UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UMG RECORDINGS, INC.; CAPITOL RECORDS, LLC; WARNER BROS. RECORDS INC.; ATLANTIC RECORDING CORPORATION; ELEKTRA ENTERTAINMENT GROUP, INC.; FUELED BY RAMEN, LLC; NONESUCH RECORDS INC.; SONY MUSIC ENTERTAINMENT; SONY MUSIC ENTERTAINMENT US LATIN LLC; ARISTA RECORDS LLC; LAFACE RECORDS LLC; and ZOMBA RECORDING LLC, Plaintiffs, v. TOFIG KURBANOV d/b/a FLVTO.BIZ and 2CONV.COM; And DOES 1-10, Defendants.	**Case No.** **1:18-CV-00957-CMH-TCB**

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER TO THE CENTRAL DISTRICT OF CALIFORNIA

Introduction

In the present case, the Plaintiffs, a collection of twelve companies, none of which is located within Virginia, have brought suit against an individual defendant, a Russian citizen and resident, concerning two websites that are managed entirely and exclusively from Russia and that each receive more than 90% of their traffic from outside the United States. What is lacking entirely in the present action are any relevant, continuing, or substantial connections to Virginia or to the United States as a whole. Accordingly, pursuant to Fed. R. Civ. P. 12(b)(2), Defendant

Tofig Kurbanov (individually and d/b/a FLTVO.biz and 2CONV.com) ("Mr. Kurbanov") moves for the dismissal of Plaintiffs' Complaint. In the alternative, even if the Court were to find sufficient contacts with the United States as a whole, the case should either be dismissed for *forum non conveniens* or transferred to the Central District of California as the venue having at least *some* arguable connection to the witnesses and the evidence that will be at issue in the present case.

In support of the Motion, Mr. Kurbanov further states as follows.

Facts

A. Mr. Kurbanov and the Websites

Mr. Kurbanov was born in Rostov-on-Don in Russia. Declaration of Tofig Kurbanov ["Kurbanov Decl."], filed herewith, ¶ 2. He currently lives in Rostov-on-Don in Russia. *Id.* Mr. Kurbanov has *never* been to the United States of America (including the Commonwealth of Virginia). *Id.*, ¶ 3.

Mr. Kurbanov operates the websites flvto.biz and 2conv.com (the "Websites"). *Id.*, ¶ 4. The Websites allow visitors to save the audio tracks from online videos to their computers without necessarily saving the video content as well. *Id.*, ¶ 5. The functionality of the Websites is content neutral and there are substantial non-infringing reasons why users would utilize the Websites. *Id.*, ¶ 6. For example, professors or students might choose to download the audio portions of lectures for later reference and playback; bands may want to capture the audio tracks from their live performances that they have captured on video; parents may want the audio portion of a school concert that they recorded; or any other number of non-infringing uses. *Id.* And, although Plaintiffs' Complaint focuses solely on the Websites' ability to record audio tracks from the YouTube website, as the Websites themselves make clear, they can be used with

a variety of websites other than YouTube, located anywhere in the world, that stream video content. *Id.*, ¶ 7.

All of the work that Mr. Kurbanov has done on the Websites has been performed in Russia. *Id.*, ¶ 8. Needless to say, Mr. Kurbanov has never done any work for the Websites from within the United States (including Virginia). *Id.*, ¶¶ 9-10.

Mr. Kurbanov has never done business in Virginia or the United States nor has he ever solicited business in Virginia or the United States. *Id.*, ¶ 11. Mr. Kurbanov has never had employees in Virginia or the United States. *Id.*, ¶ 12. He has never held a bank account in Virginia or the United States. *Id.*, ¶ 13. He has never owned or leased real estate in Virginia or the United States. *Id.*, ¶ 14. He has never had a telephone number in Virginia or the United States. *Id.*, ¶ 15. He has never paid taxes in Virginia or the United States. *Id.*, ¶ 16.

Mr. Kurbanov has not engaged in any persistent course of conduct (or any conduct at all) in Virginia or the United States. *Id.*, ¶ 17. He has never derived revenue from services rendered in Virginia or the United States. *Id.*, ¶ 18. Mr. Kurbanov have never had an agent for the service of process Virginia or the United States. *Id.*, ¶ 19.

The Websites are not specifically targeted at Internet users in Virginia or the United States. *Id.*, ¶ 20. The Websites are not targeted to any particular country, but rather they are targeted at the entire world of eligible Internet users. *Id.* Indeed, the flvto.biz website is available in 23 different language, including Italian, Portuguese, Polish, Turkish, Japanese, Korean, Russian and Arabic. *Id.*, ¶ 21.

The Websites are free to use. Accordingly, no users make any payments (from the United States, from Virginia, or from anywhere else) for using the Websites or the services

available on the Websites. *Id.*, ¶ 22. Instead, virtually all revenue derived from the Websites comes from advertisements. *Id.*, ¶ 23.

Mr. Kurbanov does not sell the advertisements himself directly or interact with advertisers, but instead Mr. Kurbanov has agreements with advertising brokers. *Id.*, ¶¶ 24-25. Other than making space on the Websites available for the advertising brokers, Mr. Kurbanov plays no role in selecting the actual advertisements that appear on the Website – rather the broker uses the space as it sees fit to place its clients' advertisements. In other words, an advertiser buys (from the broker) the right to display whatever advertisements it chooses in the space provided on the Websites, as long as it complies with law and the broker's rules. *Id.*, ¶ 26.

Because Mr. Kurbanov plays no role in the selection of the ads, he does not target the residents of any given location through the use of advertisements: he does not direct the advertisements themselves and certainly does not himself take any steps to target the residents of either Virginia or the United States.[1] *Id.*, ¶ 27.

Similarly, Mr. Kurbanov plays no role whatsoever in so-called "interest-based targeting" of advertisements (advertising that changes based on a user's internet history).[2] *Id.*, ¶ 30. To the extent that such interest-based targeting takes place, it is done solely by the advertising brokers or advertisers themselves, not Mr. Kurbanov. *Id.* Additionally, the advertisements at issue are not advertising the Websites, but rather are advertisements promoting the products or services of

[1] It is possible for the advertisers themselves, working with the advertising broker, to aim advertisements to viewers in specific locations. This process is known as "geolocation" or "geo-targeting." To the extent that there is any geolocation or geo-targeting of advertisements appearing on the Websites, however, it is done by the advertisers and the advertising broker without any input from Mr. Kurbanov. Kurbanov Decl., ¶¶ 28-29.

[2] It is unclear how such targeting is, in any event, relevant to questions of jurisdiction. Nevertheless, to the extent that such targeting has relevance, it is not done by Mr. Kurbanov. Kurbanov Decl., ¶ 30.

the advertisers themselves. *Id.*, ¶ 31. In other words, Mr. Kurbanov is not advertising the Websites into Virginia or the United States by virtue of the advertisements referenced in Plaintiffs' Complaint. *Id.*, ¶ 32. In fact, the Websites are not advertised at all – whether within the United States or elsewhere. *Id.*, ¶ 33.

The Websites have visitors from over 200 distinct countries around the world. *Id.*, ¶ 34. For the 2conv.com website, only 5.87% of the users of the website are from the United States and the website gets more users from Italy (8.89%), Brazil (9.78%), and Mexico (8.83%). *Id.*, ¶ 36. This means that *over 94% of the users of the 2conv.com website come from outside the United States*. With respect to the flvto.biz website, only 9.92% of the users of the website are from the United States and the website gets more visitors from Turkey (11.21%) and Brazil (10.19%). *Id.*, ¶ 39. This means that *over 90% of the users of the flvto.biz website come from outside the United States*.

When comparing the number of users from the various states in the United States, only 1.75% of 2conv.com and 1.70% of flvto.biz users from the United States come from Virginia, making it the 11th and 13th state in terms of users, respectively. Both of the Websites get far more users from California than they do from any other state, with 11.26% of 2conv.com and 10.65% of flvto.biz users from the United States coming from California. *Id.*, ¶¶ 37, 40.

Users of the Websites do not need to create an account, register, or sign in to use the services of the Websites. *Id.*, ¶ 41.

As of the date of the filing of the Complaint in this matter, the Websites were not (and currently they are not) hosted in Virginia or the United States. *Id.*, ¶ 42. Instead, the servers hosting the Websites are based in Germany and are hosted through the hosting provider Hetzner Online GmbH, which Mr. Kurbanov understands to be organized in Germany. *Id.*, ¶ 42.

It would be extremely burdensome and costly for Mr. Kurbanov to travel to Virginia (or anywhere else in the United States) for trial and other proceedings in this case. *Id.*, ¶ 45. Having never travelled to the United States, Mr. Kurbanov has never applied for or obtained a United States Visa. *Id.*, ¶ 46. According to the United States Embassies and Consulates in Russia, however:

> Visa operations across Russia were reduced following drastic cuts to our personnel by the Russian Federation in 2017 and the closure of U.S. Consulate St. Petersburg by the Russian Federation in March, 2018. Fewer people inevitably mean fewer staff to provide visa services.

See https://ru.usembassy.gov/visas/, last accessed September 29, 2018. The Embassies and Consulates warned that, although "Applicants may schedule interviews in Moscow, Yekaterinburg, or Vladivostok ... wait times are long." *Id.* According to Google Maps, it is a 12-hour drive from Rostov-on-Don to Moscow, as 28-hour drive to Yekaterinburg, and nearly a 12-hour flight to Vladivostok.

B. Plaintiffs

None of the Plaintiffs have their principal place of business in Virginia. Complaint, D.E. 1, ¶¶ 14-25. According to the Complaint, three of the Plaintiffs (UMG Recordings, Inc., Capitol Records, LLC and Warner Bros. Records Inc.) have their principal places of business in the Los Angeles, California area – representing 43% of the works in suit. Declaration of Frank Scardino ["Scardino Decl."], filed herewith, ¶¶ 5, 8, 11. One Plaintiff (Sony Music Entertainment US Latin LLC) has its principal place of business in Florida, and eight have their principal places of business in New York (Atlantic Recording Corporation, Elektra Entertainment Group Inc., Fueled by Ramen LLC, Nonesuch Records Inc., Sony Music Entertainment, Arista Records LLC, LaFace Records LLC and Zomba Recording LLC). Three of the New York based Plaintiffs also have offices in the Los Angeles, California area (Atlantic Recording Corporation,

Elektra Entertainment Group Inc., and Sony Music Entertainment), representing another 44% of the works in suit. Scardino Decl., filed herewith, ¶¶ 13, 14, 16, 17, 23, 24.

All of the Plaintiffs are at home in the federal district courts of California: UMG Recordings, Inc. has been the plaintiff in 980 cases in the federal courts of California; Capitol Records, LLC – 605 cases; Warner Bros. Records Inc. – 330 cases; Atlantic Recording Corporation – 348 cases; Elektra Entertainment Group, Inc. – 398 cases; Fueled by Ramen, LLC and Nonesuch Records, Inc. – 2 cases each; Sony Music Entertainment – 156 cases; Sony Music Entertainment US Latin LLC – 3 cases; Arista Records LLC – 687 cases; LaFace Records LLC – 29 cases; and Zomba Recording LLC – 79 cases. Scardino Decl., ¶¶ 2, 6, 9, 12, 15, 18, 20, 22, 25, 27, 29, 31.

C. YouTube

YouTube, which would clearly be a witness and have relevant discovery to provide as a non-party, is headquartered in San Bruno, California. Declaration of Matthew Shayefar ["Shayefar Decl."], filed herewith, ¶ 23. The YouTube.com website is the second most popular website in the world. *Id.*, ¶¶ 3, 15. Less than 17% of YouTube's visitors come from the United States. *Id.*, ¶¶ 13, 16. In the countries where the Websites are most popular, YouTube is among the top three most popular websites. *See* Kurbanov Decl., ¶¶ 36, 39; Shayefar Decl., ¶¶ 4-11 (YouTube is 3rd most popular website in Italy, 3rd most popular website in Brazil, 3rd most popular website in Mexico, 2nd most popular website in Turkey, and 3rd most popular website in France).

A significant portion of YouTube's visitors come from India, Japan, Russia, China, Brazil and the United Kingdom. *Id.*, ¶¶ 13, 16. Among the top three websites that refer traffic to

YouTube are two websites from Turkey and Russia. *Id.*, ¶ 17. The second most common search term that leads users to YouTube is "ютуб," which is Russian for "YouTube." *Id.*, ¶ 18.

YouTube claims it has over a billion users, with almost one-third of all people on the internet using the website – far more than the entire population of the United States. *Id.*, ¶ 19 and Exhibit 15 thereto. YouTube has local versions in more than 88 countries and is available in 76 different languages, making it available to 95% of the Internet's population. *Id.*

YouTube is such an international phenomenon that it exists on a data network that spans the entire globe, with major data centers in every population center across the world and new ones opening regularly. *Id.*, ¶¶ 21-22. Google, of which YouTube is a part, maintains offices around the world, with six offices in Latin America, 24 in Europe, 17 in the Asian Pacific and 5 in Africa and the Middle East. *Id.*, ¶¶ 20, 24. In the United States, Google has more offices in California (8) than it has in any other state. *Id.*, ¶ 23. Google has only one office in Virginia. *Id.* Most of Alphabet's revenues (the parent company of Google and YouTube) come from outside of the United States. *Id.*, ¶ 25.

Argument

I. Legal Standard Under Rule 12(b)(2)

"Under Rule 12(b)(2), a defendant must affirmatively raise a personal jurisdiction challenge, but the plaintiff bears the burden of demonstrating personal jurisdiction at every stage following such a challenge." *Grayson v. Anderson*, 816 F.3d 262, 267 (4th Cir. 2016). If the Court provides the parties with "a fair opportunity to present both the relevant jurisdictional evidence and their legal arguments," then it is the plaintiff's burden to prove the existence of facts to support personal jurisdiction "by a preponderance of the evidence...." *Id.*, at 268. The Fourth Circuit has made clear that an evidentiary hearing with witnesses is not required for the

"preponderance of the evidence" standard to apply – instead, it is sufficient for the Court to consider evidence such as affidavits and exhibits. *Id.*, at 269 ("[W]e see no reason to impose on a district court the hard and fast rule that it must automatically assemble attorneys and witnesses when doing so would ultimately serve no meaningful purpose. Creating such needless inefficiency would undermine a principal purpose of the Federal Rules of Civil Procedure 'to secure the just, speedy, and inexpensive determination of every action and proceeding.'").

II. The Complaint Must Be Dismissed as the Court Lacks Personal Jurisdiction Over Defendant Tofig Kurbanov, a Russian Resident and Citizen.

Although a determination of personal jurisdiction under a state's long-arm statute is often viewed as a two-step process – consideration of whether the state statute authorizes an exercise of jurisdiction, followed by a constitutional due process analysis – where, as here, the state's long-arm statute extends to the limits of the United States Constitution's Due Process Clause, the two inquiries merge into one. *See*, *e.g.*, *Consulting Eng'rs Corp. v. Geometric Ltd*., 561 F.3d 273, 277 (4th Cir. 2009) ("Because Virginia's long-arm statute is intended to extend personal jurisdiction to the extent permissible under the due process clause, the statutory inquiry merges with the constitutional inquiry."); *KMLLC Media, LLC v. Telemetry, Inc.*, 2015 U.S. Dist. LEXIS 145764, at *7-8 (E.D. Va. Oct. 27, 2015) ("In Virginia, '[i]t is manifest that the purpose of Virginia's long arm statute is to assert jurisdiction over nonresidents who engage in some purposeful activity in this State to the extent permissible under the due process clause.' ... Because Virginia's long arm statute is intended to extend personal jurisdiction to the outer limits of due process, the constitutional and statutory inquiries merge." (citations omitted)).

And, under Fed. R. Civ. P. 4(k)(2), the Court conducts the same constitutional analysis, only applied to the entire country as opposed to a single state. *See*, *e.g.*, *Base Metal Trading v. Ojsc Novokuznetsky Aluminum Factory*, 283 F.3d 208, 215 (4th Cir. 2002) ("Rule 4(k)(2) allows

a federal court to assert jurisdiction in cases 'arising under federal law' when the defendant is not subject to personal jurisdiction in any state court, but has contacts with the United States as a whole.").

"To satisfy the constitutional due process requirement, a defendant must have sufficient 'minimum contacts' with the forum state such that 'the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Consulting Eng'rs Corp.*, 561 F.3d at 277 (quoting *Int'l Shoe Co. v. Wash*., 326 U.S. 310, 316 (1945)). "The minimum contacts test requires the plaintiff to show that the defendant 'purposefully directed his activities at the residents of the forum' and that the plaintiff's cause of action 'arise[s] out of' those activities." *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). "This test is designed to ensure that the defendant is not 'haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.' ... It protects a defendant from having to defend himself in a forum where he should not have anticipated being sued." *Id.* (citations omitted).

The United States Supreme Court has recently reaffirmed that the due process inquiry must focus "'on the relationship among the defendant, the forum, and the litigation.'" *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)). As the *Walden* court explained:

> For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State. Two related aspects of this necessary relationship are relevant in this case.
>
> First, the relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State.... We have consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State....
>
> Second, our 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there.

Id. at 284-85.

Additionally, in conducting its analysis, the Court is not concerned with the defendant's non-suit contacts with the forum. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017) ("In order for a court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State. ... When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." (citations and internal quotation marks omitted)).

The Fourth Circuit has "synthesized the due process requirements for asserting specific personal jurisdiction in a three part test in which 'we consider (1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.'" *Consulting Eng'rs Corp.*, 561 F.3d at 277 (quoting *ALS Scan, Inc. v. Digital Serv. Consultants, Inc*., 293 F.3d 707, 712 (4th Cir. 2002)).

A. Purposeful Availment

In reviewing the applicable cases, the Fourth Circuit articulated a series of nonexclusive factors to be considered in determining whether a defendant has engaged in purposeful availment including: "whether the defendant maintains offices or agents in the forum state ... whether the defendant owns property in the forum state ... whether the defendant reached into the forum state to solicit or initiate business ... whether the defendant deliberately engaged in significant or long-term business activities in the forum state ... whether the parties contractually agreed that the law of the forum state would govern disputes ... whether the defendant made in-person contact with the resident of the forum in the forum state regarding the business relationship ... the nature,

quality and extent of the parties' communications about the business being transacted ... and whether the performance of contractual duties was to occur within the forum." *Consulting Eng'rs Corp.*, 561 F.3d at 278 (multiple citations omitted).

In the present case, none of the articulated factors are met: Mr. Kurbanov has no offices or agents in Virginia or the United States; has never solicited or initiated business in Virginia or the United States; has no significant or long-term business activities in Virginia or the United States; there is no contract between Mr. Kurbanov and Plaintiffs selecting Virginia or United States law (indeed, there is no contract at all between the parties); Mr. Kurbanov has made no in-person contact with residents of Virginia or the United States regarding a business relationship; the parties have never communicated with one another; and there were no contractual duties to be performed within Virginia or the United States. Quite to the contrary, any actions taken by Mr. Kurbanov were taken wholly and entirely within Russia, where Mr. Kurbanov resides.

Plaintiffs cite to only four facts in an attempt to prove jurisdiction in Virginia or the United States: (1) that, at some point in time, the Websites utilized servers in Virginia; (2) that the Websites display advertisements (for other businesses) that utilize geolocation and/or interest-based targeting; (3) that Mr. Kurbanov operates websites that are accessible within Virginia and the United States; and (4) that YouTube is located within the United States. Complaint, ¶¶ 7, 11, 12. None of these facts supports a finding of jurisdiction over Mr. Kurbanov.

1. *The Utilization of Servers That Happen to be Located in Virginia Does Not Demonstrate Purposeful Availment*.

First, with respect to the allegation concerning servers, it should be noted that, as of the date that the Complaint was filed, the Websites did not utilize any servers located in Virginia, though it is likely that they did so in the past, given that the Websites previously utilized Amazon

Web Services ("AWS") for hosting and AWS does have servers in Virginia, among other places. Kurbanov Decl., ¶¶ 42-44. The agreement the Websites previously had with Amazon was entered into from Russia. *Id.*, ¶ 43. In July of 2018, the Websites switched their servers to Hetzner Online GmbH, which is located in Germany. *Id.*, ¶ 44. Personal jurisdiction is generally determined by the state of affairs as they existed on the day the Complaint was filed.

Even if this were not the case, the Fourth Circuit has specifically "described as 'de minimis' the level of contact created by the connection between an out-of-state defendant and a web server located within a forum." *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir. 2003) (citing *Christian Science Bd. Of Directors v. Nolan*, 259 F.3d 209, 217 (4th Cir. 2001)). Other Courts have held similarly. *See*, *e.g.*, *Zaletel v. Prisma Labs, Inc*., 226 F. Supp. 3d 599, 610 (E.D. Va. 2016) ("[I]t is pellucid that defendant's servers do not target Virginia, because the users who initiate contact with the server unilaterally control the location where the server's response will wind up. In this respect, defendant's activity is purposefully directed at the individual user, regardless of where that user is. Thus, defendant's (and its server's) contact with Virginia—as opposed to any other State—is entirely fortuitous and did not 'arise out of contacts that the defendant [itself] create[d] with the forum State.'"); *FireClean, LLC v. Tuohy*, 2016 U.S. Dist. LEXIS 96294 at *19-20 (E.D. Va. 2016) (finding the fact that defendant's blog was transmitted through servers in Virginia to be *de minimis* for purposes of personal jurisdiction analysis); *GreatFence.com, Inc. v. Bailey*, 726 F. App'x 260, 261 (5th Cir. 2018) ("The crux of GreatFence's argument is that the district court had specific personal jurisdiction over AGF because AGF maintained a relationship with HostGator, a Texas web-hosting company. We reject this argument. At least one circuit has held that 'the level of contact created by the connection between an out-of-state defendant and a web server located

within a forum" is 'de minimis.' ... According to the Fourth Circuit, it 'is unreasonable to expect that, merely by utilizing servers owned by a [Texas]-based company, [AGF] should have foreseen that it could be haled into a [Texas] court and held to account for the contents of its website.' ... This is particularly true where, as here, the 'administration, maintenance, and upkeep of [AGF's] website had occurred in a state other than [Texas].'" (quoting *Carefirst of Md., Inc.*, 334 F.3d at 402 and *Christian Sci*, 259 F.3d at 217 n.9); *Amberson Holdings LLC v. Westside Story Newspaper, Inc.*, 110 F. Supp. 2d 332, 336 (D.N.J. 2000) ("Plaintiffs argue, however, that defendants' use of a New Jersey server adds additional credence to a finding of minimum contacts. However, access to a website reflects nothing more than a telephone call by a district resident to the defendant's computer servers.... This court, therefore, refuses to hold that inter-computer transfers of information, which are analogous to forwarding calls to a desired phone number through a switchboard, should somehow establish sufficient contacts that would subject a defendant to personal jurisdiction. The contacts are *de minimis*, and to uphold jurisdiction on this basis would defy common reason.").

The same result should obtain here. Although the Websites may have – for a time – been hosted on third-party servers in Virginia, they were never managed, administered, or maintained in Virginia or the United States. To the contrary, the Websites were, at all times, managed, maintained, and administered exclusively out of Russia. As such, the mere presence of servers within Virginia is not a sufficient basis for the exercise of personal jurisdiction in Virginia or the United States as a whole.

2. *Advertising Appearing on the Websites is Not a Basis for Jurisdiction.*

Preliminarily, it is important to note that the Websites do not themselves advertise in Virginia, the United States, or anywhere else, nor do Plaintiffs allege to the contrary. Instead,

Plaintiffs point to the fact that third-party advertisements appear on the Websites (which advertisements could be seen by visitors from Virginia or the United States). Additionally, some of the advertisements can be "geo-targeted," meaning that the advertisement a visitor to the Websites views may be tailored to that visitor's physical location. None of this, however, is done by Mr. Kurbanov or the Websites. Instead, the Websites have entered into agreements with advertising brokers whereby the broker buys the right to post its clients' ads on spaces on the Websites. The brokers – and not Mr. Kurbanov – then determine what ads are shown, whether they are geo-targeted, whether they are "interest-targeted," and how often they are shown.

In short, the third-party advertisements are wholly irrelevant to the question of whether Mr. Kurbanov purposefully aimed his conduct at Virginia (or the United States). The Websites are not advertising their own services and, in the end, Mr. Kurbanov plays no role in what advertisements actually appear on the Websites. As such, the advertising is irrelevant to the personal jurisdiction analysis.

3. *Maintenance of Websites Equally Accessible Throughout the World*.

This Court has held previously that the mere act of maintaining a website and providing an electronic application that is equally accessible anywhere in the world is insufficient to demonstrate express aiming – even where the services at issue are much more widely utilized within the forum than those at issue here. For example, in *Intercarrier Communications, LLC v. WhatsApp, Inc.*, 2013 U.S. Dist. LEXIS 131318 (E.D. Va. 2013), the Court addressed the issue of personal jurisdiction over the immensely popular messaging app, WhatsApp, which the court noted ranked "in the top five of the world's best-selling apps with an estimated 200-300 million users." *Id.*, at *12-13. While acknowledging that "some users of WhatsApp's product do so in

Virginia, and undoubtedly ordered the product in Virginia," the Court found this to be irrelevant to the purposeful availment analysis:

> Under ICC's theory, however, every district in the United States has jurisdiction over WhatsApp, because it has consciously chosen to conduct business in every single forum in which a user sends a message with the WhatsApp Messenger. The WhatsApp Messenger ranks in the top five of the world's best-selling apps with an estimated 200-300 million users. This Court does not agree with ICC's argument that a company "consciously" or "deliberately" targets a forum if a user unilaterally downloads or uses its software within that forum, nor does ICC cite any authority supporting its broad interpretation of specific jurisdiction.

Id.

As is the case here, the *WhatsApp* case involved parties that were all strangers to the forum, a fact that the Court found key to its analysis:

> This patent dispute is between Texas and California companies.... Although some Virginia residents presumably use the popular WhatsApp Messenger, no evidence exists to show that Virginia residents use this software proportionately more than residents of any other state. Accordingly, "[t]his Court cannot stand as a willing repository for cases which have no real nexus to [the Eastern District of Virginia]."

Id. at *17 (quoting *Cognitronics Imaging Sys., Inc. v. Recognition Research Inc.*, 83 F.Supp.2d 689, 699 (E.D. Va. 2000)).

This Court's opinion in *Zaletel v. Prisma Labs, Inc.*, 226 F. Supp 3d 599 (E.D. Va. 2016), is also particularly instructive. There, the plaintiff brought a trademark infringement claim against the defendant that had created a wildly popular app that allowed users to apply artistic filters to photographs. Within the first six months of the app's release, it had "been downloaded approximately 70 million times." *Id.*, at 604. In summarizing the plaintiff's jurisdictional arguments, the Court stated:

> Distilled to its essence, plaintiff's argument for jurisdiction is (i) that defendant distributes its Prisma app to Virginia users via downloads through Apple and Google's online app stores; (ii) that defendant distributes its Prisma app through defendant's website, http://prisma-ai.com, which links individuals directly to the Apple and Google stores; and (iii) that defendant processes images on servers

> outside of Virginia and sends the processed images (via defendant's Prisma app) to a Virginia user's device.

Id., at 608.

Nevertheless, the Court rejected personal jurisdiction, citing to the Fourth Circuit's holding in *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 714-15 (4th Cir. 2002): "under this standard, a person who simply places information on the Internet does not subject himself to jurisdiction in each state where the electronic signal is transmitted and received." *Id. See*, *also*, *Pathfinder Software, LLC v. Core Cashless, LLC*, 127 F. Supp. 3d 531, 542-43 (M.D.N.C. 2015) ("Applying the Fourth Circuit's framework, the Court concludes that Core Cashless' semi-interactive website does not subject it to personal jurisdiction in North Carolina. Nothing about the website suggests that Core Cashless has specifically directed electronic activity toward North Carolina with any manifested intent of engaging in business or other interactions in the state. Pathfinder, to support its argument that Core Cashless' website is directed to residents of North Carolina, explains that '[w]hen a North Carolinian responds to the advertising' on the website, a Core Cashless representative follows up and attempts to make a sale.... This is true, however, not just for residents of North Carolina but for individuals worldwide.").

Numerous other courts have similarly held that the maintenance of a website is relevant to specific jurisdiction only where the site is expressly aimed at the forum, which requires the plaintiff to prove that such acts "are performed for the very purpose of having their consequences felt in the forum state." *Dakota Indus., Inc. v. Dakota Sportswear, Inc.,* 946 F.2d 1384, 1390-91 (8th Cir. 1991) (quoting *Brainerd v. Governors of Univ. of Alberta*, 873 F.2d 1257, 1260 (9th Cir. 1989)). *See*, *e.g.*, *Fraserside IP L.L.C. v. Hammy Media, LTD*, 2012 U.S. Dist. LEXIS 5359, *24-25 (N.D. Iowa Jan. 17, 2012) ("Although I accept as true Fraserside's allegations that

xHamster intentionally infringed Fraserside's registered copyrights and trademarks, these allegations, alone, fail to demonstrate that xHamster 'uniquely or expressly aimed' its tortious acts at Iowa.... Although xHamster's website is both commercial and interactive, as an Iowa district court noted in a case presenting similar facts, such a website 'is arguably no more directed at Iowa than at Uzbekistan.'"); *be2 LLC v. Ivanov*, 642 F.3d 555, 558 (7th Cir. 2011) ("If the defendant merely operates a website, even a 'highly interactive' website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution."); *Toys "R" Us, Inc. V. Step Two, S.A.*, 318 F.3d 446, 452-54 (3d Cir. 2003) ("[T]he mere operation of a commercially interactive web site should not subject the operator to jurisdiction.... Rather, there must be evidence that the defendant 'purposefully availed' itself of conducting activity in the [jurisdiction]."); *Johnson v. Arden*, 614 F.3d 785, 797-98 (8th Cir. 2010) ("[T]he Johnsons have failed to prove that www.BoutiqueKittens.com is uniquely or expressly aimed at Missouri; thus *Calder* provides no support for their Lanham Act claim."); *Instabook Corp. v. Instapublisher.com*, 469 F. Supp. 2d 1120, 1127 (S.D. Fla. 2006) (finding insufficient contacts in a patent infringement case since, among other reasons, "Defendant could not reasonably anticipate being haled into court in Florida based on its operation of interactive websites accessible in Florida and its sales to two Florida residents" in the absence of "targeting or solicitation of Florida residents"); *ESAB Group, Inc. v. Centricut, L.L.C.*, 34 F. Supp. 2d 323, 331 (D.S.C. 1999) ("While it is true that anyone, anywhere could access Centricut's home page, including someone in South Carolina, it cannot be inferred from this fact alone that Centricut deliberately directed its efforts toward South Carolina residents."); *Liberty Media Holdings, LLC v. Letyagin, et al.*, 2011 WL 13217328 at *4 (S.D. Fla. Dec. 14, 2011) ("Precedent, however, establishes that maintaining a website accessible

to users in a jurisdiction does not subject a defendant to be sued there: those users must be directly targeted, such that the defendant can foresee having to defend a lawsuit....” (and cases cited therein)).

4. *The Location of YouTube*.

Plaintiffs attempt to make much of the fact that the Websites talk about the ability of users to save the audio tracks from videos that appear at the YouTube website. Their argument, apparently, is that, since YouTube is headquartered in California, the Websites are somehow aimed at the United States. The argument is an absurdity.

Putting aside the fact that the Websites also clearly indicate that the same service applies to many other video streaming sites on the Internet and putting aside the fact that the YouTube website hosts literally *billions* of videos from around the world over which Plaintiffs have no copyright interests, the fact that YouTube is headquartered in the United States does not mean that a service that allows a user to save the audio files from YouTube videos is somehow itself aimed at the United States.

YouTube is hardly a website for the United States and directing one’s efforts towards YouTube (to the extent that the Websites even do so) does not indicate an intention to direct one’s efforts towards the United States. YouTube is the second most popular website in the world. Shayefar Decl., ¶¶ 3, 15. In the countries where the Websites are most popular, YouTube is among the top three most popular websites. YouTube is 3rd most popular website in Italy, 3rd most popular website in Brazil, 3rd most popular website in Mexico, 2nd most popular website in Turkey, and 3rd most popular website in France. Shayefar Decl., ¶¶ 4-12. There is in fact hardly a place on Earth where YouTube is not among the most popular websites. Indeed, fewer than 17% of visitors to YouTube come from the United States. *Id.*, ¶¶ 13, 16. YouTube has

local versions in more than 88 countries and is available in 76 different languages, making it available to 95% of the Internet's population. *Id.*, ¶ 19.

In short, operating a service that allows individuals to save audio files from YouTube and other video streaming websites – websites that are the most popular websites across the entire world – can hardly be said to be specifically aimed at either Virginia or the United States.

B. The Claims do not Arise Out of Activities Directed at the Forum

Given that Mr. Kurbanov has not aimed any of his activities at Virginia or the United States, as discussed in detail above, Plaintiffs' claims cannot have arisen out of such actions.

C. The Exercise of Jurisdiction Would Not Be Reasonable

In determining if an exercise of personal jurisdiction is constitutionally reasonable, the Fourth Circuit has dictated the consideration of five factors: (1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies. *Consulting Eng'rs Corp,* 561 F.3d at 277-79 (citations omitted).

1. *Burden on the Defendant* – Mr. Kurbanov is a citizen of Russia who has never visited the United States and does not hold a United States Visa. As noted, above, the United States Embassies and Consulates has indicated that there are extended wait times to obtain a United States Visa as a result of the closing of a number of consulates within Russia. Defending a lawsuit in the United States – where he has no connections whatsoever – would present a great burden to Mr. Kurbanov.

2. *The Interest of the Forum State* – If the forum state is considered to be Virginia, then the state has no interest in the present litigation whatsoever. None of the parties to

the litigation are from Virginia and no actions underlying Plaintiffs' claims occurred in Virginia. And, although the United States certainly has an interest in protecting the interests of copyright holders, it is generally recognized that those interest end at the water's edge. *See*, *e.g.*, *Tire Eng'g & Distribution, Ltd. Liab. Co. v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 306 (4th Cir. 2012) ("As a general matter, the Copyright Act is considered to have no extraterritorial reach."); *Nintendo of Am., Inc. v. Aeropower Co.*, 34 F.3d 246, 249 n.5 (4th Cir. 1994) ("[T]he Copyright Act is generally considered to have no extraterritorial application."). *See*, *also*, *Palmer v. Braun*, 376 F.3d 1254, 1258 (11th Cir. 2004) ("Federal copyright law has no extraterritorial effect, and cannot be invoked to secure relief for acts of infringement occurring outside the United States.... Thus, it is only where an infringing act occurs in the United States that the infringement is actionable under the federal Copyright Act, giving the federal courts jurisdiction over the action." (citing *Subafilms, Ltd. v. MGM-Pathe Communications*, 24 F.3d 1088, 1091 (9th Cir. 1994) (en banc))); *Foreign Imported Prods. & Publ., Inc. v. Grupo Indus. Hotelero, S.A.*, 2008 U.S. Dist. LEXIS 108705 (S.D. Fla. Oct. 24, 2008) ("Federal copyright law has no extraterritorial effect, and therefore it is only where an infringing act occurs in the United States that the infringement is actionable under the federal Copyright Act, giving the federal courts jurisdiction over the action.... Stated another way, district courts do not have subject matter jurisdiction over infringing acts that took place 'wholly outside' the United States or 'entirely overseas.'"). Accordingly, this factor does not support an exercise of jurisdiction.

3. *Plaintiffs' Interests in Convenient and Effective Relief* – Plaintiffs would undoubtedly face their own burdens in having to litigate their claims against Mr. Kurbanov in Russia. Nevertheless, Russian law provides for the protection of copyright interests. *See*, *e.g*, International Comparative Legal Guides – Copyright 2018 | Russia, available at

https://iclg.com/practice-areas/copyright-laws-and-regulations/russia#chaptercontent5. And, as the Fourth Circuit has held, the burdens on an alien defendant must be given enhanced consideration even if a denial of personal jurisdiction would present the plaintiffs with their own burdens. *See*, *e.g.*, *Ellicott Mach. Corp. v. John Holland Party, Ltd.*, 995 F.2d 474, 480 (4th Cir. 1993).

4. *The Final Factors* – To the extent that the final factors are applicable, they weigh in favor of a denial of personal jurisdiction given the important sovereignty concerns at play. *Ellicot Mach Corp.*, 995 F.2d at 480 ("Continuing in the *World-Wide Volkswagen* analysis, we perceive that the issues here implicate fundamental substantive social policies affecting international trade, business, and sovereignty concerns. The involvement of these policies weighs against the reasonableness of jurisdiction in Maryland.... In our view, the total picture implicates the concerns expressed in *Asahi* for constraint in the exercise of personal jurisdiction in an international context."). *See*, *also*, *Sinatra v. National Enquirer*, 854 F.2d 1191, 1199 (9th Cir. 1988) ("a higher jurisdictional barrier" exists where, as here, the defendants are aliens as opposed to simply citizens from different states "because important sovereignty concerns exist.").

Accordingly, an exercise of personal jurisdiction over Mr. Kurbanov would not be reasonable.

III. In the Alternative, the Case Should be Transferred to the Central District of California.

Although, as discussed above, Mr. Kurbanov does not believe that personal jurisdiction can be exercised over him in either Virginia or the United States as a whole consistent with the Due Process requirements of the Constitution, if the Court were to find that an exercise of such

jurisdiction were permissible under either Virginia's long-arm statute or under Rule 4(k)(2), the Court should nevertheless transfer the matter to the Central District of California.

A. Transfer is Proper Under Rule 4(K)(2)

First, under Rule 4(k)(2), Plaintiffs were required to "demonstrate that [Defendant] is not subject to personal jurisdiction in any state...." *Base Metal Trading v. Ojsc Novokuznetsky Aluminum Factory*, 283 F.3d 208, 215 (4th Cir. 2002). And, although the Fourth Circuit allows parties to "present inconsistent alternate positions in a case," a plaintiff arguing that a foreign defendant is subject to either the jurisdiction of the forum state or of the United States in general must still attempt to "argue that [Defendant] is not subject to personal jurisdiction in any state." *Id.* Even if Plaintiffs *had* alleged that there was no other state in which jurisdiction could be asserted over Mr. Kurbanov, some circuits have held that a Defendant may defeat the Plaintiffs' forum selection simply by naming another state where (in the alternative) it would be amenable to an exercise of personal jurisdiction. *See*, *e.g.*, *ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 552 (7th Cir. 2001) ("A defendant who wants to preclude use of Rule 4(k)(2) has only to name some other state in which the suit could proceed.").

This Court, however, has taken a somewhat more balanced approach – weighing the Plaintiff's original selection of forum against the Defendant's proposed alternative forum, utilizing a five-factor test designed to avoid "giving either party carte blanche to forum shop," allowing "defendants to maintain a principled argument against personal jurisdiction while still submitting to jurisdiction in the transferor and transferee forum, and provid[ing] plaintiffs the initial choice of forum." *Orbital Austl. PTY Ltd. v. Daimler AG*, 2015 U.S. Dist. LEXIS 86631 at *14 (E.D. Va. July 1, 2015).

In the present case, an application of the five-factor test favors transfer of the present action to the Central District of California.

1. *Plaintiff's Choice of Forum* – Although a plaintiff's choice of forum is often given a certain amount of deference, that is not the case where the plaintiff is not itself a resident of the forum. *Orbital Austl. PTY Ltd.*, *supra* at *14. *See*, *also*, *Lycos, Inc. v. TiVo, Inc.*, 499 F. Supp. 2d 685, 692 (E.D. Va. 2007) ("However, the plaintiff's choice of forum is not entitled to substantial weight if the chosen forum is not the plaintiff's 'home forum,' and the cause of action bears little or no relation to the chosen forum." (citing *Telepharmacy Solutions, Inc. v. Pickpoint Corp.*, 238 F.Supp.2d 741, 743 (E.D. Va. 2003))); *Koh v. Microtek Int'l, Inc.*, 250 F. Supp. 2d 627, 635 (E.D. Va. 2003) ("[I]f there is little connection between the claims and this judicial district, that would militate against a plaintiff's chosen forum and weigh in favor of transfer to a venue with more substantial contacts.").

In the present case, none of the twelve Plaintiffs are from Virginia and (as noted above), the Plaintiffs' causes of action have no actual relation to the Commonwealth. Accordingly, the first factor weighs in favor of transfer.

2. *Convenience of the Parties* – "The second factor to consider is the convenience of the parties. Included within this consideration is the 'the cost of obtaining the attendance of witnesses, and the availability of compulsory process.'" *Orbital Austl. PTY Ltd.*, *supra* at *16 (quoting *Lycos*, 499 F.Supp.2d at 693). In the present case, the second factor clearly weighs in favor of transfer: three of the Plaintiffs are actually head-quartered in California and three more have regular places of business in California. Additionally, each of the Defendants have demonstrated the convenience of the California courts by bringing cases as Plaintiffs in the Federal District Courts of California. And, compulsory process over non-

resident parties is equally available (or equally unavailable) in California as it would be in Virginia. Accordingly, the second factor favors transfer.

3. *Access to Evidence* – "The third factor in the transfer analysis is the ease of access to evidence." *Orbital Austl. PTY Ltd.*, *supra* at *17. In the present case, "the majority of evidence is likely to be abroad" and the remaining evidence is either in California or in a jurisdiction other than Virginia, weighing in favor of transfer. *Id.* at *18. In addition, where, as here, "transfer here would reduce the inconvenience to some parties without increasing the inconvenience to any other party. This factor weighs in favor of transfer." *Id.*

4. *Convenience of Witnesses* – "The fourth factor in the transfer analysis is the convenience of witnesses, including third-party witnesses." *Id.* In the present case, there is no suggestion that there is a single witness in this case located in Virginia. On the flipside, the witnesses from YouTube will be located in California, as will the witnesses from at least three of the Plaintiffs. Accordingly, the fourth factor also weighs in favor of transfer.

5. *Interests of Justice* – "The fifth and final factor courts must consider in the transfer analysis is the interest of justice. The interest of justice focuses on 'systemic integrity and fairness,' and considers factors such as 'docket congestion, interest in having local controversies decided at home, knowledge of applicable law, unfairness in burdening forum citizens with jury duty, and interest in avoiding unnecessary conflicts of law.'" *Id.*, at *20-21. In the present case, it is fairer to transfer the case to California, given that some of the parties are located in California and none are located in Virginia. Moreover, approximately 11% of United States users of the Websites come from California, the state with the most users, as compared to 1.7% from Virginia. Next, transfer would eliminate entirely the question of personal jurisdiction

inasmuch as (if the Court were to find that jurisdiction exists under Rule 4(k)(2), which Mr. Kurbanov contests), Mr. Kurbanov would consent to jurisdiction in California.

"Finally, docket congestion is only 'a minor consideration, which a court must view in light of other relevant factors, and which will receive little weight if all other reasonable and logical factors result in a transfer of venue.'" *Id.*, at *22 (citations omitted). As this Court has noted, "When a plaintiff with no significant ties to the Eastern District of Virginia chooses to litigate in the district primarily because it is known as the 'rocket docket,' the interest of justice 'is not served.'" *Pragmatus AV, LLC v. Facebook, Inc.*, 769 F. Supp. 2d 991, 997 (E.D. Va. 2011).

As such, the final (and all) of the factors weigh in favor of transfer and, as such, if the Court finds that personal jurisdiction exists under Rule 4(k)(2), the matter should be transferred to the Central District of California.

B. Transfer is Proper for *Forum Non Conveniens*

"A foreign plaintiff's choice of forum is afforded little weight in the *forum non conveniens* equation." *Galustian v. Peter*, 561 F. Supp. 2d 559, 562 (E.D. Va. 2008). Nevertheless, the "burden is on the moving party to show that a more appropriate alternative forum exists." *Id.* (quoting *Kontoulas v. A.H. Robins Co.,* 745 F.2d 312, 315 (4th Cir. 1984)).

In determining if a more appropriate forum exists, the Court considers three factors, the first of which is a determination that an adequate alternate forum exists. "Once an alternative forum is identified, it will usually be deemed adequate if it permits litigation of the subject matter in dispute." *Galustian*, 561 F. Supp. 2d at 562 (citations omitted). Here, there is no reason why the Central District of California could not just as easily decide the federal copyright questions at issue in this case.

The second set of factors, known as the "private interest factors," include "the relative ease of access to sources of proof, the availability of compulsory process for the attendance of unwilling witnesses, the cost of obtaining the attendance of willing witnesses, the possibility of viewing the premises in question (if applicable), and all other practical problems that make trial of a case easy, expeditious, and inexpensive." *Id.* As discussed above, in connection with the 4(k)(2) transfer analysis, each of these factors favors transfer to the Central District of California.

Finally, the Court considers the "public interest factors," that include "the administrative difficulties flowing from court congestion, the local interest in having localized controversies decided at home, the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action, the avoidance of unnecessary problems in conflict of laws, or the application of foreign law, and the unfairness of burdening citizens in an unrelated forum with jury duty." *Id.*, at 562-63. Here, too, as discussed in connection with the 4(k)(2) transfer analysis, each of the factors are either neutral or favor transfer to the Central District of California.

Accordingly, if the Court were to find that personal jurisdiction could be exercised over Mr. Kurbanov under either theory, transfer to the Central District of California would be warranted.

Conclusion

For the reasons stated hereinabove, the Court should dismiss the Complaint against Mr. Kurbanov individually and d/b/a FLTVO.biz and 2CONV.com in its entirety. In the alternative, if the Complaint is not dismissed, it should be transferred to the Central District of California.

Dated: October 1, 2018

Respectfully Submitted:

/s/ Jeffrey H. Geiger
Jeffrey H. Geiger (VSB No. 40163)
SANDS ANDERSON PC
1111 E. Main Street, Suite 2400
Bank of America Plaza
P.O. Box 1998 (23218)
Richmond, Virginia 23218-1998
Telephone: (804) 783-7248
Facsimile: (804) 783-7291
jgeiger@sandsanderson.com

/s/ Valentin Gurvits
Valentin D. Gurvits (*pro hac vice*)
Matthew Shayefar (*pro hac vice*)
BOSTON LAW GROUP, PC
825 Beacon Street, Suite 20
Newton Centre, Massachusetts 02459
Telephone: 617-928-1804
Facsimile: 617-928-1802
vgurvits@bostonlawgroup.com
matt@bostonlawgroup.com

/s/ Evan Fray-Witzer
Evan Fray-Witzer (*pro hac vice*)
CIAMPA FRAY-WITZER, LLP
20 Park Plaza, Suite 505
Boston, Massachusetts 02116
Telephone: 617-426-0000
Facsimile: 617-423-4855
Evan@CFWLegal.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

Michael K. Lowman, Esquire
Jenner & Block LLP
1099 New York Ave, NW
Suite 900
Washington, DC 20001-4412
Email: mlowman@jenner.com
Counsel for Plaintiffs

Kenneth L. Doroshow, Esquire
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Email: kdoroshow@jenner.com
Counsel for Plaintiffs (admitted pro hac vice)

Alison I. Stein, Esquire
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Email: astein@jenner.com
Counsel for Plaintiffs (admitted pro hac vice)

Jonathan A. Langlinais, Esquire
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
Email: jlanglinais@jenner.com
Counsel for Plaintiffs (admitted pro hac vice)

/s/ Jeffrey H. Geiger
Jeffrey H. Geiger