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

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

17 Plaintiffs,

18 v.

19 RODNEY SEBASTIAN CLARK
20 DONALDS; *et al.*,

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

**PLAINTIFFS’ OPPOSITION TO
DEFENDANT VLADIMIR FELIX’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

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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 works toward California, did
6 business through concerts and advertisements in California, and profited from the
7 distribution, steaming, downloading, and sale of the infringing works by exploiting
8 the 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 Vladimi Felix p/k/a DJ Blass’
13 (“Blass”) primary argument against jurisdiction is that he lives and works in Florida,
14 and therefore, lacks sufficient contacts for California to assert either general or
15 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 Blass’s position that the SCAC is insufficient based on the particularity
21 standard and that the Plaintiffs fails to allege actual copying of original and
22 protectible elements of the Subject Works¹ likewise fail. Plaintiffs adequately plead
23 a claim of copyright infringement against Blass and sufficiently allege Subject
24

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

1 Works protectable. Blass’s position that they are unprotectible or *scenes a faire* fail.
2 The Motion should be denied.

3 **II. PROCEDURAL HISTORY**

4 Plaintiffs initially filed three separate actions (1) an initial case on April 1,
5 2021, (2) another case in this district on October 19, 2021, and (3) another in the
6 southern district of New York on May 16, 2022. *See* Central District of California,
7 Case No. 2:21-cv-08295-AB-AFM (“Fonsi Case”); Southern District of New York,
8 Case No. 1:22-cv-03997-AT, later Central District of California, Case No. 2:22-cv-
9 03827-AB-AFM (“Yankee Case”). On May 31, 2022, the Yankee Case was
10 transferred to this District. Id. Dkt. 20.

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

22 **III. FACTUAL BACKGROUND**

23 Plaintiffs Cleveland Constantine Browne p/k/a “Clevie” and Wycliffe
24 Anthony Johnson p/k/a “Steely” are renowned musicians who performing and
25 produced as “Steely and Clevie.” SCAC ¶173. In 1989, Steely and Clevie wrote and
26 recorded the song *Fish Market*. SCAC ¶179. They own the copyright for *Fish*
27 *Market*’s sound recording and composition, which are registered with the U.S.

1 Copyright Office. SCAC ¶177, 189. *Fish Market* is an original work that includes,
 2 among other things, original drum work that differentiates it from prior works.
 3 SCAC ¶180. *Fish Market* features, *inter alia*, a programmed kick, snare, and hi-hat
 4 playing a one bar pattern; percussion instruments, including a tambourine playing
 5 through the entire bar, a synthesized ‘tom’ playing on beats one and three, and
 6 timbales that play a roll at the end of every second bar and free improvisation over
 7 the pattern for the duration of the song; and a synthesized Bb (b-flat) bass note on
 8 beats one and three of each bar, which follows the aforementioned synthesized ‘tom’
 9 pattern. *Id.*

10 Steely and Clevie co-authored *Dem Bow* with Shabba Ranks and co-own the
 11 song’s composition copyrights. SCAC ¶181. The composition for *Dem Bow* is
 12 registered with the U.S. Copyright Office. *Id.* In 1990, after *Dem Bow*’s release and
 13 success, the derivative work *Pounder Riddim* was created by Ephraim Barrett² and
 14 Denis Halliburton, the latter of which performed the *Dem Bow* and *Fish Market*
 15 composition to create a new work. SCAC ¶182. The *Pounder Riddim* was then used
 16 to create the sound recordings of *Pounder Dub Mix II* (“*Pounder*”). *Id.* For the
 17 *Pounder Riddim*,³ and the derivative *Pounder* Denis Halliburton copied *Dem Bow*’s
 18 instrumental, sound, arrangement, and composition, including the drum pattern,
 19 the drum components, including the kick, snare, hi-hat, tom and timbales as well as
 20 the full bassline. SCAC ¶183. The composition played by Halliburton is virtually
 21 identical to *Fish Market*. SCAC ¶183. Thus, the *Fish Market* composition is
 22 necessarily captured in the sound recordings for *Pounder*. *Id.* A transcript of a
 23

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

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

1 portions of *Fish Market* is shown below. Any copying, interpolating, or sampling of
 2 the *Pounder* is a copying or interpolation of *Fish Market*'s composition. SCAC
 3 ¶188.

4 **Fish Market**

5 Steely & Clevie

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15 Blass is responsible for the creation and exploitation of 20 works (collectively,
 16 the “Infringing Works”) that infringe on Plaintiffs’ copyrights in the Subject Works.
 17 SCAC ¶¶385-388, Exhibit A. Blass’s “sampling” (direct extraction and
 18 reproduction) of *Fish Market* and/or *Pounder* establishes access by way of striking
 19 similarity, if not virtual identity. SCAC ¶667. Blass infringed Plaintiffs’ rights in
 20 *Fish Market* by sampling the recording of *Fish Market* and/or *Pounder* and
 21 reproducing such sample in some of the Infringing Works. SCAC ¶668. Blass also
 22 infringed Plaintiffs’ rights in *Fish Market* by making a direct copy of the
 23 composition of *Fish Market* and using that copy in one or all of the Infringing
 24 Works. SCAC ¶669. The details of which Subject Work and how it is alleged in the
 25 SCAC to have been infringed by each Infringing Work are identified in Exhibit 1 to
 26 the Declaration of Frank R. Trechsel (“Trechsel Decl.”). Specifically, Blass
 27 infringed the *Fish Market* composition as part of all the Infringing Works, the *Fish*

1 *Market* sound recording on 8 works, *Dembow*, *Hola*, *La Fanatica*, *la Mision 2*, *La*
 2 *Rockera*, *Quiero Verte Bailar*, *Reggaeton en lo Oscuro*, and *Tu Sabes* all by Wisin
 3 & Yandel Id. Blass also infringed the *Pounder* sound recording copyright on at least
 4 one track, *Reggaeton en lo Oscuro* by Wisin & Yandel. Id.

5 **IV. ARGUMENT**

6 **A. Blass is subject to specific personal jurisdiction in California**

7 California’s long-arm statute, C.C.P.C. § 410.10, is coextensive with federal
 8 due process requirements, therefore, the jurisdictional analyses under state and
 9 federal due process are the same. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d
 10 1218, 1223 (9th Cir. 2011) (internal citations omitted). Accordingly, California
 11 allows the exercise of personal jurisdiction “to the full extent permitted by due
 12 process.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th
 13 Cir. 2000).

14 A plaintiff need only make a *prima facie* showing that jurisdiction is proper to
 15 survive a motion to dismiss for lack of personal jurisdiction. *Schwarzenegger v.*
 16 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). When determining the
 17 sufficiency of plaintiffs’ *prima facie* showing, uncontroverted allegations in the
 18 complaint are taken as true and all factual disputes are resolved in plaintiff’s
 19 favor. *AT&T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588-89 (9th Cir.
 20 1996.)⁴ A district court “may exercise either general or specific personal jurisdiction
 21 over nonresident defendants.” *Fed. Deposit Ins. Corp. v. British-American Ins. Co.*,

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

1 828 F.2d 1439, 1442 (9th Cir. 1987). Specific jurisdiction exists where there is a
2 relationship between the quality of the defendant’s forum contacts and the cause of
3 action pursuant to the test of *Burger King v. Rudzewicz*, 471 U.S. 462 (1985).

4 This Court may properly exercise specific personal jurisdiction over Blass,
5 and because jurisdiction is proper in this Court, venue is proper as well. See *Brayton*
6 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1126 (9th Cir. 2010); *MGM*
7 *Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073, 1095 (C.D. Cal. 2003)
8 (“Because... jurisdiction is proper in this district, venue is proper as well.”).

9 Specific jurisdiction exists if: (1) the defendant purposefully directed its
10 activities towards the forum state or consummates some transaction with the forum
11 or residents thereof; (2) the claim arises out of or relates to the defendant's forum-
12 related activities; and (3) the exercise of jurisdiction must comport with fair play and
13 substantial justice, i.e., it must be reasonable. *Mavrix Photo, Inc.*, 647 F.3d at 1227–
14 28 (other citations omitted.) This Circuit has a flexible approach to this test, finding
15 personal jurisdiction even in cases that do not meet each of the three factors “if
16 considerations of reasonableness dictate.” *Ochoa v. J.B. Martin & Sons Farms, Inc.*,
17 287 F.3d 1182, 1188 n. 2 (9th Cir. 2002) (internal citations omitted). When a case
18 “centers on allegations of copyright infringement, the Court applies a purposeful-
19 direction analysis. *Carsey-Werner Co., LLC v. Brit. Broad. Corp.*, 2018 WL
20 1083550, at *4 (C.D. Cal. 2018), citing *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*,
21 874 F.3d 1064, 1069 (9th Cir. 2017).

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

26 ///

27 ///

1 **1. Blass purposefully directed his activities towards California**

2 A defendant purposefully directs its activities at the forum when it (1)
3 commits an intentional act, (2) expressly aimed at the forum state or its residents,
4 and (3) causes harm that it knows is likely suffered in the forum state. *Mavrix Photo,*
5 *Inc.*, 647 F.3d at 1228 (citations omitted). Blass’s activities satisfy each of these
6 factors, as Blass has repeatedly intentionally distributed, performed, and promoted
7 his music, including the Infringing Works, in and to this jurisdiction.

8 **a. Blass acted intentionally**

9 It is beyond reasonable dispute that Blass acted intentionally in creating,
10 performing, distributing, and selling his works. *See Mavrix Photo, Inc.*, 647 F.3d at
11 1229; *Brayton Purcell*, 361 F. Supp. 2d at 1142. Indeed, Blass does not, and cannot,
12 dispute that these acts were intentional. *Freidman v. Popsugar, Inc.*, No.
13 218CV0588, 2018 WL 6016963, at *7 (C.D. Cal. Oct. 29, 2018). The factor is met.

14 **b. Blass expressly directed his infringing conduct towards**
15 **California**

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

25 Similarly, Plaintiffs allege that Blass is actually aware of his fans in
26 California, and has repeated exploited his California base for commercial gain and to
27 achieve a substantial viewer base in this state Plaintiffs alleges that Blass “and [his]

1 publishing companies received monies in connection with the songs and music at
2 issue in this case from ASCAP and other companies based in California.” SCAC
3 ¶654. Blass is alleged to have authorized the reproduction, distribution and sale of
4 records and digital downloads of the Infringing Works, through the execution of
5 licenses, and/or selling and distributing physical or digital copies of the Infringing
6 Works through various physical and online sources including without limitation,
7 through Amazon.com, Walmart, Target and iTunes. SCAC ¶673. Blass also engaged
8 in the unauthorized reproduction, distribution, public performance, licensing,
9 display, and creation of the Infringing Works, including, without limitation,
10 distributing and broadcasting the Infringing Works on streaming platforms,
11 including Spotify, Apple Music, Amazon, Pandora, and YouTube. SCAC ¶¶673-
12 674. Each of these allegations are alleged to have occurred “in and with the state of
13 California, including in this juridical district.” SCAC ¶99. Further, Blass is alleged
14 to have infringed the Subject Works with co-defendants such as Sony and Warner
15 each of which are alleged California entities. See, SCAC ¶¶15, 18, 51, 69, Exhibit A.

16 Blass attempts to evade personal jurisdiction by claiming that he does not
17 direct his activity toward California, but this is belied by evidence. As in *Mavrix*
18 *Photo*, Blass has expressly aimed the distribution of his music at California and has
19 engaged in actions expressly “anticipating, desiring, and to achieve” a California
20 viewer base. This includes transactions within the California market and with
21 California businesses when he was paid to perform infringing music at California-
22 based venues. See, Trechsel Decl. at ¶¶2-6, Exhibits 2-7. For example, Blass has
23 made frequent stops in Los Angeles, California where he has performed the
24 allegedly infringing music. Trechsel Decl. at ¶¶2-5, Exhibits 2-7. And performing
25 shows in California and advertising those shows to California residents specifically
26 reflects Blass’s desire to induce more California residents to buy, stream, and
27

1 download his infringing music.⁵ Trechsel Decl. at ¶¶2-6, Exhibits 2-7. *See, e.g., Rio*
 2 *Props Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020-21 (9th Cir. 2002) (website
 3 operator targeted Nevada because it ran radio and print advertisements in Las Vegas
 4 to attract more Nevada residents to the website). Further, a Blass Facebook post
 5 even includes the hashtag “#DembowMusicinLA” meaning hear Dem Bow music in
 6 Los Angeles providing not only access to the Subject Works but also a desire to
 7 reach a California audience. Trechsel Decl. at ¶2. ⁶ *See, e.g., Rio Props Inc. v. Rio*
 8 *Int’l Interlink*, 284 F.3d 1007, 1020-21 (9th Cir. 2002) (finding a website operator
 9 targeted Nevada because it ran radio and print advertisements in Las Vegas to attract
 10 more Nevada residents to the website). Blass’s claims that he does not expressly
 11 direct his conduct to California are thus false, and personal jurisdiction is proper.

12 **c. Blass knew that harm would be felt in forum state**

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

18 Infringement results in harm to plaintiff where the alleged infringement has
 19 reduced the value of the original work in the forum. *See Mavrix Photo Inc.*, 647 F.3d
 20 at 1231-32 (“Because [defendant’s] actions destroyed this [forum]-based value, a
 21 jurisdictionally significant amount of [plaintiff’s] economic harm took place in [the
 22 forum].”). Given the significant and intentional popularity of Blass’s work in
 23 _____

24 ⁵ Even if Blass’s California performances, streaming, or sales make up less than
 25 1% of his overall profits, it is sufficient to establish personal jurisdiction. *See*
 26 *Keeton*, 465 U.S. at 772 n.1, 780 (finding that jurisdiction was sufficiently
 27 established even if the defendant’s exploitation of the market makes up less than
 28 1% of total profits).

⁶ Both Disney+ and HBO are California companies.

1 California and the success of his multiple, sold-out world tour performances of the
2 Infringing Works in this state, Blass’s infringement of the Subject Works has
3 undeniably and foreseeably reduced the value of the Subject Works in this state.

4 While Blass claims that his allegedly infringing conduct was limited to the
5 states in which he created the Infringing Works, such claims are meritless. Even if
6 were true that the only potentially infringing conduct included the production of the
7 Infringing Works (it is not), purposeful direction is concerned with where the
8 defendant’s actions were **felt**, not where they occurred. *See Mavrix Photo, Inc.*, 647
9 F.3d at 1228. Blass’s infringing conduct has thus foreseeably harmed Plaintiffs in
10 California, and personal jurisdiction is proper. Blass’s Motion should be denied.

11 **2. Plaintiff’s claims arise from activities directed toward**
12 **California**

13 Specific jurisdiction is “tethered to a relationship between the forum and the
14 claim.” *Holland Am. Line Inc. v. Wartsila North Am.*, 485 F.3d 450, 460 (9th Cir.
15 2007). A single forum state contact can support jurisdiction if “the cause of action...
16 arise[s] out of that particular purposeful contact of the defendant with the forum
17 state.” *Yahoo! Inc.*, 433 F.3d at 1210 (internal citations omitted). Notably, a claim
18 may arise out of in-state activities even if the defendant’s contacts with the forum are
19 not extensive. *Roberts v. Synergistic Int’l, LLC*, 676 F. Supp. 2d 934, 943 (E.D. Cal.
20 2009).⁷ However, the Ninth Circuit has recognized that, regarding intellectual

21
22 ⁷ Blass attempts to change the standard necessary to establish specific jurisdiction.
23 Specifically, Blass argues that the creation, distribution, and sale of the Infringing
24 Work does not relate to the forum-related activities or establish a sufficient
25 connection to this forum because it is not a “regular and systematic contact”. *See*
26 *Mot.* at 11 ¶ 11-13. But the standard to establish specific jurisdiction is not regular
27 and systematic contact, nor is that the standard for determining whether the claims
28 arise from defendants’ conduct directed towards the forum state. Blass’s position is
incorrect and contrary to the case law.

1 property infringement claims, conduct is sufficiently directed to the forum state if it
2 harms the plaintiff in said forum. *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316,
3 1322 (9th Cir. 1998); *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945,
4 963 (N.D. Cal. 2015).

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

12 **3. Exercising personal jurisdiction over Blass comports with fair play**
13 **and substantial justice**

14 Courts consider seven factors in deciding the reasonableness of personal
15 jurisdiction: (1) the extent of a defendant's purposeful interjection; (2) the burden on
16 the defendant in defending in the forum; (3) the extent of conflict with the
17 sovereignty of the defendant's state; (4) the forum's state's interest in adjudicating
18 the dispute; (5) the most efficient judicial resolution of the controversy; (6) the
19 importance of the forum to plaintiff's interest in convenient and effective relief; and
20 (7) the existence of an alternative forum. *Core-Vent Corp. v. Nobel Indus. AB*, 11
21 F.3d 1482, 1487 (9th Cir. 1993), citing *Burger King Corp.*, 471 U.S. 462 (1985). And
22 where as here the plaintiff has made a *prima facie* showing of personal jurisdiction,
23 it is the burden of the defendant to make a "compelling case" that exercise of
24 jurisdiction would be unreasonable. *Coremetrics, Inc. v. Atomic Park.com, LLC*, 370
25 F. Supp. 2d 1013, 1024 (N.D. Cal. 2005) *See also Mavrix Photo Inc.*, 647 F.3d at
26 1228; *Brayton Purcell*, 361 F. Supp. 2d at 1143-44 (presumption that jurisdiction is
27 reasonable when the other prongs of the jurisdiction analyses are met). To carry this

1 burden, Blass must show that any claimed unreasonableness could not be alleviated
2 by less restrictive means such as conflict of law rules or an accommodating venue
3 transfer. *See Burger King Corp.*, 471 U.S. at 476–78.

4 Blass cannot establish that the exercise of personal jurisdiction in California is
5 unreasonable. Indeed, Blass merely claims it would be “unfair” to exercise personal
6 jurisdiction here without any explanation as to why same would result in any burden.
7 Such bald assertions clearly fall short of establishing a “compelling case” that
8 personal jurisdiction would be unreasonable. Blass’s motion should be denied.

9 Blass cites only one case, *Asahi Metal Indus. Co. v. Sup. Ct.*, to support a
10 finding of unreasonableness, but it is easily distinguished. In *Asahi Metal Indus. Co.*
11 *v. Sup. Ct.*, the Supreme Court. 480 U.S. 102, 112-13 (1987). The Court emphasized
12 that the defendant engaged in **no** advertisement in California, channels of
13 communication with California customers, had no agents or employees of the
14 company in California, and indeed did nothing more than just placing the product in
15 the stream of commerce in the California market. 480 U.S. 102, 112-13 (1987). As
16 already discussed, Blass expressly and repeatedly advertised in California, came to
17 California personally to give repeated, paid performances to California residents,
18 and worked directly with California based companies to achieve substantial success
19 here. Trechsel Decl. ¶¶ 2-6, Exhibits 2-7. Blass’s sole authority thus fails, and Blass
20 cannot carry his burden of establishing that personal jurisdiction is unreasonable in
21 this case.

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

24 First, evidence establishes that Blass did interject himself into California
25 through the purposeful direction of his music and business related to the distribution
26 and promotion of his infringing music towards and in the California market, as
27 discussed, *supra*.

1 Second, any burden on Blass resulting from personal jurisdiction in this
2 District would be minimal and manageable. “[W]ith the advances in transportation
3 and telecommunications and the increasing interstate practice of law, any burden [of
4 litigation in a forum other than one's residence] is substantially less than in days
5 past.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1080 (9th Cir.
6 2011.) Indeed, other than trial nearly all of the processes in this litigation can and
7 will likely be handled remotely, not requiring any particular effort or expense from
8 Blass that would not be required in any forum. Even depositions and mediation will
9 likely be conducted by videoconference. Thus, any burden imposed on Blass by
10 proceeding here would essentially be no more than the burden faced by any non-
11 resident defendant brought into this Court. *See, E.g., Lions Gate Ent. Inc. v. TD*
12 *Ameritrade Servs. Co.*, 170 F. Supp. 3d 1249, 1264 (C.D. Cal. 2016).

13 Third, there would be no conflict of law issues presented by proceeding here
14 because copyright law is federal law, and thus the applicable statutes would be the
15 same in any federal court this case could be brought in. *Colt Studio, Inc. v.*
16 *Badpuppy Enter.*, 75 F. Supp. 2d 1104, 1110 (C.D. Cal. 1999) (holding because
17 copyright law is federal law, the analysis is the same irrespective of the state it is
18 litigated in).

19 Fourth, given Blass’s interjection into California and the intellectual property
20 violations in California, California would have an interest in resolving the claims
21 here.

22 Fifth, the consolidated nature of this case in this forum makes resolution here
23 efficient. Plaintiffs’ claims were originally filed in multiple jurisdictions and the
24 other courts ordered transfer and this Court ordered consolidation of all the claims
25 due to efficiency concerns and in hope of lessening the burdens on the court system.
26 *Lions Gate Ent. Inc.*, 170 F. Supp. 3d at 1264 (finding where the case was already
27 transferred from New York to California and the New York court “already decided it
28

1 is more convenient and appropriate for the case as a whole to be decided in this
2 forum” the exercise of jurisdiction was reasonable to “stop forum transfers by both
3 parties”).

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

8 And, finally, no alternative forum exists. This forum is the only forum where
9 all the defendants are subject to specific jurisdiction. Blass’s argument that the claim
10 should be transferred or otherwise dismissed and re-filed in Florida, would once
11 again require Plaintiffs to sever the Blass’s claims to independently file those in
12 Florida because very few defendants have any connection to Florida. To reiterate,
13 Plaintiffs already attempted to file that way, which led to the transfer and
14 consolidation in this court. And even when considering the claims could be brought
15 individually in different forums, “the presence of an alternate forum does not
16 overcome reasonableness established by the other factors.” *West Marine*, 2012 WL
17 479677, at *7. Considering the court previously held that bringing the claims against
18 each defendant in different jurisdictions is inefficient and forced the consolidation of
19 Plaintiffs claims, Plaintiffs are effectively foreclosed from re-filing in any other
20 forum.

21 All factors thus establish that personal jurisdiction is proper regarding Blass,
22 and Blass fails to present any explanation that personal jurisdiction would not
23 comport with the concerns of fairness and efficiency, let alone a compelling case for
24 same which could carry his burden. Blass’s Motion should thus be denied.

25 **4. Venue transfer is unwarranted**

26 Blass alternatively seeks a transfer of venue under 28 U.S.C. § 1406 and §
27 1404. Section 1406 allows for transfer of venue if the claim is brought in an

1 improper venue. And § 1404 allows the transfer of venue where the venue is proper,
2 but another venue offers more convenient resolution of the claims. The burden is on
3 the moving party to establish that a transfer will allow a case to proceed more
4 conveniently and better serve the interests of justice. See, e.g., *Commodity Futures*
5 *Trading Comm. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). And in “seeking to
6 transfer a case to a different district, a defendant bears a heavy burden of proof to
7 justify the necessity of the transfer.” *STX, Inc. v. Trik Stik, Inc.*, 708 F.Supp. 1551,
8 1555-56 (N.D. Cal. 1988). Here, given the consolidation and overlapping claims,
9 Blass cannot meet this heavy burden.

10 It is axiomatic that “a situation in which two cases involving precisely the
11 same issues are simultaneously pending in different District Courts leads to the
12 wastefulness of time, energy and money that § 1404(a) was designed to prevent.”
13 *Continental Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 26, 80 S.Ct. 1470, 4
14 L.Ed.2d 1540 (1960). Despite this, Blass seeks to cause exactly such inefficiency.
15 The request should be denied because the “[l]itigation of related claims in the same
16 tribunal is strongly favored because it facilitates efficient, economical and
17 expeditious pre-trial proceedings and discovery and avoid duplicitous (sic) litigation
18 and inconsistent results.” *Jolly v. Purdue Pharma L.P.*, 2005 WL 2439197, at *2
19 (S.D. Cal. 2005), quoting *Durham Prods, Inc. v. Sterling Film Portfolio, Ltd., Series*
20 *A*, 537 F.Supp. 1241, 1243 (S.D.N.Y.1982) (citation omitted). Maintaining the Blass
21 claims as part of this omnibus action is appropriate, economical, and efficient.

22 A transfer request should be denied if it will result in “litigating the issues in
23 both forums” and “would force the parties to engage in duplicative discovery and
24 pre-trial motions, require the courts to analyze the same factual and legal issues, and
25 ... require both courts to construe the same [copyright] terms[.]” *In Western Digital*
26 *Technologies, Inc. v. Board of Regents of the University of Texas System*, , 2011 WL
27 97785, *4 (N.D. Cal. 2011). Indeed, as in *Western Digital*, courts often transfer

1 cases to encourage and effect consolidation. *Bite Tech, Inc. v. X2 Impact, Inc.*, 2013
2 WL 871926, *6 (N.D. Cal. 2013) (transferring a case because “the two suits involve
3 overlapping issues, such as to what extent X2's actions unlawfully infringe[.]). Here,
4 the matters are already consolidated and transfer would upset the attendant
5 efficiencies. Efficiency and avoidance of duplicative litigation is a “strong factor” in
6 this regard. *Id.* Blass’s transfer request, which will disrupt consolidation and require
7 inefficient and duplicative litigation, must be denied.

8 Relevant here, “centralizing the adjudication of similar cases will also avoid
9 the possibility of inconsistent judgments.” *Hawkins v. Gerber Prod. Co.*, 924 F.
10 Supp. 2d 1208, 1214 (S.D. Cal. 2013), quoting *Callaway Golf Co. v. Corp. Trade,*
11 *Inc.*, 2010 WL 743829, at *7 (S.D. Cal. 2010). Thus, an “important consideration in
12 determining whether the interests of justice dictate a transfer of venue is the
13 pendency of a related case in the transferee forum.” *Callaway Golf Co.*, 2010 WL
14 743829, at *7 (internal quotations omitted). Here, the related cases are in this forum
15 and no related cases are pending in the transferee forum.

16 Moreover, the “feasibility of consolidation is a significant factor in a transfer
17 decision” and “possible consolidation of discovery and convenience to witnesses and
18 parties” is a primary factor when considering transfer. *A.J. Indus., Inc. v. U.S. Dist.*
19 *Court for Cent. Dist. of Cal.*, 503 F.2d 384, 386–87 (9th Cir.1974) (citations
20 omitted). Indeed, the “unique circumstances of a pending, consolidated case” will
21 “weigh heavily” in favor of litigating the action where the consolidated case is
22 pending, as it will “provide further significant convenience and efficiency[.]” *Amaru*
23 *Ent., Inc. v. Heritage Cap. Corp.*, 2022 WL 18142555, at *2 (C.D. Cal. Nov. 30,
24 2022), citing *Esquer v. StockX, LLC*, 2020 WL 3487821 at *6. To be sure, the “best
25 way to ensure consistency is to prevent related issues from being litigated in two
26 separate venues.” *Argonaut Ins. Co. v. MacArthur Co.*, 2002 WL 145400, *4
27 (N.D. Cal. 2002). Transfer is improper.

1 In general, Section 1400(a) turns on the same analysis used to assess whether
2 specific jurisdiction exists. *Brayton Purcell LLP*, 606 F.3d at 1124. Consequently,
3 where specific jurisdiction is proper, so is venue. Blass rests all venue arguments on
4 the same reasons as those made in arguing a lack of jurisdiction. *See* Def. Mtn. pg.
5 14-15. Plaintiffs have already shown those arguments lack merit. Therefore, transfer
6 under § 1406 is improper, particularly in light of the consolidated nature of this
7 action.

8 Additionally, Blass has not met his burden in showing an inconvenience
9 sufficient to justify the transfer of the case to the Southern District of Florida, as
10 requested. Under the doctrine of *forum non conveniens*, defendant bears the burden
11 of proving that an adequate alternative forum exists. *Cheng v. Boeing Co.*, 708 F.2d
12 1406, 1411 (9th Cir.), *cert. denied*, 464 U.S. 1017 (1983). The burden requires “a
13 *strong* showing of inconvenience to warrant upsetting the plaintiff’s choice of
14 forum.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.
15 1986) (emphasis added). As previously noted, this Court ordered consolidation of all
16 claims against all defendants. If the Court transferred the claim against Blass to
17 another venue, Plaintiffs would end up in the same position as before – with the
18 claims against each defendant divided among potentially hundreds of jurisdictions.
19 Prior courts have already concluded that separating the claims and dispersing the
20 claims (all of which against each defendant are nearly identical) among hundreds of
21 dockets and courts would unnecessarily burden to the court system and create
22 unprecedented inconveniences for Plaintiffs. Blass does not present any *strong*
23 justification to invoke such burdens.

24 **B. The SCAC meets the pleading standards for copyright**
25 **infringement and contributory liability**

26 A complaint must merely “contain a short and plain statement of the claim
27 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To defeat a
28

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

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

17 Rule 8 requires a plaintiff to “give the defendant fair notice of what the [...]
 18 claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (quoting
 19 Fed. R. Civ. P. 8(a)). And each allegation of a complaint must be “simple, concise,
 20 and direct.” Fed. R. Civ. P. 8(d)(1) (emphasis added). As such, Plaintiffs are **not**
 21 required to plead every act and instance of infringement, as Defendants urge. See,
 22 e.g., *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 167 F. Supp. 2d 1114, 1120 (C.D.
 23 Cal. 2001) (“Perfect 10 alleges the existence of hundreds, even thousands of
 24 infringing photographs... Requiring a statement of each and every example would
 25 defeat the regime established by Rule 8.”). Plaintiffs’ SCAC is sufficient.

26 Indeed, “simply alleging present ownership by plaintiff, registration in
 27 compliance with the applicable statute and infringement by defendant” is sufficient

1 to state a claim for copyright infringement. *Crispin v. Christian Audigier, Inc.*, 2010
2 WL 11508342, at *4 (C.D. Cal. 2010), quoting *Perfect 10, Inc.*, 167 F. Supp. 2d at
3 1120. Plaintiff thus need not “specifically identify each of the infringed works and
4 their protectable elements. *Jean Royere SAS v. Edition Mod.*, 2022 WL 20275667, at
5 *4 (C.D. Cal. 2022) (“the Court rejects Defendants argument that Plaintiffs
6 copyright claim fails because they did not specifically identify each of the infringed
7 works and their protectable elements.”). In cases like this, where there is a “wide
8 variation in number” of Infringing Works at issue, Rule 8 does not require a “highly
9 detailed pleading.” *Id.*, quoting *Etereo Spirits, LLC v. James R. Ling*, 2021 WL
10 3914256, at *6 (C.D. Cal. 2021).

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

19 *Perfect 10, Inc.* is instructive. There, the Court rejected the argument that the
20 plaintiff was required to identify the “hundreds, even thousands, of alleged
21 infringing” works at issue and found that plaintiff could avail himself of the liberal
22 pleading standards established by Rule 8. *Id.* at 1120 (plaintiff not required to “state,
23 in its complaint, every copyright relied on, every individual image in the magazines
24 that is being infringed, every image on specific web pages that does infringe, [and]
25 the dates of any infringement.”) Such an argument “misconstrues the burden
26 [plaintiff] faces in the pleadings stage. Copyright claims need not be pled with
27 particularity.” *Id.*, citing, e.g., *Mid America Title Co. v. Kirk*, 991 F.2d 417, 421 (7th
28

1 Cir.1993). Plaintiffs' SCAC easily meets this standard, particularly in light of the
2 massive number of Infringing Works and Defendants request to consolidate the
3 cases.

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

15 The SCAC is simply not a "shotgun pleading" because it does not
16 "overwhelm defendants with an unclear mass of allegations and make it difficult or
17 impossible for defendants to make informed responses to the plaintiff's
18 allegations[.]" *Sollberger v. Wachovia Sec., LLC*, 2010 WL 2674456 *4-*5 (CD.
19 Cal. 2010). To the extent the pleadings are "overwhelming" (they are not), that is
20 due to Defendants' request to consolidate a number of more manageable cases.

21 The cases relied on by Blass are distinguishable. In *Mason v. County of*
22 *Orange*, the court ordered the plaintiff to amend his complaint because the plaintiff
23 pled all claims against eleven defendants, regardless of whether the facts supported
24 such allegations. 251 F.R.D. 562, 563 (2008). Importantly, plaintiff incorporated
25 *conflicting* claims into the pleadings, and thus, the court held this "shotgun"
26 approach led to a seriously deficient and confusing complaint. *Id.* (emphasis added).
27 Similarly, in *Sollberger*, in the complaint, plaintiff "alleg[ed] in multiple places that

1 ‘Defendants Wachovia, Morgan Keegan, and Janney’ did certain things or ‘knew or
2 should have known’ certain information, without making any specific allegations
3 against Defendants [regarding the basis of their knowledge].” *Id.* at *5.

4 Here, there are no conflicting claims or theories presented. The claims against
5 Blass and each of the other Defendants are specifically pled and do not conflict.
6 Specifically, Exhibit A to the SCAC, identifies the claims against each Defendant
7 and does not lead to confusion. *See, E.g., Livewirecyber, Inc. v. Lee*, No. CV 17-
8 00645-AB (ASX), 2017 WL 4786087, at *4 (C.D. Cal. Aug. 3, 2017); *See also,*
9 *Savage v. Tweedy*, No. 3:12-CV-1317-HZ, 2012 WL 6618184, at *4–5 (D. Or. Dec.
10 13, 2012) (denying motion to dismiss based on “shotgun” pleadings where
11 allegations are not “overwhelming”).

12 **2. Plaintiffs’ sufficiently plead facts to support copyright infringement**
13 **against Blass**

14 To maintain a claim for copyright infringement, a plaintiff must show (1)
15 ownership of a valid copyright, and (2) copying of constituent elements of the work
16 that are original. *Feist Publ’ns, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 361
17 (1991). The first prong is not disputed by Blass. As to the second prong, the copying
18 may be established by demonstrating (a) that the defendant had access to plaintiff’s
19 copyrighted work and (b) that the works at issue are substantially similar in their
20 protected elements. *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir.
21 2002).

22 **i. Plaintiffs sufficiently plead access**

23 Blass argues Plaintiffs failed to sufficiently plead access regarding *Fish*
24 *Market, Dem Bow*⁸, and *Pounder*. But proof of access requires only the opportunity
25

26 ⁸ Although addressing access, Blass appears to contend Plaintiffs do not have
27 ownership over the *Dem Bow* composition because “they are not the authors of the
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1 to view or to copy plaintiff’s work. *Three Boys Music Corp. v. Bolton*, 212 F.3d 477,
 2 482 (9th Cir. 2000), *overruled on other grounds by Skidmore as Tr. for Randy Craig*
 3 *Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020). Where there is no direct
 4 evidence of access, circumstantial evidence can be used to prove access either by (1)
 5 establishing a chain of events linking the plaintiff’s work and the defendants, or (2)
 6 showing that the plaintiff’s work has been widely disseminated. *Art Attacks Ink, LLC*
 7 *v. MGA Enter. Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). A plaintiff must simply
 8 allege facts showing “more than a ‘bare possibility’” that defendant had access to the
 9 work. *Jason v. Fonda*, 526 F. Supp. 774, 775 (C.D. Cal. 1981), *aff’d*, 698 F.2d 966-
 10 67 (9th Cir. 1982).

11 Plaintiffs expressly plead that “Defendants had access to *Fish Market* because
 12 *Fish Market* was widely distributed throughout the world since 1989 on vinyl and
 13 CD. Defendants also had access to *Fish Market* through distribution of *Dem Bow* ...
 14 which was a worldwide hit within the global reggae dancehall scene...” See SCAC
 15 ¶1661. Such widespread dissemination confirms more than a chance of access. See,
 16 *Gray v. Perry*, 2018 WL 3954008, at *5 (C.D. Cal. Aug. 13, 2018)(widespread
 17 dissemination of “Joyful Noise” on websites suggested more than a bare possibility
 18 that defendants had the opportunity to hear the song). Just as in *Gray*, the success of
 19 Plaintiffs’ Subject Works show more than a mere possibility that Blass had access to
 20 the Subject Works. The Subject Works are so widely disseminated that an entire
 21 genre of music is named after it. And Blass’s Infringing Work falls within that
 22 genre. Further, given the ubiquity of ways to access media online, “from YouTube to
 23 subscription services like Netflix and Spotify, access may be established by a trivial
 24

25 _____
 26 sound recording.” Def. Mtn. pg. 20:12-14. This is belied by direct statements of
 27 ownership and creation in the SCAC, and authorship of the sound recording cannot
 28 preclude authorship or ownership of a composition. SCAC ¶181-182, 189.

1 showing that the work is available on demand.” *Skidmore*, 952 F.3d at 1068.

2 Plaintiffs have certainly met this trivial burden.

3 Access can also be inferred where the similarities between the two works are
4 so strikingly similar as to preclude the possibility of independent creation. *Bernal v.*
5 *Paradigm Talent & Literary Agency*, 788 F. Supp. 2d 1043, 1052 (C.D. Cal. 2010).

6 Such is the case here, where Plaintiffs allege access was “by way of striking
7 similarity, if not virtually identical” to Plaintiffs works, e.g., “sampling”. See SCAC
8 ¶ 667.

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

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

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

1 compositions, “[t]he extrinsic test requires analytical dissection of a work *and expert*
2 *testimony.*” *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)(proclaiming that resolving
8 substantial similarity “should be even more disfavored on a motion to dismiss” than
9 on motion for summary judgment); *Rentmeester*, 883 F.3d at 1127 (Owens, Cir. J.,
10 concurring in part, dissenting in part) (“[Substantial similarity] is an inherently
11 factual question which is often reserved for the jury, and rarely for a court to decide
12 at the motion to dismiss stage.”) (emphasis added); cf. *Smith v. AMC Networks, Inc.*,
13 2019 WL 402360, at *4–6 (C.D. Cal. 2019) (declining to apply extrinsic test at
14 pleading stage, finding “most prudent course of action is to follow Ninth Circuit
15 precedent and hold in abeyance the issue of substantial similarity until further factual
16 development of the record, including expert testimony”).

17 To reach this conclusion at the Rule 12(b)(6) or Rule 12(c) stage, (1) “[t]he
18 copyrighted and allegedly infringing works must be presented to the court, such that
19 the works are ‘capable of examination and comparison,’” and (2) the court must find
20 that the instant proceeding “is not a case in which discovery could shed light on any
21 issues that actually matter to the outcome” of the extrinsic test. *Rentmeester*, 883
22 F.3d at 1123; *see also Zindel*, 815 F. App’x at 158. This is especially so in cases

23
24 ⁹ Expert testimony is critical in cases like this, where specialized knowledge is
25 required to dissect the objective elements of a musical composition. *See Bernal*,
26 788 F. Supp. 2d at 1062–63 (“Unlike . . . a copyright case involving . . . music,
27 this case involves . . . subject matter readily understandable by any ordinary
28 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).

1 involving musical compositions. *See, e.g., Skidmore*, 952 F.3d at 1086 (“We are not
2 well situated to determine whether a musical passage is original [as a matter of
3 law].”); *Hall v. Swift*, 2021 WL 6104160, at *5 (C.D. Cal. 2021) (“[I]t is not proper
4 for this Court to resolve . . . what is essentially simply a battle of the experts.”).
5 Here, neither ground can be conclusively established at this stage due to the
6 complexity of the case, and the composition. Further, the Court cannot conduct this
7 type of analysis for each and every Infringing Work. Thus, it is an improper inquiry
8 at this stage in the litigation.

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

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

16 In the music context, challenges to a work’s originality should not be decided
17 at the pleading stage. *See, e.g., Nichols v. Club for Growth Action*, 235 F. Supp. 3d
18 289, 296–97 (D.D.C. 2017)(“Defendant’s arguments about originality are relevant to
19 determining whether the two works are substantially similar, which is not an
20 appropriate question on a motion to dismiss.”), citing *Prunte v. Universal Music*
21 *Group*, 484 F.Supp.2d 32, 41 (D.D.C. 2007)(“Substantial similarity is a question that
22 should be decided either by a factfinder at trial or, in some cases, in the context of a
23 motion for summary judgment, not on a motion to dismiss for failure to state a claim
24 under Rule 12(b)(6).”). If “[p]laintiffs adequately alleged that the lyrics and musical
25 composition are original[,]” that will suffice. *Id.* at 296. Such is the case here –
26 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,
 11 *Fish Market* contains, inter alia, a composite of interlocking components constructed
 12 and layered in tiers of instruments, timbres, and harmonic (bass) and rhythmic
 13 (drums and percussion) patterns repeated throughout essentially the song’s entirety:
 14 bass; kick drum, snare drum, a ‘tom’ drum, and hi-hats; and timbales (played in
 15 various distinctive syncopated rhythms) and tambourine (played in various
 16 distinctive sixteenth note and/or eighth note patterns). SCAC ¶¶ 180-89, 648.
 17 Specifically, *Fish Market* features a programmed kick, snare, and hi-hat playing a
 18 one bar pattern (hi-hat and kick drum playing together on beats one to four, while
 19 the snare drum plays on the fourth, seventh, twelfth and fifteenth sixteenth beats of
 20 the bar and ghost notes on the third and eleventh sixteenth notes of the bar);
 21 percussion instruments, including a tambourine playing through the entire bar
 22 (including a unique combination of sixteenth and eighth notes), a synthesized ‘tom’
 23

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

1 playing on beats one and three in concert with the bass, and timbales that play a
2 unique combination of sixteenth notes, a roll at the end of every second bar, and free
3 improvisation over the pattern for the duration of the song; and a synthesized Bb (b-
4 flat) bass note on beats one and three of each bar, which is played in conjunction
5 with the synthesized ‘tom’ pattern. This combination of elements—i.e., the drum,
6 percussion, and bass composite pattern of interwoven hi-hat, snare, kick, tom, bass,
7 tambourine, and timbale patterns—is original. *Id.* These elements are shown in the
8 transcription exemplar provided, *supra*, and are worthy of copyright protection.

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

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

21 Blass misconstrues the copied elements of the Subject Works as “*scenes a*
22 *faire*,” or “building blocks” that would entitle the Subject Works only to thin
23 protection. See *Oracle Am., Inc. v. Google Inc.*, 750 F.3d 1339, 1364 (Fed. Cir.
24 2014) (holding *scenes a faire* analysis should focus on the circumstances presented
25 to the creator, not the copier). Blass’s position that *scenes a faire* renders the work
26 unprotectable is misplaced because *scenes a faire* does not determine protectability
27 of the work. See *Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1082 (9th Cir. 2000)

1 (“we hold that [merger and *scenes a faire* doctrines] are defenses to infringement.”),
 2 citing *Kregos v. Associated Press*, 937 F.2d 700, 705 (2d Cir. 1991) (holding the
 3 merger doctrine relates to infringement, not copyrightability); *Fleener v. Trinity*
 4 *Broad. Network*, 203 F. Supp. 2d 1142, 1150 (C.D. Cal. 2001); See also 4
 5 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT §
 6 13.03[B][4] (Matthew Bender, Rev. Ed., 2013).

7 Because the application of *scenes a faire* is disputed by the parties, it would
 8 be error for the Court to grant the motion to dismiss because of *scenes a faire*
 9 without independent evidence. *Swirsky*, 376 F.3d at 850 (“It is inappropriate to grant
 10 summary judgment on the basis of *scenes a faire* without independent evidence,
 11 unless the allegation of *scenes a faire* is uncontested.”); *Williams v. Bridgeport*
 12 *Music, Inc.*, 2014 U.S. Dist. LEXIS 182240 (C.D. Cal. 2014) (same). See also,
 13 *Hayes v. Minaj*, 2013 WL 11328453, at *6 (C.D. Cal. 2013) (“summary judgment is
 14 not highly favored on the substantial similarity issue in copyright cases”).

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

20 Further, expert testimony¹¹ is nearly always necessary to determine which
 21 elements of a work are protectable and whether *scenes a faire* applies, and if so,
 22

23 ¹¹ Blass 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

1 whether such similarity establishes liability under the notions of thin protection. *See*
2 *Alfred v. Walt Disney Co.*, 821 F. App'x 727, 729 (9th Cir. 2020). Crucially here,
3 “[a]dditional evidence would also illuminate whether any similarities are mere
4 unprotectable [musical] tropes or *scènes à faire*.” *Smith v. Jackson*, 84 F.3d 1213,
5 1220 (9th Cir. 1996) (stating the district court properly relied on expert evidence to
6 determine that allegedly copied song elements were unprotected *scènes à faire*),
7 *overruled on other grounds by Skidmore*, 952 F.3d at 1066. At this stage, the court
8 cannot conclude what elements are protectable and of those elements, which, if any
9 are subject to *scenes a faire* limitation. *See Alfred*, 821 F. App'x at 729 (“expert
10 testimony ... would be particularly useful in this circumstance, where the works in
11 question are almost twenty years old and the blockbuster *Pirates of the Caribbean*
12 film franchise may itself have shaped what are now considered pirate-movie
13 tropes.”).

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

20 Plaintiffs have identified in the Complaint the exact combination of elements
21 that make Plaintiffs creation unique and distinctive from any sound created before
22 the Subject Works and Blass’s Infringing Works has copied those unique and
23 distinctive elements exactly. Taking such allegations as true, Plaintiffs have
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25 _____
26 determination sought by Blass. Cherry picked sound bites of secondary sources are
27 not sufficient to allow the court to evaluate the originality and protectability of the
28 copied portions of the Subject Works.

1 sufficiently stated a claim. Blass’s improperly introduced evidence to the contrary is
2 insufficient.

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

4 To sufficiently plead contributory infringement, a plaintiff need only plausibly
5 allege that the defendant (1) knows about a third party’s infringing activity, and (2)
6 induces, causes, or materially contributes to the infringing conduct. *Perfect 10, Inc.*
7 *v. Vias Int’l Serv. Ass’n*, 494 F.3d 788, 795 (9th Cir. 2007). Plaintiffs allege that
8 numerous Defendants have infringed Plaintiffs’ rights in *Fish Market*, *Pounder*, and
9 *Dem Bow* by, without limitation, exploiting the Infringing Works for profit by
10 licensing, or otherwise authorizing third parties to use, reproduce and/or perform the
11 Infringing Works for profit. SCAC ¶671 (listing names).

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

24 Blass ignores the SCAC’s Paragraph 671 and 673, in which Plaintiffs
25 specifically identify record label and publishing Defendants involved in the licensing
26 and authorization of third party distributors exploitation of the Infringing Works by
27 both physical and online sources such as Amazon.com, Walmart, Target, and

1 iTunes, as well as digital sources like Spotify, YouTube, and Apple Music. SCAC
2 ¶¶671, 673. This conduct was done in concert with and approval and knowledge of
3 Blass. SCAC ¶172. Further, Blass collaborated with other artists to create the
4 Infringing Works, and, in doing so, knowingly incorporated material elements from
5 the Subject Works and with knowledge that they did not have the requisite consent.
6 SCAC ¶671, 673.

7 As a contributor, it cannot reasonably be disputed that Blass was significantly
8 involved in the creation and overseeing of the Infringing Works and their sale,
9 distribution, licensing, and other forms of exploitation by third parties. Plaintiffs
10 were not in the studio with Blass and co-artists during the creation of the Infringing
11 Works, and cannot, without sufficient discovery, establish the extent of Blass's
12 knowledge or oversight. Plaintiffs have alleged facts sufficient to establish that Blass
13 knew about the infringement, and the ability to stop such infringement considering
14 his role as co-author, and his role in the distribution through third-parties.

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

17 Because Blass is subject to personal jurisdiction here, and because Blass has
18 not shown that transfer is necessary for the convenience of the parties, his Motion
19 should be denied. However, should this court disagree, Plaintiffs respectfully request
20 that it defer its ruling until Plaintiffs can conduct targeted jurisdictional discovery
21 into, over the last five years, the number of California residents streaming the
22 infringing music, the number of California residents attending Blass's performances,
23 the revenue derived from such streaming and attendance to performances from
24 California residents, advertisements directed at California, location of the production
25 and creation of the infringing works, and any other monetization of the relationship
26 between Blass and California residents.

27 ///

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 **9,964** words, which complies with the word limit of L.R. 11-6.

Dated: August 3, 2023

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