Declaration of Frank R. Trechsel (“Trechsel Decl.”). Specifically, Camilo infringed the *Fish Market* composition as part of all the Infringing Works, the *Fish Market* sound recording on three works, *Tutu* his own song, *Sin Pijama* by Becky G, and *Contigo voy a Muerte* by Karol G. Id. Camilo also infringed the *Pounder* sound recording copyright on at least one track, *Conitgo voy a Muerte* by Karol G. Id.

///
///

1 **IV. ARGUMENT**

2 **A. Camilo is subject to specific personal jurisdiction in California**

3 California’s long-arm statute, Cal.Civ.Proc.Code § 410.10, is coextensive with
4 federal due process requirements, therefore, the jurisdictional analyses under state
5 and federal due process are the same. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647
6 F.3d 1218, 1223 (9th Cir. 2011) (internal citations omitted). Accordingly, California
7 allows the exercise of personal jurisdiction “to the full extent permitted by due
8 process.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th
9 Cir. 2000).

10 A plaintiff need only make a *prima facie* showing that jurisdiction is proper to
11 survive a motion to dismiss for lack of personal jurisdiction. *Ziegler v. Indian River*
12 *County*, 64 F.3d 470, 473 (9th Cir. 1995); *Schwarzenegger v. Fred Martin Motor Co.*,
13 374 F.3d 797, 800 (9th Cir. 2004). When determining the sufficiency of plaintiffs’
14 *prima facie* showing, uncontroverted allegations in the complaint are taken as true
15 and all factual disputes are resolved in plaintiff’s favor. *AT&T Co. v. Compagnie*
16 *Bruxelles Lambert*, 94 F.3d 586, 588-89 (9th Cir. 1996.)⁴ A district court “may
17 exercise either general or specific personal jurisdiction over nonresident defendants.”
18 *Fed. Deposit Ins. Corp. v. British-American Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir.
19 1987). Specific jurisdiction exists where there is a relationship between the quality of
20 the defendant’s forum contacts and the cause of action pursuant to the test of *Burger*
21 *King v. Rudzewicz*, 471 U.S. 462 (1985).

22 As addressed below, this Court may properly exercise specific personal
23 jurisdiction over Camilo, and because jurisdiction is proper in this Court, venue is

24 _____
25 ⁴ Where the Court does not hold an evidentiary hearing but rather decides the
26 jurisdictional issue based on the pleadings and supporting declarations, it is
27 presumed that the facts set forth therein can be proven. *Bancroft*, 223 F.3d at 1085.
28 See also *Figuroa v. Gates*, 120 F.Supp.2d 917, 919 (C.D.Cal. 2000) (grant of a
motion to dismiss is proper only “[w]here it appears ‘beyond doubt’ that a party
‘can prove no set of facts in support of [its] claim which would entitle [it] to
relief[.]’”).

1 proper as well. See *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124,
 2 1126 (9th Cir. 2010); *MGM Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073,
 3 1095 (C.D. Cal. 2003) (“Because... jurisdiction is proper in this district, venue is
 4 proper as well.”).

5 Specific jurisdiction exists if: (1) the defendant purposefully directed its
 6 activities towards the forum state or consummates some transaction with the forum or
 7 residents thereof⁵; (2) the claim arises out of or relates to the defendant's forum-
 8 related activities; and (3) the exercise of jurisdiction must comport with fair play and
 9 substantial justice, i.e., it must be reasonable. *Mavrix Photo, Inc.*, 647 F.3d at 1227–
 10 28 (other citations omitted.) This Circuit uses a flexible approach to this test, finding
 11 personal jurisdiction even in cases that do not meet each of the three factors “if
 12 considerations of reasonableness dictate.” *Ochoa v. J.B. Martin & Sons Farms, Inc.*,
 13 287 F.3d 1182, 1188 n. 2 (9th Cir. 2002) (internal citations omitted). When a case
 14 “centers on allegations of copyright infringement, the Court applies a purposeful-
 15 direction analysis. *Carsey-Werner Co., LLC v. Brit. Broad. Corp.*, 2018 WL
 16 1083550, at *4 (C.D. Cal. 2018), citing *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*,
 17 874 F.3d 1064, 1069 (9th Cir. 2017).

18 Plaintiffs bear only the burden of establishing the first two prongs of the above
 19 test, whereafter Defendant must prove that the exercise of personal jurisdiction would
 20 fail to comport with fair play and substantial justice. *Mavrix Photo, Inc.*, 647 F.3d at
 21 1128. Each of the three prongs are met here, and the Court has personal jurisdiction
 22 over Camilo.

23 **1. Camilo purposefully directed his activities towards California**

24 A defendant purposefully directs its activities at the forum state when it (1)
 25 commits an intentional act, (2) expressly aimed at the forum state or its residents, and
 26 (3) causes harm that it knows is likely suffered in the forum state. *Mavrix Photo, Inc.*,

27 _____
 28 ⁵ In copyright infringement cases, courts employ a purposeful direction analysis
 instead of a purposeful avilment analysis. *Mavrix Photo Inc.*, 647 F.3d at 1228.

1 647 F.3d at 1228 (citations omitted). Camilo’s activities easily satisfy each of these
 2 factors, as Camilo has repeatedly intentionally distributed, performed, and promoted
 3 his music, including the Infringing Works, in and to this jurisdiction.

4 **i. Camilo acted intentionally**

5 It is beyond reasonable dispute that Camilo acted intentionally in creating,
 6 performing, distributing, and selling his works. *See Mavrix Photo, Inc.*, 647 F.3d at
 7 1229; *Brayton Purcell*, 361 F. Supp. 2d at 1142. Indeed, Camilo does not, and
 8 cannot, dispute that these acts were intentional. *Freidman v. Popsugar, Inc.*, No.
 9 218CV0588, 2018 WL 6016963, at *7 (C.D. Cal. 2018). The intentional act factor is
 10 easily met.

11 **ii. Camilo expressly directed his infringing conduct towards California**

12 It is well established that “due process permits the exercise of personal
 13 jurisdiction over a defendant who ‘purposefully directs’ his activities at residents in
 14 the forum, even in the ‘absence of physical contacts’ with the forum.”
 15 *Schwarzenegger*, 374 F.3d at 803, quoting *Burger King*, 471 U.S. at 476, citing
 16 *Keeton v. Hustler Mag. Inc.*, 465 U.S. 770, 774-75 (1984). In *Mavrix Photo Inc.*,
 17 even though defendant’s website was “national,” defendant “kn[ew]—either actually
 18 or constructively—about its [California] user base, and [] exploit[ed] that base for
 19 commercial gain,” such that “the defendant anticipated, desired, and achieved a
 20 substantial California viewer base.” 647 F.3d at 1229-3.

21 Similarly, Plaintiffs allege that Camilo is actually aware of his fans in
 22 California, and has repeated exploited his California base for commercial gain and to
 23 achieve a substantial viewer base in this state Plaintiffs alleges that Camilo “and [his]
 24 publishing companies received monies in connection with the songs and music at
 25 issue in this case from ASCAP and other companies based in California.” SCAC
 26 ¶654. Camilo is alleged to have authorized the reproduction, distribution and sale of
 27 records and digital downloads of the Infringing Works, through the execution of
 28 licenses, and/or selling and distributing physical or digital copies of the Infringing

1 Works through various physical and online sources including without limitation,
 2 through Amazon.com, Walmart, Target and iTunes. SCAC ¶673. Camilo also
 3 engaged in the unauthorized reproduction, distribution, public performance,
 4 licensing, display, and creation of the Infringing Works, including, without
 5 limitation, distributing and broadcasting the Infringing Works on streaming
 6 platforms, including Spotify, Apple Music, Amazon, Pandora, and YouTube. SCAC
 7 ¶¶673-674. Each of these allegations are alleged to have occurred “in and with the
 8 state of California, including in this juridical district.” SCAC ¶99. Further, Camilo is
 9 alleged to have infringed the Subject Works with co-defendants such as Sony and
 10 Warner each of which are alleged California entities. See, SCAC ¶¶15, 18, 51, 69,
 11 Exhibit A.

12 Camilo attempts to evade personal jurisdiction by claiming that he does not
 13 direct his activity toward California, but this is unavailing. As in *Mavrix Photo*,
 14 Camilo has expressly aimed the distribution of his music at California and has
 15 engaged in actions expressly “anticipating, desiring, and to achieve” a California
 16 viewer base. This includes transactions within the California market and with
 17 California businesses when he was paid to perform infringing music at California-
 18 based venues, Camilo’s most recent tours which have each made frequent stops in
 19 Los Angeles, California and where he has performed the allegedly infringing music.
 20 Trechsel Decl. ¶¶2-4, Exhibits 3,4. And Camilo has produced physical
 21 advertisements in California plainly designed to achieve a substantial fan base in the
 22 state, including a for his Disney+ show *The Montaners* and an HBO Max
 23 documentary of his world tour which are distributed to California residents. Trechsel
 24 Decl. at ¶¶4, 7-8.⁶ See, e.g., *Rio Props Inc. v. Rio Int’l Interlink*, 284 F.3d 1007,
 25 1020-21 (9th Cir. 2002) (finding a website operator targeted Nevada because it ran
 26 radio and print advertisements in Las Vegas to attract more Nevada residents to the
 27

28 ⁶ Both Disney+ and HBO are California companies.

1 website). Camilo’s claims that he does not expressly direct his conduct to California
2 are thus plainly false, and personal jurisdiction is proper.

3 **iii. Camilo knew that harm would be felt in forum state**

4 Finally, purposeful direction is established where conduct indicates that a
5 defendant knew harm from infringing acts would be felt in the forum *See Metro–*
6 *Goldwyn–Mayer Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073, 1090 (C.D.
7 Cal. 2003). Further, it is well established that economic loss resulting from copyright
8 infringement is a foreseeable harm. *Brayton Purcell*, 606 F.3d at 1131.

9 Infringement results in harm to plaintiff where the alleged infringement has
10 reduced the value of the original work in the forum. *See Mavrix Photo Inc.*, 647 F.3d
11 at 1231-32 (“Because [defendant’s] actions destroyed this [forum]-based value, a
12 jurisdictionally significant amount of [plaintiff’s] economic harm took place in [the
13 forum].”). Given the significant and intentional popularity of Camilo’s work in
14 California and the success of his multiple, sold-out world tour performances of the
15 Infringing Works in this state, Camilo’s infringement of the Subject Works has
16 undeniably and foreseeably reduced the value of the Subject Works in this state.

17 While Camilo claims that his allegedly infringing conduct was limited to the
18 states in which he created the Infringing Works, such claims are meritless. (Mot. at
19 1.) Even if were true that the only potentially infringing conduct included the
20 production of the Infringing Works (it is not), purposeful direction is concerned with
21 where the defendant’s actions were **felt**, not where they occurred. *See Mavrix Photo,*
22 *Inc.*, 647 F.3d at 1228. Camilo’s infringing conduct has thus foreseeably harmed
23 Plaintiffs in California, and personal jurisdiction is proper. Camilo’s Motion should
24 be denied.

25 **2. Plaintiff’s claims arise from activities directed toward**
26 **California**

27 Specific jurisdiction is “tethered to a relationship between the forum and the
28 claim.” *Holland Am. Line Inc. v. Wartsila North Am.*, 485 F.3d 450, 460 (9th Cir.

2007). A single forum state contact can support jurisdiction if “the cause of action... arise[s] out of that particular purposeful contact of the defendant with the forum state.” *Yahoo! Inc.*, 433 F.3d at 1210 (internal citations omitted). Notably, a claim may arise out of in-state activities even if the defendant's contacts with the forum are not extensive. *Roberts v. Synergistic Int'l, LLC*, 676 F. Supp. 2d 934, 943 (E.D. Cal. 2009).⁷ However, the Ninth Circuit has recognized that, regarding intellectual property infringement claims, conduct is sufficiently directed to the forum state if it harms the plaintiff in said forum. *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998); *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945, 963 (N.D. Cal. 2015).

Camilo’s infringing conduct has harmed Plaintiffs in this jurisdiction. As discussed, Plaintiffs have sufficiently alleged harm in California via, *inter alia*, Camilo depriving Plaintiffs of revenue and diminishing Plaintiffs copyrights in the state through the infringing conduct at issue. Plaintiffs would not have sought recovery “but for” Camilo’s widespread distribution and exploitation of the Infringing Work, a significant portion of which arose out of Camilo’s infringement directed towards California. For these reasons, specific jurisdiction is sufficiently established.

3. Exercising personal jurisdiction over Camilo comports with fair play and substantial justice

Courts consider seven factors in deciding the reasonableness of personal jurisdiction: (1) the extent of a defendant’s purposeful interjection; (2) the burden on

⁷ Camilo attempts to change the standard necessary to establish specific jurisdiction. Specifically, Camilo argues that the creation, distribution, and sale of the Infringing Work does not relate to the forum-related activities or establish a sufficient connection to this forum because it is not a “regular and systematic contact”. *See Mot.* at 11 ¶ 11-13. But the standard to establish specific jurisdiction is not regular and systematic contact, nor is that the standard for determining whether the claims arise from defendants’ conduct directed towards the forum state. Camilo’s position is incorrect and contrary to the case law.

1 the defendant in defending in the forum; (3) the extent of conflict with the
2 sovereignty of the defendant’s state; (4) the forum’s state’s interest in adjudicating
3 the dispute; (5) the most efficient judicial resolution of the controversy; (6) the
4 importance of the forum to plaintiff’s interest in convenient and effective relief; and
5 (7) the existence of an alternative forum. *Core–Vent Corp. v. Nobel Indus. AB*, 11
6 F.3d 1482, 1487 (9th Cir. 1993), citing *Burger King Corp.*, 471 U.S. 462 (1985). And
7 where as here the plaintiff has made a *prima facie* showing of personal jurisdiction, it
8 is the burden of the defendant to make a “compelling case” that exercise of
9 jurisdiction would be unreasonable. *Coremetrics, Inc. v. Atomic Park.com, LLC*, 370
10 F. Supp. 2d 1013, 1024 (N.D. Cal. 2005); *Mavrix Photo Inc.*, 647 F.3d at 1228; *See*
11 *Brayton Purcell*, 361 F. Supp. 2d at 1143-44 (there is a presumption that jurisdiction
12 is reasonable when the other prongs of the jurisdiction analyses are met). To carry
13 this burden, Camilo must show that any claimed unreasonableness could not be
14 alleviated by less restrictive means such as conflict of law rules or an accommodating
15 venue transfer. *See Burger King Corp.*, 471 U.S. at 476–78.

16 Camilo does not and cannot establish that the exercise of personal jurisdiction
17 in California is unreasonable. Indeed, Camilo merely claims it would be “unfair” to
18 exercise personal jurisdiction here without any explanation as to why same would
19 result in any burden. Such bald assertions clearly fall short of establishing a
20 “compelling case” that personal jurisdiction would be unreasonable. Camilo’s motion
21 should be denied.

22 Camilo cites only one case, *Asahi Metal Indus. Co. v. Sup. Ct.*, to support a
23 finding of unreasonableness, but it is easily distinguished. In *Asahi Metal Indus. Co.*
24 *v. Sup. Ct.*, the Supreme Court. 480 U.S. 102, 112-13 (1987). The Court emphasized
25 that the defendant engaged in **no** advertisement in California, channels of
26 communication with California customers, had no agents or employees of the
27 company in California, and indeed did nothing more than just placing the product in
28 the stream of commerce in the California market. 480 U.S. 102, 112-13 (1987). As

1 already discussed, Camilo expressly and repeatedly advertised in California, came to
2 California personally to give repeated, paid performances to California residents, and
3 worked directly with California based companies to achieve substantial success here.
4 Trechsel Decl. ¶¶ 2-8, Exhibits 2-10. Camilo’s sole authority thus fails, and Camilo
5 cannot carry his burden of establishing that personal jurisdiction is unreasonable in
6 this case.

7 Indeed, all relevant factors as set forth above establish that the exercise of
8 personal jurisdiction on Camilo fully comports with fairness and substantial justice.

9 First, evidence establishes that Camilo did interject himself into California
10 through the purposeful direction of his music and business related to the distribution
11 and promotion of his infringing music towards and in the California market, as
12 discussed, *supra*.

13 Second, any burden on Camilo resulting from personal jurisdiction in this
14 District would be minimal and manageable. “[W]ith the advances in transportation
15 and telecommunications and the increasing interstate practice of law, any burden [of
16 litigation in a forum other than one’s residence] is substantially less than in days
17 past.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1080 (9th Cir. 2011.)
18 Indeed, other than trial nearly all of the processes in this litigation can and will likely
19 be handled remotely, not requiring any particular effort or expense from Camilo that
20 would not be required in any forum. Even depositions and mediation will likely be
21 conducted by videoconference. Thus, any burden imposed on Camilo by proceeding
22 here would essentially be no more than the burden faced by any non-resident
23 defendant brought into this Court. *See, E.g., Lions Gate Ent. Inc. v. TD Ameritrade*
24 *Servs. Co.*, 170 F. Supp. 3d 1249, 1264 (C.D. Cal. 2016).

25 Third, there would be no conflict of law issues presented by proceeding here
26 because copyright law is federal law, and thus the applicable statutes would be the
27 same in any federal court this case could be brought in. *Colt Studio, Inc. v. Badpuppy*
28

1 *Enter.*, 75 F. Supp. 2d 1104, 1110 (C.D. Cal. 1999) (holding because copyright law is
2 federal law, the analysis is the same irrespective of the state it is litigated in).

3 Fourth, given Camilo’s interjection into California and the intellectual property
4 violations in California, California would have an interest in resolving the claims
5 here.

6 Fifth, the consolidated nature of this case in this forum makes resolution here
7 efficient. Plaintiffs’ claims were originally filed in multiple jurisdictions and the other
8 courts ordered transfer and this Court ordered consolidation of all the claims, due to
9 efficiency concerns and in hope of lessening the burdens on the court system. *Lions*
10 *Gate Ent. Inc.*, 170 F. Supp. 3d at 1264 (finding where the case was already
11 transferred from New York to California and the New York court “already decided it
12 is more convenient and appropriate for the case as a whole to be decided in this
13 forum” the exercise of jurisdiction was reasonable to “stop forum transfers by both
14 parties”).

15 Sixth, Camilo provides no justification for his position that litigating in Florida
16 would offer more convenient or effective relief for Plaintiff. Indeed, litigating its
17 copyright infringement claims against all named Defendants in one action rather than
18 multiple across the country is far more convenient and effective for Plaintiff.

19 And, finally, no feasible alternative forum exists. This forum is the only forum
20 where all the defendants are subject to specific jurisdiction. Camilo’s argument that
21 the claim should be transferred or otherwise dismissed and re-filed in Florida, would
22 once again require Plaintiffs to sever the Camilo’s claims to independently file those
23 in Florida because very few defendants have any connection to Florida. To reiterate,
24 Plaintiffs already attempted to file that way, which led to the transfer and
25 consolidation in this court. And even when considering the claims could be brought
26 individually in different forums, “the presence of an alternate forum does not
27 overcome reasonableness established by the other factors.” *West Marine*, 2012 WL
28 479677, at *7. Considering the court previously held that bringing the claims against

1 each defendant in different jurisdictions is inefficient and forced the consolidation of
2 Plaintiffs claims, Plaintiffs are effectively foreclosed from re-filing in any other
3 forum.

4 All factors thus establish that personal jurisdiction is proper regarding Camilo,
5 and Camilo fails to present any explanation that personal jurisdiction would not
6 comport with the concerns of fairness and efficiency, let alone a compelling case for
7 same which could carry his burden. Camilo's Motion should thus be denied.

8 **4. Venue transfer is unwarranted**

9 Camilo alternatively seeks a transfer of venue under 28 U.S.C. § 1406 and §
10 1404. Section 1406 allows for transfer of venue if the claim is brought in an improper
11 venue. And § 1404 allows the transfer of venue where the venue is proper, but
12 another venue offers more convenient resolution of the claims. The burden is on the
13 moving party to establish that a transfer will allow a case to proceed more
14 conveniently and better serve the interests of justice. See, e.g., *Commodity Futures*
15 *Trading Comm. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). And in “seeking to
16 transfer a case to a different district, a defendant bears a heavy burden of proof to
17 justify the necessity of the transfer.” *STX, Inc. v. Trik Stik, Inc.*, 708 F.Supp. 1551,
18 1555-56 (N.D. Cal. 1988). Here, given the consolidation and overlapping claims,
19 Camilo cannot meet this heavy burden.

20 It is axiomatic that “a situation in which two cases involving precisely the
21 same issues are simultaneously pending in different District Courts leads to the
22 wastefulness of time, energy and money that § 1404(a) was designed to prevent.”
23 *Continental Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 26, 80 S.Ct. 1470, 4
24 L.Ed.2d 1540 (1960). Despite this, Camilo seeks to cause exactly such inefficiency.
25 The request should be denied because the “[l]itigation of related claims in the same
26 tribunal is strongly favored because it facilitates efficient, economical and
27 expeditious pre-trial proceedings and discovery and avoid duplicitous (sic) litigation
28 and inconsistent results.” *Jolly v. Purdue Pharma L.P.*, 2005 WL 2439197, at *2

1 (S.D. Cal. 2005), quoting *Durham Prods, Inc. v. Sterling Film Portfolio, Ltd., Series*
2 *A*, 537 F.Supp. 1241, 1243 (S.D.N.Y.1982) (citation omitted). Maintaining the
3 Camilo claims as part of this omnibus action is appropriate, economical, and
4 efficient.

5 A transfer request should be denied if it will result in “litigating the issues in
6 both forums” and “would force the parties to engage in duplicative discovery and
7 pre-trial motions, require the courts to analyze the same factual and legal issues, and
8 ... require both courts to construe the same [copyright] terms[.]” *In Western Digital*
9 *Technologies, Inc. v. Board of Regents of the University of Texas System*, , 2011 WL
10 97785, *4 (N.D. Cal. 2011). Indeed, as in *Western Digital*, courts often transfer cases
11 to encourage and effect consolidation. *Bite Tech, Inc. v. X2 Impact, Inc.*, 2013 WL
12 871926, *6 (N.D. Cal. 2013) (transferring a case because “the two suits involve
13 overlapping issues, such as to what extent X2's actions unlawfully infringe[.]). Here,
14 the matters are already consolidated and transfer would upset the attendant
15 efficiencies. Efficiency and avoidance of duplicative litigation is a “strong factor” in
16 this regard. *Id.* Camilo’s transfer request, which will disrupt consolidation and require
17 inefficient and duplicative litigation, must be denied.

18 Relevant here, “centralizing the adjudication of similar cases will also avoid
19 the possibility of inconsistent judgments.” *Hawkins v. Gerber Prod. Co.*, 924 F.
20 Supp. 2d 1208, 1214 (S.D. Cal. 2013), quoting *Callaway Golf Co. v. Corp. Trade,*
21 *Inc.*, 2010 WL 743829, at *7 (S.D.Cal. 2010). Thus, an “important consideration in
22 determining whether the interests of justice dictate a transfer of venue is the
23 pendency of a related case in the transferee forum.” *Callaway Golf Co.*, 2010 WL
24 743829, at *7 (internal quotations omitted). Here, the related cases are in this forum
25 and no related cases are pending in the transferee forum.

26 Moreover, the “feasibility of consolidation is a significant factor in a transfer
27 decision” and “possible consolidation of discovery and convenience to witnesses and
28 parties” is a primary factor when considering transfer. *A.J. Indus., Inc. v. U.S. Dist.*

1 *Court for Cent. Dist. of Cal.*, 503 F.2d 384, 386–87 (9th Cir.1974) (citations
2 omitted). Indeed, the “unique circumstances of a pending, consolidated case” will
3 “weigh heavily” in favor of litigating the action where the consolidated case is
4 pending, as it will “provide further significant convenience and efficiency[.]” *Amaru*
5 *Ent., Inc. v. Heritage Cap. Corp.*, 2022 WL 18142555, at *2 (C.D. Cal. 2022), citing
6 *Esquer v. StockX, LLC*, 2020 WL 3487821 at *6. To be sure, the “best way to ensure
7 consistency is to prevent related issues from being litigated in two separate venues.”
8 *Argonaut Ins. Co. v. MacArthur Co.*, 2002 WL 145400, *4 (N.D.Cal. 2002). Transfer
9 is improper.

10 In general, Section 1400(a) turns on the same analysis used to assess whether
11 specific jurisdiction exists. *Brayton Purcell LLP*, 606 F.3d at 1124. Consequently,
12 where specific jurisdiction is proper, so is venue. Camilo rests all venue arguments
13 on the same reasons as those made in arguing a lack of jurisdiction. *See* Def. Mtn. pg.
14 14-15. Plaintiffs have already shown those arguments lack merit. Therefore, transfer
15 under § 1406 is improper, particularly in light of the consolidated nature of this
16 action.

17 Additionally, Camilo has not met his burden in showing an inconvenience
18 sufficient to justify the transfer of the case to the Southern District of Florida, as
19 requested. Under the doctrine of *forum non conveniens*, defendant bears the burden of
20 proving that an adequate alternative forum exists. *Cheng v. Boeing Co.*, 708 F.2d
21 1406, 1411 (9th Cir.), *cert. denied*, 464 U.S. 1017 (1983). The burden requires “a
22 *strong* showing of inconvenience to warrant upsetting the plaintiff’s choice of
23 forum.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.
24 1986) (emphasis added). As previously noted, this Court ordered consolidation of all
25 claims against all defendants. If the Court transferred the claim against Camilo to
26 another venue, Plaintiffs would end up in the same position as before – with the
27 claims against each defendant divided among potentially hundreds of jurisdictions.
28 Prior courts have already concluded that separating the claims and dispersing the

1 claims (all of which against each defendant are nearly identical) among hundreds of
 2 dockets and courts would unnecessarily burden to the court system and create
 3 unprecedented inconveniences for Plaintiffs. Camilo does not present any *strong*
 4 justification to invoke such burdens.

5 **B. The SCAC meets the pleading standards for copyright**
 6 **infringement and contributory liability**

7 Under the Federal Rules of Civil Procedure, a complaint must merely “contain
 8 a short and plain statement of the claim showing that the pleader is entitled to relief.”
 9 Fed. R. Civ. P. 8(a)(2). To defeat a Rule 12(b)(6) motion, the complaint need only
 10 provide enough factual detail to “give the defendant fair notice of what the ... claim is
 11 and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
 12 (2007). The allegations of the complaint must be taken as true and all reasonable
 13 inferences are drawn in plaintiff’s favor. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336,
 14 338 (9th Cir. 1996). And the court generally may not consider materials other than
 15 facts alleged in, and documents made part of, the complaint. *Anderson v. Angelone*,
 16 86 F.3d 932, 934 (9th Cir. 1996). Finally, dismissal is proper only where a complaint
 17 fails to plead either a cognizable legal theory or sufficient facts under a cognizable
 18 legal theory. *Unicolors, Inc. v. H&M Hennes & Mauritz LP*, No. CV 16-02322-AB
 19 (SKX), 2016 WL 10646311, at *2 (C.D. Cal. 2016), citing, *Balistreri v. Pacifica*
 20 *Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988). If a Rule 12(b)(6) motion is granted,
 21 the “court should grant leave to amend... [] unless it determines that the pleading
 22 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d
 23 1122, 1127 (9th Cir. 2000) (internal citations and quotations omitted).

24 **1. The SCAC provides proper notice and is not a “shotgun” pleading**

25 Camilo falsely asserts the SCAC is a “shotgun pleading.” Rule 8 requires a
 26 plaintiff to “give the defendant fair notice of what the [...] claim is and the grounds
 27 upon which it rests.” *Twombly*, 550 U.S. at 555 (quoting Fed. R. Civ. P. 8(a)). And
 28 each allegation of a complaint must be “simple, concise, and direct.” Fed. R. Civ. P.

1 8(d)(1) (emphasis added). As such, Plaintiffs are **not** required to plead every act and
2 instance of infringement, as Defendants urge. See, e.g., *Perfect 10, Inc. v. Cybernet*
3 *Ventures, Inc.*, 167 F. Supp. 2d 1114, 1120 (C.D. Cal. 2001) (“Perfect 10 alleges the
4 existence of hundreds, even thousands of infringing photographs... Requiring a
5 statement of each and every example would defeat the regime established by Rule
6 8.”). Plaintiffs’ SCAC is sufficient.

7 Indeed, “simply alleging present ownership by plaintiff, registration in
8 compliance with the applicable statute and infringement by defendant” is sufficient to
9 state a claim for copyright infringement. *Crispin v. Christian Audigier, Inc.*, 2010
10 WL 11508342, at *4 (C.D. Cal. 2010), quoting *Perfect 10, Inc.*, 167 F. Supp. 2d at
11 1120. Plaintiff thus need not “specifically identify each of the infringed works and
12 their protectable elements. *Jean Royere SAS v. Edition Mod.*, 2022 WL 20275667, at
13 *4 (C.D. Cal. 2022)(“the Court rejects Defendants argument that Plaintiffs copyright
14 claim fails because they did not specifically identify each of the infringed works and
15 their protectable elements.”) In cases like this, where there is a “wide variation in
16 number” of Infringing Works at issue, Rule 8 does not require a “highly detailed
17 pleading.” *Id.*, quoting *Etereo Spirits, LLC v. James R. Ling*, 2021 WL 3914256, at
18 *6 (C.D. Cal. 2021).

19 Relevant here, “given the large number of” infringing songs at issue, “all of
20 which Plaintiff alleges infringe on their copyright, Plaintiff is not required to identify
21 each infringing item.” *Id.*, citing *Perfect 10*, 167 F. Supp. at 1120. Plaintiffs’ SCAC,
22 which “identifies a set of” intellectual property – the compositions and sound
23 recordings – sufficiently notifies Defendants “as to the type of infringing conduct and
24 the source of the claims.” *Etereo Spirits*, 2021 WL 3914256, at *6, citing *Perfect 10*,
25 167 F. Supp 2d at 1120, citing *Leatherman v. Tarrant Cty. Narcotics Intel. &*
26 *Coordination Unit*, 507 U.S. 163, (1993).

27 *Perfect 10, Inc.* is instructive. There, the Court rejected the argument that the
28 plaintiff was required to identify the “hundreds, even thousands, of alleged

1 infringing” works at issue and found that plaintiff could avail himself of the liberal
2 pleading standards established by Rule 8. *Id.* at 1120 (plaintiff not required to “state,
3 in its complaint, every copyright relied on, every individual image in the magazines
4 that is being infringed, every image on specific web pages that does infringe, [and]
5 the dates of any infringement.”) Such an argument “misconstrues the burden
6 [plaintiff] faces in the pleadings stage. Copyright claims need not be pled with
7 particularity.” *Id.*, citing, e.g., *Mid America Title Co. v. Kirk*, 991 F.2d 417, 421 (7th
8 Cir.1993). Plaintiffs’ SCAC easily meets this standard, particularly in light of the
9 massive number of Infringing Works and Defendants request to consolidate the cases.

10 The SCAC identifies the Subject Works and alleges what Camilo copied from
11 those works. Trechsel Decl. at 1, Exhibit 1. Thus, Camilo has notice sufficient for
12 him to ascertain the grounds for the claims. Notably, the SCAC provides numerous
13 examples of “sample” infringements, which are sufficient to provide notice as to the
14 scope of the action. *Perfect 10*, 167 F. Supp. 2d at 1120 (noting that allegations of
15 “sample” infringements may “establish the scope of the [alleged] infringement”); 3
16 M. & D. Nimmer, *Nimmer on Copyright* § 12.09(A)(2) (“To avoid unwieldiness,
17 courts have approved a complaint that simply alleges representative acts of
18 infringement, rather than a comprehensive listing.”) Given the “unwieldiness”
19 engendered by the massive scope of the infringement and the request to consolidate,
20 the “representative acts” in the SCAC are sufficient.

21 The SCAC is simply not a “shotgun pleading” because it does not “overwhelm
22 defendants with an unclear mass of allegations and make it difficult or impossible for
23 defendants to make informed responses to the plaintiff’s allegations[.]” *Sollberger v.*
24 *Wachovia Sec., LLC*, 2010 WL 2674456 *4–*5 (CD. Cal. 2010). To the extent the
25 pleadings are “overwhelming” (they are not) that is due to Defendants’ request to
26 consolidate a number of more manageable cases.

27 The cases relied on by Camilo are distinguishable. In *Mason v. County of*
28 *Orange*, the court ordered the plaintiff to amend his complaint because the plaintiff

1 pled all claims against eleven defendants, regardless of whether the facts supported
2 such allegations. 251 F.R.D. 562, 563 (2008). Importantly, plaintiff incorporated
3 *conflicting* claims into the pleadings, and thus, the court held this “shotgun” approach
4 led to a seriously deficient and confusing complaint. *Id.* (emphasis added). Similarly,
5 in *Sollberger*, in the complaint, plaintiff “alleg[ed] in multiple places that
6 ‘Defendants Wachovia, Morgan Keegan, and Janney’ did certain things or ‘knew or
7 should have known’ certain information, without making any specific allegations
8 against Defendants [regarding the basis of their knowledge].” *Id.* at *5.

9 Here, there are no conflicting claims or theories presented. The claims against
10 Camilo and each of the other Defendants are specifically pled and do not conflict.
11 Specifically, Exhibit A to the SCAC, identifies the claims against each Defendant and
12 does not lead to confusion. *See, E.g., Livewirecyber, Inc. v. Lee*, No. CV 17-00645-
13 AB (ASX), 2017 WL 4786087, at *4 (C.D. Cal. Aug. 3, 2017); *See also, Savage v.*
14 *Tweedy*, No. 3:12-CV-1317-HZ, 2012 WL 6618184, at *4–5 (D. Or. Dec. 13, 2012)
15 (denying motion to dismiss based on “shotgun” pleadings where allegations are not
16 “overwhelming.”)

17 **2. Plaintiffs’ sufficiently plead facts to support copyright infringement** 18 **against Camilo**

19 To maintain a claim for copyright infringement, a plaintiff must show (1)
20 ownership of a valid copyright, and (2) copying of constituent elements of the work
21 that are original. *Feist Publ’ns, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 361
22 (1991). The first prong is not disputed by Camilo. As to the second prong, the
23 copying may be established by demonstrating (a) that the defendant had access to
24 plaintiff’s copyrighted work and (b) that the works at issue are substantially similar in
25 their protected elements. *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th
26 Cir. 2002).

27 **i. Plaintiffs sufficiently plead access**

28

1 Camilo argues Plaintiffs failed to sufficiently plead access regarding *Fish*
 2 *Market, Dem Bow*,⁸ and *Pounder*. But proof of access requires only the opportunity
 3 to view or to copy plaintiff’s work. *Three Boys Music Corp. v. Bolton*, 212 F.3d 477,
 4 482 (9th Cir. 2000), *overruled on other grounds by Skidmore as Tr. for Randy Craig*
 5 *Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020). Where there is no direct
 6 evidence of access, circumstantial evidence can be used to prove access either by (1)
 7 establishing a chain of events linking the plaintiff’s work and the defendants, or (2)
 8 showing that the plaintiff’s work has been widely disseminated. *Art Attacks Ink, LLC*
 9 *v. MGA Enter. Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). A plaintiff must simply
 10 allege facts showing “more than a ‘bare possibility’” that defendant had access to the
 11 work. *Jason v. Fonda*, 526 F. Supp. 774, 775 (C.D. Cal. 1981), *aff’d*, 698 F.2d 966-
 12 67 (9th Cir. 1982).

13 Plaintiffs expressly plead that “Defendants had access to *Fish Market* because
 14 *Fish Market* was widely distributed throughout the world since 1989 on vinyl and
 15 CD. Defendants also had access to *Fish Market* through distribution of *Dem Bow* ...
 16 which was a worldwide hit within the global reggae dancehall scene...” See SCAC
 17 ¶661. Such widespread dissemination confirms more than a chance of access. See,
 18 *Gray v. Perry*, No. 215CV05642CASJCX, 2018 WL 3954008, at *5 (C.D. Cal. Aug.
 19 13, 2018)(widespread dissemination of “Joyful Noise” on websites suggested more
 20 than a bare possibility that defendants had the opportunity to hear the song). Just as in
 21 *Gray*, the success of Plaintiffs’ Subject Works show more than a mere possibility that
 22 Camilo had access to the Subject Works. The Subject Works are so widely
 23 disseminated that an entire genre of music is named after it. And Camilo’s Infringing
 24 Work falls within that genre. Further, given the ubiquity of ways to access media

25
 26 ⁸ Although addressing access, Camilo appears to contend Plaintiffs do not have
 27 ownership over the *Dem Bow* composition because “they are not the authors of the
 28 sound recording.” Def. Mtn. pg. 20:12-14. This is belied by direct statements of
 ownership and creation in the SCAC, and authorship of the sound recording cannot
 preclude authorship or ownership of a composition. SCAC ¶181-182, 189.

1 online, “from YouTube to subscription services like Netflix and Spotify, access may
2 be established by a trivial showing that the work is available on demand.” *Skidmore*,
3 952 F.3d at 1068. Plaintiffs have certainly met this trivial burden.

4 Access can also be inferred where the similarities between the two works are
5 so strikingly similar as to preclude the possibility of independent creation. *Bernal v.*
6 *Paradigm Talent & Literary Agency*, 788 F. Supp. 2d 1043, 1052 (C.D. Cal. 2010).
7 Such is the case here, where Plaintiffs allege access was “by way of striking
8 similarity, if not virtually identical” to Plaintiffs works, e.g., “sampling.” *See SCAC ¶*
9 *667*.

10 Moreover, because the truth concerning a defendant’s obtainment of, or access
11 to, the musical composition is exclusively within its knowledge and records, a
12 copyright plaintiff cannot be expected to plead those facts at the start of a case.
13 *Campbell v. United States*, 365 U.S. 85, 81 (1961) (litigant does not have burden of
14 proof of establishing facts peculiarly within knowledge of adversary). In sum,
15 Plaintiffs sufficiently plead access sufficient to state a claim at this stage.

16 **ii. A 12(b)(6) motion is improper to challenge substantial similarity**
17 **and protectability**

18 Plaintiffs need only “plausibly allege substantial similarity between the two
19 works.” *Zindel as Tr. for David Zindel Tr. v. Fox Searchlight Pictures, Inc.*, 815 F.
20 App’x 158, 159 (9th Cir. 2020). The Ninth Circuit uses a two-part test to evaluate
21 “unlawful appropriation.” *Skidmore*, 952 F.3d at 1064. The first part, the extrinsic
22 test, compares the objective similarities of specific expressive elements in the two
23 works. *Id.* The second part, the intrinsic test, tests for similarity of expression from
24 the standpoint of the ordinary reasonable observer with no expert assistance. *Id.* Only
25 the extrinsic test is relevant to a motion to dismiss. *See Rentmeester v. Nike, Inc.*, 883
26 F.3d 1111, 1118 (9th Cir. 2018). Crucially, in cases involving musical compositions,
27
28

1 “[t]he extrinsic test requires analytical dissection of a work *and expert testimony.*”
 2 *Swirsky v. Carey*, 376 F.3d 841, 845 (9th Cir. 2004) (emphasis added).⁹

3 As such, “[c]ourts must be just as cautious before dismissing a case for lack of
 4 substantial similarity on a motion to dismiss” because analytical dissection and
 5 substantial similarity between protected elements of works are “usually extremely
 6 close issue[s] of fact.” *Zindel*, 815 F. App’x at 159–60. *see also Astor-White v.*
 7 *Strong*, 733 F. App’x 407, 409–10 (9th Cir. 2018) (Wardlaw, Cir. J., concurring)
 8 (proclaiming that resolving substantial similarity “should be even more disfavored on
 9 a motion to dismiss” than on motion for summary judgment); *Rentmeester*, 883 F.3d
 10 at 1127 (Owens, Cir. J., concurring in part, dissenting in part) (“[Substantial
 11 similarity] is an inherently factual question which is often reserved for the jury, and
 12 rarely for a court to decide at the motion to dismiss stage.”) (emphasis added); cf.
 13 *Smith v. AMC Networks, Inc.*, No. 18-CV-3803-LHK, 2019 WL 402360, at *4–6
 14 (C.D. Cal. Jan. 31, 2019) (Koh, then-D.J., now-Cir. J.) (declining to apply extrinsic
 15 test at pleading stage, finding “most prudent course of action is to follow Ninth
 16 Circuit precedent and hold in abeyance the issue of substantial similarity until further
 17 factual development of the record, including expert testimony.”)

18 To even reach this conclusion at the Rule 12(b)(6) or Rule 12(c) stage, recent
 19 authority instructs that (1) “[t]he copyrighted and allegedly infringing works must be
 20 presented to the court, such that the works are ‘capable of examination and
 21 comparison,’” and (2) the court must find that the instant proceeding “is not a case in
 22 which discovery could shed light on any issues that actually matter to the outcome”

23 _____
 24 ⁹ Expert testimony is less critical in cases involving literary works than it is in a
 25 case like this, where specialized knowledge is required to dissect the objective
 26 elements of a musical composition. *See Bernal*, 788 F. Supp. 2d at 1062–63
 27 (“Unlike . . . a copyright case involving . . . music, this case involves . . . subject
 28 matter readily understandable by any ordinary person, including the Court.”);
see also Chiate v. Morris, 972 F.2d 1337, 1992 WL 197591 at *5 (9th Cir.
 1992) (expert testimony by musicologist crucial to analyzing objective
 similarity).

1 of the extrinsic test. *Rentmeester*, 883 F.3d at 1123; see also *Zindel*, 815 F. App'x at
 2 158. This is especially so in cases involving musical compositions. *See, e.g.*,
 3 *Skidmore*, 952 F.3d at 1086 (“We are not well situated to determine whether a
 4 musical passage is original [as a matter of law]”); *Hall v. Swift*, No. CV 17-6882,
 5 2021 WL 6104160, at *5 (C.D. Cal. Dec. 9, 2021) (“[I]t is not proper for this Court to
 6 resolve . . . what is essentially simply a battle of the experts.”). Here, neither ground
 7 can be conclusively established at this stage due to the complexity of the case, and
 8 the composition. Further, the Court cannot conduct this type of analysis for each and
 9 every Infringing Work. Thus, it is an improper inquiry at this stage in the litigation.

10 **iii. Plaintiffs sufficiently alleged that the Subject Works are original**
 11 **and protectible**

12 Copyright “protects only original expression,” but “it is not difficult to meet
 13 the famously low bar for originality.” *Gray v. Hudson*, 28 F.4th 87, 97–98 (9th Cir.
 14 2022)(citations omitted). Indeed, the “vast majority of works make the grade quite
 15 easily, as they possess some creative spark, no matter how crude, humble or obvious
 16 it might be.” *Id.* (citations and internal quotation marks omitted).

17 In the music context, challenges to a work’s originality should not be decided
 18 at the pleading stage. *See, e.g., Nichols v. Club for Growth Action*, 235 F. Supp. 3d
 19 289, 296–97 (D.D.C. 2017)(“Defendant’s arguments about originality are relevant to
 20 determining whether the two works are substantially similar, which is not an
 21 appropriate question on a motion to dismiss”), citing *Prunte v. Universal Music*
 22 *Group*, 484 F.Supp.2d 32, 41 (D.D.C. 2007)(“Substantial similarity is a question that
 23 should be decided either by a factfinder at trial or, in some cases, in the context of a
 24 motion for summary judgment, not on a motion to dismiss for failure to state a claim
 25 under Rule 12(b)(6).”) If “[p]laintiffs adequately alleged that the lyrics and musical
 26 composition are original[,]” that will suffice. *Id.* at 296. Such is the case here –
 27 Plaintiffs alleged originality and that is sufficient.

1 The allegedly copied portions of the Subject Works are not only original but
 2 protectable. Musical compositions are generally afforded broad copyright
 3 protection—i.e., to prove infringement thereof, the standard is substantial similarity,
 4 not virtual identity.¹⁰ See *Williams v. Gaye*, 895 F.3d 1106, 1120 (9th Cir.
 5 2018)(“Musical compositions are not confined to a narrow range of expression
 6 We have applied the substantial similarity standard to musical infringement suits[.]”)
 7 (internal citations omitted); *Swirsky v. Carey*, 376 F.3d 841, 849 (9th Circ. 2004), *as*
 8 *amended on denial of reh’g* (Aug. 24, 2004).

9 *Fish Market* includes, among other things, an original drum, percussion, and
 10 bass composite pattern that differentiates *Fish Market* from prior works. That is, *Fish*
 11 *Market* contains, inter alia, a composite of interlocking components constructed and
 12 layered in tiers of instruments, timbres, and harmonic (bass) and rhythmic (drums and
 13 percussion) patterns repeated throughout essentially the song’s entirety: bass; kick
 14 drum, snare drum, a ‘tom’ drum, and hi-hats; and timbales (played in various
 15 distinctive syncopated rhythms) and tambourine (played in various distinctive
 16 sixteenth note and/or eighth note patterns). SCAC ¶¶ 180-89, 648. Specifically, *Fish*
 17 *Market* features a programmed kick, snare, and hi-hat playing a one bar pattern (hi-
 18 hat and kick drum playing together on beats one to four, while the snare drum plays
 19 on the fourth, seventh, twelfth and fifteenth sixteenth beats of the bar and ghost notes
 20 on the third and eleventh sixteenth notes of the bar); percussion instruments,
 21 including a tambourine playing through the entire bar (including a unique
 22 combination of sixteenth and eighth notes), a synthesized ‘tom’ playing on beats one
 23 and three in concert with the bass, and timbales that play a unique combination of
 24 sixteenth notes, a roll at the end of every second bar, and free improvisation over the

25 _____
 26 ¹⁰ This Court “do[es] not need to reach” the issue of the level of protection
 27 because it is “a sufficiency of evidence argument,” not a pleading-stage
 28 argument. See *Skidmore*, 952 F.3d at 1076 n.13. The range of expression, and
 the scope of protection afforded as a result, are fact issues not suitable for
 adjudication now. *Id.*

1 pattern for the duration of the song; and a synthesized Bb (b-flat) bass note on beats
 2 one and three of each bar, which is played in conjunction with the synthesized ‘tom’
 3 pattern. This combination of elements—i.e., the drum, percussion, and bass
 4 composite pattern of interwoven hi-hat, snare, kick, tom, bass, tambourine, and
 5 timbale patterns—is original. Id. These elements are shown in the transcription
 6 exemplar provided, *supra*, and are worthy of copyright protection.

7 Camilo’s contention to the contrary is inapposite. First, Camilo addresses only
 8 what he defines in his Motion as the “Sound.” The “Sound” definition disregards the
 9 totality of Plaintiffs’ allegations related to *Fish Market* and does not include the
 10 transcript found in paragraph 188 of the SCAC. See, Def. Mtn. at 3:12. Further,
 11 Camilo ignores that it is these very components that Plaintiffs allege “the Camilo
 12 Works incorporate[.]...as the primary rhythm / drum section of each work...[and that]
 13 [a] comparison of *Fish Market* and each of the Camilo Works establishes that each of
 14 the Camilo Works incorporates both qualitatively and quantitatively significant
 15 sections of the *Fish Market* recording and composition.” SCAC §387-388. These
 16 allegations are sufficient to pled substantial similarity.

17 **iv. The Subject Works are protectable and *scenes a faire* does not**
 18 **disturb that protectability**

19 Camilo misconstrues the copied elements of the Subject Works as “*scenes a*
 20 *faire*,” or “building blocks” that would entitle the Subject Works only to thin
 21 protection. See *Oracle Am., Inc. v. Google Inc.*, 750 F.3d 1339, 1364 (Fed. Cir. 2014)
 22 (holding *scenes a faire* analysis should focus on the circumstances presented to the
 23 creator, not the copier). Camilo’s position that *scenes a faire* renders the work
 24 unprotectable is misplaced because *scenes a faire* does not determine protectability of
 25 the work. See *Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1082 (9th Cir. 2000)
 26 (“we hold that [merger and *scenes a faire* doctrines] are defenses to infringement”),
 27 citing *Kregos v. Associated Press*, 937 F.2d 700, 705 (2d Cir. 1991) (holding the
 28 merger doctrine relates to infringement, not copyrightability); *Fleener v. Trinity*

1 *Broad. Network*, 203 F. Supp. 2d 1142, 1150 (C.D. Cal. 2001); See also 4
 2 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT §
 3 13.03[B][4] (Matthew Bender, Rev. Ed., 2013).

4 Because the application of *scenes a faire* is disputed by the parties, it would be
 5 error for the Court to grant the motion to dismiss because of *scenes a faire* without
 6 independent evidence. *Swirsky*, 376 F.3d at 850 (“It is inappropriate to grant
 7 summary judgment on the basis of *scenes a faire* without independent evidence,
 8 unless the allegation of *scenes a faire* is uncontested.”); *Williams v. Bridgeport*
 9 *Music, Inc.*, 2014 U.S. Dist. LEXIS 182240 (C.D. Cal. 2014) (same). See also, *Hayes*
 10 *v. Minaj*, No. 2:12-CV-07972-SVW-SH, 2013 WL 11328453, at *6 (C.D. Cal. 2013)
 11 (“summary judgment is not highly favored on the substantial similarity issue in
 12 copyright cases.”)

13 Camilo has not alleged any facts or evidence supporting elements that are
 14 necessary for the court to determine if *scenes a faire* applies and in what regard, such
 15 as the genre, commonplace elements, and motives that the elements constituting
 16 *scenes a faire* flows from. See *Washington v. ViacomCBS, Inc.*, 2020 WL 5823568,
 17 at *2 (C.D. Cal. 2020).

18 Further, expert testimony¹¹ is nearly always necessary to determine which
 19 elements of a work are protectable and whether *scenes a faire* applies, and if so,
 20 whether such similarity establishes liability under the notions of thin protection. See
 21 *Alfred v. Walt Disney Co.*, 821 F. App’x 727, 729 (9th Cir. 2020). Crucially here,
 22

23 ¹¹ Camilo cites multiple secondary references regarding the history of reggaeton,
 24 pop-culture, and music in Puerto Rico and Latin American culture. But none of
 25 these sources are properly before the court as the review is confined to the
 26 allegations in the pleading and must be disregarded. Further, the need for these
 27 sources proves Plaintiffs point that expert testimony and a full analysis of the
 28 historical context at the time of the Subject Works’ creation is required to make the
 determination sought by Camilo. Cherry picked sound bites of secondary sources
 are not sufficient to allow the court to evaluate the originality and protectability of
 the copied portions of the Subject Works.

1 “[a]dditional evidence would also illuminate whether any similarities are mere
 2 unprotectable [musical] tropes or *scènes à faire*.” *Smith v. Jackson*, 84 F.3d 1213,
 3 1220 (9th Cir. 1996) (stating the district court properly relied on expert evidence to
 4 determine that allegedly copied song elements were unprotected *scènes à faire*),
 5 *overruled on other grounds by Skidmore*, 952 F.3d at 1066. At this stage, the court
 6 cannot conclude what elements are protectable and of those elements, which, if any
 7 are subject to *scenes a faire* limitation. *See Alfred*, 821 F. App'x at 729 (“expert
 8 testimony ... would be particularly useful in this circumstance, where the works in
 9 question are almost twenty years old and the blockbuster *Pirates of the Caribbean*
 10 film franchise may itself have shaped what are now considered pirate-movie tropes.”)

11 Nonetheless, *scenes a faire* does not apply here even when considering
 12 Camilo’s few allegations otherwise. First, we must review the state of art at the time
 13 Plaintiffs created the songs at issue. *Alfred*, 821 F. App'x at 729 (noting importance
 14 of expert testimony when the plaintiff’s film “may itself have shaped what are now
 15 considered pirate-movie tropes.”) The fact that numerous artists have copied from
 16 Plaintiffs’ works after they were created is irrelevant.

17 Plaintiffs have identified in the Complaint the exact combination of elements
 18 that make Plaintiffs creation unique and distinctive from any sound created before the
 19 Subject Works and Camilo’s Infringing Work has copied those unique and distinctive
 20 elements exactly. Taking such allegations as true, Plaintiffs have sufficiently stated a
 21 claim. Camilo’s improperly introduced evidence to the contrary is insufficient.

22 **3. Plaintiffs sufficiently alleged contributory infringement**

23 To sufficiently plead contributory infringement, a plaintiff need only plausibly
 24 allege that the defendant (1) knows about a third party’s infringing activity, and (2)
 25 induces, causes, or materially contributes to the infringing conduct. *Perfect 10, Inc. v.*
 26 *Vias Int’l Serv. Ass’n*, 494 F.3d 788, 795 (9th Cir. 2007). Plaintiffs allege that
 27 numerous Defendants have infringed Plaintiffs’ rights in *Fish Market*, *Pounder*, and
 28 *Dem Bow* by, without limitation, exploiting the Infringing Works for profit by

1 licensing, or otherwise authorizing third parties to use, reproduce and/or perform the
2 Infringing Works for profit. SCAC ¶671 (listing names).

3 Camilo is also alleged to have (a) authorized the reproduction, distribution and
4 sale of records and digital downloads of the Infringing Works, through the execution
5 of licenses, and/or actually reproducing, and/or selling and distributing physical or
6 digital or electronic copies of the Infringing Works through various physical and
7 online sources and applications, including without limitation, through Amazon.com,
8 Walmart, Target and iTunes; (b) streamed and/or publicly performed or authorized
9 the streaming and/or public performance of the Infringing Works through, without
10 limitation, Spotify, YouTube, and Apple Music; and (c) participated in and furthered
11 the aforementioned infringing acts, and/or shared in the proceeds therefrom. SCAC
12 ¶672. Camilo is also alleged to have “knowingly induced, participated in, aided and
13 abetted in and profited from the illegal reproduction, distribution, and publication of
14 the Infringing Works as alleged above.” SCAC ¶679.

15 Camilo ignores the SCAC’s Paragraph 671 and 673, in which Plaintiffs
16 specifically identify record label and publishing Defendants involved in the licensing
17 and authorization of third party distributors exploitation of the Infringing Work by
18 both physical and online sources such as Amazon.com, Walmart, Target, and iTunes,
19 as well as digital sources like Spotify, Youtube, and Apple Music. SCAC ¶¶671, 673.
20 This conduct was done in concert with and approval and knowledge of Camilo.
21 SCAC ¶172. Further, Camilo collaborated with other artists to create the Infringing
22 Works, and, in doing so, knowingly incorporated material elements from the Subject
23 Works and with knowledge that they did not have the requisite consent. SCAC ¶671,
24 673.

25 As a contributor, it cannot reasonably be disputed that Camilo was
26 significantly involved in the creation and overseeing of the Infringing Work and their
27 sale, distribution, licensing, and other forms of exploitation by third parties. Plaintiffs
28 were not in the studio with Camilo and co-artists during the creation of the Infringing

1 Work, and cannot, without sufficient discovery, establish the extent of Camilo's
2 knowledge or oversight. Plaintiffs have alleged facts sufficient to establish that
3 Camilo knew about the infringement, and the ability to stop such infringement
4 considering his role as co-author, and his role in the distribution through third-parties.

5 **C. Plaintiffs should be granted the ability to conduct jurisdictional**
6 **discovery and amend its pleading**

7 Because Camilo is subject to personal jurisdiction here, and because Camilo
8 has not shown that transfer is necessary for the convenience of the parties, his Motion
9 should be denied. However, should this court disagree, Plaintiffs respectfully request
10 that it defer its ruling until Plaintiffs can conduct targeted jurisdictional discovery
11 into, over the last five years, the number of California residents streaming the
12 infringing music, the number of California residents attending Camilo's
13 performances, the revenue derived from such streaming and attendance to
14 performances from California residents, advertisements directed at California,
15 location of the production and creation of the infringing works, and any other
16 monetization of the relationship between Camilo and California residents.

17 Moreover, should the Court find any deficiencies in regard to any of the
18 arguments raised by Camilo, it is respectfully requested that Plaintiffs be allowed to
19 amend the SCAC to include even more detailed factual allegations, including
20 allegations based on that jurisdictional discovery. *See* Fed. R. Civ. P. 15(a) (leave to
21 amend a dismissed complaint should be freely granted unless the complaint could not
22 be saved by any amendment); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d
23 708, 712 (9th Cir. 2001) (stating that courts should grant leave to an amendment a
24 complaint with "extremely liberality"); *Schreiber Distrib. Co. v. Serv-Well Furniture*
25 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) ("[L]eave to amend should be granted
26 unless the court determines that the allegation of other facts consistent with the
27 challenged pleading could not possibly cure the deficiency.")

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court deny Camilo’s motion in its entirety.

Respectfully submitted,

Dated: August 3, 2023

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
Frank Trechsel, Esq.
Benjamin F. Tookey, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiffs

L.R. 11-6.2. Certificate of Compliance

The undersigned certifies that this memorandum of points and authorities complies with the type-volume limitation of L.R. 11-6.1. This certification is made relying on the word count of the word-processing system used to prepare the document.

The undersigned, counsel of record for Plaintiff, certifies that this brief contains _____ words, which complies with the word limit of L.R. 11-6.

Dated: August 3, 2023

By: /s/ Frank R. Trechsel
Frank R. Trechsel