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13 JUSTON RECORDS

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16 CLEVELAND CONSTANTINE) Case No.: 2:21-cv-02840-AB-AFM

17 BROWNE; ANIKA JOHNSON as)

18 personal representative of THE) **NOTICE OF MOTION AND MOTION**

19 ESTATE OF WYCLIFFE) **TO DISMISS THIRD AMENDED**

20 JOHNSON; and STEELY & CLEVIE) **COMPLAINT PURSUANT TO FED. R.**

21 PRODUCTIONS, LTD.) **CIV. P. 12(B)(2); MEMORANDUM OF**

22) **POINTS AND AUTHORITIES IN**

23 Plaintiffs,) **SUPPORT THEREOF**

24)

25 v.) *(Declarations of Sihem Ouillani and*

26) *Benjamin S. Akley filed, and [Proposed]*

27 RODNEY SEBASTIAN CLARK) *Order lodged, concurrently)*

28 DONALDS, *ET AL.*)

) Date: March 18, 2022

Defendants.) Time: 10:00 a.m.

) Place: Courtroom 7B

)

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 18, 2022, or as soon thereafter as the
3 matter may be heard in Courtroom 7B of this Court, located at 350 West 1st Street, Los
4 Angeles, California 90012, Defendant Juston Records (“Juston”) will and hereby does
5 move the Court for an order dismissing the Third Amended Complaint (the “TAC”) filed
6 in this action by plaintiffs Cleveland Constantine Browne, Anika Johnson as personal
7 representative of The Estate of Wycliffe Johnson, and Steely & Clevie Productions, Ltd.
8 (“Plaintiffs”) pursuant to Federal Rule of Civil Procedure (“FPRC”) 12(b)(2) for lack of
9 personal jurisdiction.

10 This motion is made on the ground that Juston has no connection or contact
11 whatsoever with the State of California and virtually no connection at all with the United
12 States, and is based upon this Notice, the accompanying Memorandum of Points and
13 Authorities, the Declarations of Sihem Ouillani (the “Ouillani Decl.”) and Benjamin S.
14 Akley (“Akley Decl.”), any memorandum of points and authorities, declaration, or other
15 papers filed on reply, all other pleadings and filings in this action, and such other matters
16 as may be presented at or before the hearing.

17 As detailed in the Akley Decl., this motion is made following the conference of
18 counsel pursuant to L.R. 7-3 which took place on multiple phone calls and in written
19 correspondence between December 29, 2021 and February 28, 2022 and involved,
20 among other things, Juston’s counsel providing Plaintiffs’ counsel a draft of the Ouillani
21 Decl. and producing to Plaintiffs’ counsel copies of all agreements reflecting Juston’s
22 involvement in the underlying and allegedly infringing works, all of which reflect and
23 evidence that there is no basis for this Court’s exercise of jurisdiction over Juston.

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Dated: February 15, 2022

PRYOR CASHMAN LLP

By: /s/ Benjamin S. Akley
Benjamin S. Akley
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Attorneys for Defendant
JUSTON RECORDS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Juston is a paradigmatic example of a foreign defendant over which this Court
3 lacks personal jurisdiction. Juston is a French company located in France that does not
4 have any employees, offices, accounts, agents, licenses, or regular business contacts or
5 connections in California or the United States. As regards the claims at issue in this
6 specific action, Juston’s minimal contacts with the United States (a few contracts with
7 residents of Florida and New York) are not sufficient to hale Juston into any court in the
8 United States and certainly do not confer jurisdiction over Juston in this Court in
9 California. And requiring Juston to appear and defend itself in this Court would violate
10 Constitutional due process as it applies both to California’s long-arm statute and to
11 FRCP 4(k)(2) (which for federal claims can in certain instances confer nationwide
12 Federal Court jurisdiction over foreign defendants who have sufficient minimum
13 contacts with the United States—which Juston clearly does not—but who are not subject
14 to general jurisdiction in any particular state). In short, Plaintiffs have not alleged any,
15 and the evidence indisputably demonstrates there is no, basis for this Court to exercise
16 personal jurisdiction over Juston. Juston’s motion should be granted and Juston should
17 be dismissed from this action pursuant to FRCP 12(b)(2).

18 **I. STATEMENT OF RELEVANT FACTS**

19 **A. Background**

20 This is a copyright infringement action brought by Plaintiffs—allegedly the
21 owners and/or holders of the composition and sound recording rights to the song “Fish
22 Market” (the “Allegedly Infringed Work”)—against Defendants, who are the writers,
23 performers, music labels, publishers, and persons or entities otherwise involved in the
24 creation, distribution, and/or administration of two versions of the song “Dame Tu
25 Cosita” (the “Allegedly Infringing Works”). (TAC ¶¶25-33). According to the TAC,
26 the Allegedly Infringing Works either directly sample the sound recording of, directly
27 copy, or are substantially similar to the Allegedly Infringed Work. (TAC ¶¶35-40). The
28

1 TAC states claims against Defendants for direct and vicarious/contributory copyright
2 infringement. (TAC ¶¶43-65).

3 **B. The Complaint’s Deficient Jurisdictional Allegations**

4 Plaintiffs’ TAC contains only a few conclusory sentences purporting to justify this
5 Court’s exercise of personal jurisdiction over Juston:

6 14. At all times mentioned herein Defendant Juston Records,
7 individually (collectively “Juston”) was and is a French private limited
8 company and doing business in and with the state of California,
9 including in this judicial district.

10 ***

11 32. On April 2, 2018, Sony, Ultra and Juston released the single *Dame*
12 *tu Cosita* by El Chombo (sometimes referred to as the “*Single*”).

13 33. In or about August 2018, Sony, Ultra and Juston released an
14 alternative mix of *Dame tu Cosita* by El Chombo, Pitbull, and Karol G
15 (sometimes referred to as the “*Remix*”).

16 (TAC ¶¶14, 32-33). As set forth below, those allegations are both untrue and deficient.

17 **C. Juston’s Lack of Jurisdictional Contacts With California**

18 In fact, as detailed in the accompanying Ouillani Decl., Juston does no business
19 in or with the California, has no presence in California (or the United States), never
20 contracted with any California resident with respect to the Allegedly Infringing Works,
21 and never directly or indirectly exploited the Allegedly Infringing Works in California
22 (or the United States).

23 Specifically, Juston is a *société par actions simplifiée* (roughly equivalent to a
24 limited liability company in the United States) which is organized and exists under
25 French law. Juston is a music recording and publishing company which owns and/or
26 administers a catalog of sound recordings and compositions and conducts business
27 almost exclusively in France. Juston’s sole office and headquarters is located in Paris,
28 France. Juston has only six employees, all based in the Paris office. Juston has no

1 representatives outside of Paris. Juston has no bank accounts outside of France. Juston
2 owns no property outside of France. And Juston has no connection to California
3 whatsoever. (Ouillani Decl. ¶¶7-14).

4 With respect to the Allegedly Infringing Works: in 2018 Juston decided to record
5 a version of “Dame tu Cosita” (i.e. the first Allegedly Infringing Work) as a new version
6 of a song (“El Cosita Mix”) that had previously been created and released by defendant
7 Rodney Sebastian Clark p/k/a El Chombo (“Clark,” who was incorrectly named herein
8 as “Rodney Sebastian Clark Donalds”). To that end Juston entered into several
9 agreements with Clark and his company defendant Energy Music Corp. (a Florida entity)
10 to acquire the rights to “El Cosita Mix” and to exploit the recording of and publish
11 “Dame tu Cosita.” Juston also entered into an agreement for non-party Philip Thomas
12 p/k/a Cutty Ranks—a resident of Jamaica—to act as a featured artist on “Dame tu
13 Cosita.” Later, Juston decided to record a remix of “Dame tu Cosita” and in connection
14 therewith entered into a mixing agreement with defendants Giordano Ashruf, Sharif
15 Badloe, and Rashid Badloe (collectively, the “Afro Bros”) through non-party
16 Spinnin’Records B.V. (a Dutch entity) and featured artist agreements with defendants
17 Carolina Giraldo Navarro p/k/a Karol G (a resident of New York) and Armando
18 Christian Perez p/k/a Pitbull (a resident of Florida). (Ouillani Decl. ¶¶15-18).

19 To exploit the original and remixed versions of “Dame tu Cosita” Juston entered
20 into a co-exploitation agreement with French record label and publisher Play Two. Upon
21 information and belief, Play Two subsequently licensed the versions of “Dame tu
22 Cosita” to the distributor(s) of those works in the United States (and elsewhere). Juston
23 never entered into any agreement with defendants Sony Music Entertainment (“SME”),
24 Ultra Records, LLC (“Ultra”), or any of the other defendants in this action concerning
25 the exploitation of the original and remixed versions of “Dame tu Cosita,” in the United
26 States or elsewhere. (Ouillani Decl. ¶¶19-20).

27 Significantly, none of the agreements to which Juston is a party concerning “El
28 Cosita Mix” or the Allegedly Infringing Works were entered into in California or with a

1 California resident or entity, and none of the agreements were entered into under or
2 invoke California law or the law of any of the United States (rather, they are all subject
3 to French choice of law and venue provisions). Likewise, none of Juston’s employees
4 has been physically present in California or the United States for any purpose related to
5 the Allegedly Infringing Works or the allegations in this case. And, again, Juston has
6 never contracted with persons or entities in California for any purpose relating to the
7 exploitation of the Allegedly Infringing Works. (Ouillani Decl. ¶¶21-23).

8 Finally, in addition to the facts that Juston does not do business in or with
9 California and that Juston neither directed any activity toward California nor availed
10 itself of California law in connection with the Allegedly Infringing Works, it would be
11 definitionally unreasonable to hale Juston into Court into California. Juston is a French
12 company, existing and organized under French law. Juston has no permanent connection
13 to California or the United States and has never engaged in any suit-related conduct (or
14 any other conduct) in or otherwise directed to California or the United States. Juston’s
15 contacts with California are non-existent, and there is absolutely nothing tying it to
16 California or the United States generally. Juston never expected to be haled into Court
17 in California or otherwise subject to California’s law or jurisdiction, nor would it have
18 any reason to so expect. And it would be extremely difficult for Juston to fully and
19 properly defend itself and fully participate in this case over 5,000 miles away from
20 Juston’s offices and the home city of all of its employees and records. (Ouillani Decl.
21 ¶¶24-27).¹

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26 ¹ Again, all of the above facts, including all of Juston’s contracts related to the Allegedly
27 Infringing Works, were fully disclosed to Plaintiffs’ counsel during the parties’ pre-
28 motion conference process. Nevertheless, Plaintiffs’ have forced Juston to proceed with
this motion. (Akley Decl. ¶¶3-9).

1 **II. ARGUMENT²**

2 **A. Legal Standard**

3 The exercise of personal jurisdiction over a foreign defendant requires that the
4 defendant “have at least minimum contacts with the relevant forum such that the exercise
5 of jurisdiction does not offend traditional notions of fair play and substantial justice.”
6 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). Plaintiffs
7 “bear[] the burden of establishing a prima facie case supporting in personam
8 jurisdiction,” *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 587 (9th Cir. 1993), and to
9 withstand a motion under FRCP 12(b)(2) a plaintiff cannot “simply rest on the bare
10 allegations” of its complaint. *Schwarzenegger*, 374 F.3d at 800. Where, as here, a
11 defendant provides sworn proof refuting the jurisdictional allegations contained in a
12 complaint, the plaintiff is “obligated to come forward with facts, by affidavit or
13 otherwise, supporting personal jurisdiction.” *Amba Mktg. Sys., Inc. v. Jobar Int’l Inc.*,
14 551 F.2d 784, 787 (9th Cir. 1977); *see also Fahmy v. Hogge*, No. 08-cv-1152-PSG-SHx,
15 2008 WL 4614322, at *2 (C.D. Cal. Oct. 14, 2008) (in face of sworn statements refuting
16 jurisdictional allegations, “the plaintiff must present admissible evidence to support the
17 Court’s exercise of personal jurisdiction”).

18 The exercise of personal jurisdiction over a non-resident defendant turns on two
19 inquiries: (i) whether an applicable state statute confers jurisdiction; and (ii) whether the
20 exercise of jurisdiction comports with constitutional due process. *Schwarzenegger*, 374
21 F.3d at 800-01. Since California’s long-arm statute “allows the exercise of personal
22 jurisdiction to the full extent permissible under the U.S. Constitution,” this Court’s
23 “inquiry centers on whether exercising jurisdiction comports with due process.” *Picot*
24 *v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015).

25 Constitutional due process requires that a non-resident defendant have such
26 “minimum contacts” with the forum state that the exercise of personal jurisdiction does
27

28 ² All citations and quotations omitted unless otherwise noted.

1 not “offend traditional notions of fair play and substantial justice” and correspondingly
2 “ensures that a defendant will not be haled into a jurisdiction solely as a result of
3 ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts.” *Glencore Grain Rotterdam B.V. v.*
4 *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002). “Applying the
5 ‘minimum contacts’ analysis, a court may obtain either general or specific jurisdiction
6 over a defendant.” *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001) (overruled
7 on other grounds by *Daimler AG v. Bauman*, 571 U.S. 117 (2014)).

8 **B. Juston Is Not Subject to General Jurisdiction**

9 “General jurisdiction, which enables a court to hear cases unrelated to the
10 defendant’s forum activities, exists if the defendant has ‘substantial’ or ‘continuous and
11 systematic’ contacts with the forum state.” *Brand v. Menlove Dodge*, 796 F.2d 1070,
12 1073 (9th Cir. 1986). To establish general jurisdiction, a plaintiff “must meet an
13 exacting standard.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1069 (9th Cir. 2015) More
14 particularly, a court “may exercise general jurisdiction only when a defendant is
15 ‘essentially at home’ in the State.” *Ford Motor Co. v. Montana Eighth Judicial Dist.*
16 *Court*, 141 S. Ct. 1017, 1024 (2021) (emphasis added).

17 With regard to business entities, courts consider, among other things, whether the
18 defendant is incorporated or licensed to do business in the forum state, whether the
19 defendant has offices, property, employees or bank accounts in the forum state, whether
20 the defendant pays taxes, advertises, solicits business or makes sales in the forum state,
21 and whether the defendant designates an agent for service of process in the forum state.
22 *See Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)
23 (overruled in part on other grounds by *Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
24 *L’Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006) (en banc)); *Hirsch v. Blue Cross,*
25 *Blue Shield*, 800 F.2d 1474, 1478 (9th Cir. 1986). A vital distinction exists between
26 “doing business with” the forum state and “doing business in” the forum state, and
27 general jurisdiction only exists when the defendant is found to be doing business in the
28 forum state. *See Schwarzenegger*, 374 F.3d at 801.

1 Here, notwithstanding Plaintiffs’ half-hearted and utterly unsupported assertions
2 in the TAC that Juston is “doing business in and with the state of California,” the truth
3 is that Juston is a French entity, existing and organized under the laws of France, which
4 has no connection to California whatsoever (“continuous and systematic” or otherwise).
5 Juston has no offices, employees, accounts, agents, or licenses or incorporations in
6 California, and does not do anything else in or with California such that it could even
7 remotely be deemed “at home” in the state. Put simply, general personal jurisdiction
8 over Juston in California—the only sort alleged in the TAC—does not exist, and Juston’s
9 motion should be granted on that basis.

10 **C. Juston Is Not Subject to Specific Jurisdiction**

11 Plaintiffs have not seriously attempted to allege or assert in the TAC that this
12 Court is able to exercise specific personal jurisdiction over Juston. Regardless, as set
13 forth below it is equally clear that jurisdiction over Juston also does not exist on that
14 basis.

15 Specific personal jurisdiction “is based on the relationship between the
16 defendant’s forum contacts and the plaintiff’s claim.” *Black v. Ritz-Carlton Hotel Co.,*
17 *LLC*, 977 F. Supp. 2d 996, 1004 (C.D. Cal. 2013), *aff’d sub nom., Lockhart v. Ritz-*
18 *Carlton Hotel Co.*, 639 F. App’x 423 (9th Cir. 2016); *see also Bristol-Myers Squibb Co.*
19 *v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780 (2017). The Supreme Court has made
20 clear that “[f]or a State to exercise [specific] jurisdiction consistent with due process, the
21 defendant’s suit-related conduct must create a substantial connection with the forum
22 State,” and “the relationship must arise out of contacts that the ‘defendant himself’
23 creates with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis in
24 original); *accord Ford Motor*, 141 S. Ct. at 1025 (“The contacts must be the defendant’s
25 own choice and not random, isolated, or fortuitous,” and “[t]hey must show that the
26 defendant deliberately reached out beyond [his] home—by, for example, exploiting a
27 market in the forum State or entering a contractual relationship centered there”). Stated
28 differently, courts “must ‘look[] to the defendant’s contacts with the forum State itself,

1 not the defendant’s contacts with persons who reside there.” *Picot*, 780 F.3d at 1214
2 (quoting *Walden*, 571 U.S. at 284 (brackets in original)).

3 “[F]oreseeability alone has never been a sufficient benchmark for personal
4 jurisdiction under the Due Process Clause.” *Perez v. U.S.*, 103 F. Supp. 3d 1180, 1197
5 (S.D. Cal. 2015) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286,
6 295 (1980)). Rather, “[t]he question is whether a defendant has followed a course of
7 conduct directed at the society or economy existing within the jurisdiction of a given
8 sovereign.” *Perez*, 103 F. Supp. 3d at 1197. Moreover, “[a]n intent to serve the entire
9 U.S. does not necessarily show purposeful availment of the privilege of conducting
10 business in any particular state.” *Id.* (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 564
11 U.S. 873, 886 (2011) (“an intent to serve the U.S. market” as a whole held insufficient
12 to confer jurisdiction in New Jersey where there was no evidence that the distributor
13 “purposefully availed itself of the New Jersey market” specifically) (plurality op.)).

14 In the Ninth Circuit, specific jurisdiction is appropriate only if all of the following
15 elements are established: (1) the defendant has performed some act or consummated
16 some transaction within the forum or otherwise purposefully availed himself of the
17 privileges of conducting activities in the forum, (2) the claim arises out of or relates to
18 the defendant’s forum-related activities, and (3) the exercise of jurisdiction is reasonable.
19 *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006); *see also Picot*,
20 780 F.3d at 1211.³ Plaintiffs bear the burden of establishing the first two elements. *See*
21 *Schwarzenegger*, 374 F.3d at 800.

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25 ³ The Supreme Court recently explained that, contrary to the bulk of prior Ninth Circuit
26 jurisprudence, the question under prong two of the specific jurisdiction inquiry is not
27 whether a plaintiff’s claim “arises out of or results from” the defendant’s forum-related
28 activities but whether the plaintiff’s claim “arise[s] out of or relate[s] to” the defendant’s
forum-related activities. *Ford Motor*, 141 S. Ct. at 1025 (emphases added).

1 1. Juston Did Not Purposefully Direct Itself To or In California

2 The first prong of the Ninth Circuit’s test “ensures that a defendant will not be
3 haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts
4 or of the unilateral activity of another party of a third person” *Unocal*, 248 F.3d at 924,
5 and turns on whether an action sounds in contract or tort. *Schwarzenegger*, 374 F.3d at
6 802. In intellectual property infringement cases, courts apply a “purposeful direction”
7 analysis, evaluated under a three-part “effects” test traceable to the Supreme Court’s
8 decision in *Calder v. Jones*, 465 U.S. 783 (1984). *See, e.g., Imageline, Inc. v. Hendricks*,
9 No. 09-cv-1870-DSF-AGR_x, 2009 WL 10286181, at *2, 4 (C.D. Cal. Aug. 12, 2009);
10 *Wonderful Co. LLC v. Nut Cravings Inc.*, No. 20-cv-11738-SVW, 2021 WL 3598859,
11 at *2 (C.D. Cal. Apr. 22, 2021).

12 Per *Calder*, to establish purposeful direction, a plaintiff must show that the
13 defendant “(1) committed an intentional act, (2) expressly aimed at the forum state, (3)
14 causing harm that the defendant knows is likely to be suffered in the forum state.” *Picot*,
15 780 F.3d at 1214. Here, neither the second nor third elements of the *Calder* effects test
16 are satisfied. None of Juston’s conduct relative to the Allegedly Infringing Works (i.e.
17 entering into a handful of agreements with residents of Florida, one with a resident of
18 New York, and numerous with foreign persons or entities, including a co-exploitation
19 agreement with another French entity which ultimately licensed the Allegedly Infringing
20 Works to a distributor in the United States) was “expressly aimed” at California (or the
21 United States), both as a matter of fact and as a matter of law. *See, e.g., Holland Am.*
22 *Line, Inc. v. Wartsila North Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007) (“The placement
23 of a product into the stream of commerce, without more, is not an act purposefully
24 directed toward a forum state”); *Hit Bound Music, Ltd. v. BBC Films*, No. 16-cv-7125-
25 CBM, 2017 WL 5640543, at *3 (C.D. Cal. June 28, 2017) (no express aiming where
26 film distributor only distributed film in United Kingdom); *Mitsui Sumitomo Ins. USA.,*
27 *Inc. v. Kyocera Mita Corp.*, No. 15-cv-1860-ODW, 2015 WL 5842324, at *3 (C.D. Cal.
28 Oct. 6, 2015) (“mere foreseeability that a product will reach and be used in the forum

1 state cannot satisfy the requirements for personal jurisdiction”); *Bridgeport Music, Inc.*
2 *v. Still N The Water Publ’g*, 327 F.3d 472, 480 (6th Cir. 2003) (no jurisdiction over non-
3 resident music publisher where it granted a license that permitted, but did not require,
4 nationwide distribution of allegedly infringing composition and where it was “merely
5 aware” of such distribution, and the exploitation of the composition was “pretty much
6 out of [its] hands”); *One Media IP Ltd. v. S.A.A.R. SrL*, 122 F. Supp. 3d 705, 718 (M.D.
7 Tenn. 2015) (holding, in a copyright infringement action, that “broad intention to target
8 the United States through a third party is not sufficient to establish purposeful
9 availment”).

10 Likewise, Juston did not know and had no reason to know that its conduct would
11 be “likely” to cause any alleged “harm” in California (or the United States). *See Browne*
12 *v. McCain*, 612 F. Supp. 2d 1118, 1125 (C.D. Cal. 2009) (no purposeful direction where
13 defendant did not know of the plaintiff’s California residence). Indeed, all of Plaintiffs
14 in this action appear to be residents of Jamaica, so it is not clear that any alleged “harm”
15 was caused in California or the United States at all. Accordingly, Plaintiffs cannot
16 possibly satisfy or demonstrate the first “purposeful direction” prong of the specific
17 personal jurisdiction inquiry and for that reason alone no such jurisdiction can or should
18 exist over Juston.

19 2. Because Juston Had and Has No Contacts With California, Plaintiffs’
20 Claims Do Not Arise From or Relate To Those Non-Existent
21 Contacts

22 Plaintiffs also cannot demonstrate that their claims arise out of any activities in or
23 directed toward California by Juston. Again, Juston did nothing with respect to the
24 Allegedly Infringing Works that was directed to California or the United States, and the
25 only such activities that did occur in California or the United States with respect to the
26 Allegedly Infringing Works (i.e. distribution) were undertaken by other parties. That is
27 not enough to establish any connection between Juston and Plaintiffs’ alleged harm. *See,*
28 *e.g., Doe v. American Nat’l. Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997) (plaintiff

1 failed to satisfy second prong of *Calder* in tort action where defendant “did not control”
2 the conduct directed to the forum that resulted in plaintiff’s alleged injury); *Saavedra v.*
3 *Albin Mfg. Corp.*, No. 10-cv-2312-MJL, 2011 WL 3664402, at *4 (S.D. Cal. Aug. 19,
4 2011) (finding the plaintiff’s claims did not arise out of the defendants’ California
5 contacts since the contacts were “not directly related to the injuries plaintiff alleges he
6 suffered”). Thus, Plaintiffs also cannot satisfy the second prong of the specific
7 jurisdiction test and for that independent additional reason no such jurisdiction can or
8 should exist over Juston.⁴

9 3. Exercising Jurisdiction Over Juston Would be Unreasonable

10 Because Plaintiffs cannot satisfy the first two prongs of the specific jurisdiction
11 analysis, this Court need not reach the third reasonableness prong. *See Unocal Corp.*,
12 248 F.3d at 925. But there is no question that exercising jurisdiction over Juston would
13 be unreasonable.

14 In assessing reasonableness, courts examine seven non-exclusive factors: “(1) the
15 extent of a defendant’s purposeful interjection into the forum state’s affairs; (2) the
16 burden on the defendant of defending in the forum; (3) the extent of conflict with the
17 sovereignty of the defendant’s home state; (4) the forum 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 the plaintiff’s interests in convenient and effective relief; and
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21 ⁴ The Supreme Court’s recent decision in *Ford Motor* does not dictate a different analysis
22 or result. The majority in *Ford Motor* found that the second prong is satisfied where a
23 defendant-manufacturer (i) maintains a continuing presence in a forum and engages in
24 continuing business activities, including specifically and continually targeting
25 consumers in that forum, and (ii) has placed an allegedly defective product into the
26 stream of commerce which malfunctions and causes injuries in the forum, because even
27 though the injuries did not “arise out of” the defendant’s specific in-forum activities they
28 were sufficiently “related to” those activities such that the defendant could reasonably
anticipate being haled into court in the forum. 141 S. Ct. 1017 at 1026-29. Obviously
where, as here, the defendant has no presence or activities in a forum, the analysis in
Form Motor does not apply.

1 (7) the existence of an alternative forum.” *Glencore Grain*, 284 F.3d at 1125; *see also*
2 *Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 302 (9th Cir. 1986). All of
3 these factors weigh in favor of dismissal in this case.

4 First, Juston has not purposefully interjected itself into California. *See Me Renee*
5 *LLC v. Elite World, S.A.*, No. 14-cv-3299-R, 2014 WL 12696912, at *4 (C.D. Cal. Aug.
6 7, 2014) (finding exercise of jurisdiction over European defendant would be
7 unreasonable where it did not interject itself into forum state); *S.H. Silver Co. v. David*
8 *Morris Int’l*, No. 08-cv-03550-CRB, 2008 WL 4058364, at *5 (N.D. Cal. Aug. 28, 2008)
9 (“the degree of interjection is a factor to be weighed in assessing overall reasonableness
10 of jurisdiction”).

11 Second, it would be unduly burdensome to require Juston, a French company
12 located in France, to maintain a defense halfway around the world. *See Asahi Metal*
13 *Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987) (“The unique burdens placed
14 upon one who must defend oneself in a foreign legal system should have significant
15 weight in assessing the reasonableness of stretching the long arm of personal jurisdiction
16 over national borders”); *Rano*, 987 F.2d at 588 (“We have held that litigation against an
17 alien defendant requires a higher jurisdictional barrier than litigation against a citizen
18 from a sister state”); *Amoco Egypt Oil Co. v. Leonis Nav. Co.*, 1 F.3d 848, 852 (9th Cir.
19 1993) (finding the burden on the defendant considerable since the defendant’s “base of
20 operations” was in Manila).

21 Third, substantially all of Juston’s activities with respect to the Allegedly
22 Infringing Songs were in France and all of Juston’s contracts with respect to the same
23 are governed by French law and subject to the jurisdiction and venue of French courts,
24 so a conflict exists with the sovereignty of France. *See Amoco*, 1 F.3d at 852 (“Where,
25 as here, the defendant is from a foreign nation rather than another state, the sovereignty
26 barrier is high and undermines the reasonableness of personal jurisdiction”); *see, e.g.,*
27 *Fields*, 796 F.2d at 303 (“Adjudication of the dispute in a California court would
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1 interfere with the capacity of English courts to resolve disputes involving English
2 parties, and thus interfere with British sovereignty”).

3 Fourth, California has no inherent interest in adjudicating this dispute. While
4 “California has a strong interest in protecting its residents from injury,” *Pacific Atl.*
5 *Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1330 (9th Cir. 1985), Plaintiffs are
6 all apparently residents of Jamaica. Moreover, Plaintiffs’ rights are amply protected as
7 they have sued the other Defendants who actually are responsible for or involved in the
8 distribution of the Allegedly Infringing Works in the United States. Moreover, “the
9 burden on the defendant is the primary concern,” and California courts “have expressed
10 concern about the adverse effect the assumption of jurisdiction might have on commerce
11 where the forum activities of the nonresident are not substantial.” *Pacific Atl. Trading*,
12 758 F.2d at 1330.

13 Fifth, Juston has no witnesses or evidence in California related to its defense,
14 making California inefficient for resolution of the claims against it. *See Caruth v. Int’l*
15 *Psychoanalytical Ass’n*, 59 F.3d 126, 129 (9th Cir. 1995) (fifth factor “concerns the
16 efficiency of the forum, particularly where the witnesses and evidence are likely to be
17 located”). Plaintiffs have named Juston apparently hoping to obtain extraterritorial
18 application of their United States copyright law infringement claims, but the Copyright
19 Act has no extraterritorial application. *See Subafilms, Ltd. v. MGM-Pathe Commc’ns*
20 *Co.*, 24 F.3d 1088, 1090-98 (9th Cir. 1994). In any event, this factor is “no longer
21 weighed heavily.” *Panavision Int’l, L.P. v. Toepfen*, 141 F.3d 1316, 1323 (9th Cir.
22 1988).

23 Sixth, courts focus on the burden to the defendant and not the convenience of
24 plaintiffs. *See Pacific Atl. Trading*, 758 F.2d at 1330; *Roth v. Garcia Marquez*, 942 F.2d
25 617, 624 (9th Cir. 1991) (no surprise that plaintiff’s prefer to try a case in a forum
26 convenient for them); *Caruth*, 59 F.3d at 129 (“cases have cast doubt” on the sixth
27 factor’s significance). In any event, Plaintiffs can obtain satisfactory relief for the alleged
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1 United States infringement of their alleged United States rights from the other
2 Defendants.

3 Seventh, an adequate alternative forum exists in France since Juston is a French
4 company residing in France. *See S.H. Silver*, 2008 WL 4058364, at *6 (foreign courts
5 “provide an obvious alternative forum” over foreign defendants).

6 In sum, all seven factors weigh against the reasonableness of exercising specific
7 personal jurisdiction over Juston in this case. Therefore, all three prongs of the specific
8 jurisdiction test dictate that Juston’s motion should be granted on that basis as well.

9 **D. Juston Is Not Subject to Personal Jurisdiction Under FRCP 4(k)(2)**

10 Finally, during the parties’ pre-motion conference process Plaintiffs’ counsel has
11 suggested that this Court alternatively may exercise jurisdiction over Juston pursuant to
12 FRCP 4(k)(2). That basis for jurisdictional also fails.

13 “[A] court may exercise jurisdiction [under Rule 4(k)(2)] when three requirements
14 are met. First, the claim against the defendant must arise under federal law...Second, the
15 defendant must not be subject to the personal jurisdiction of any state court of general
16 jurisdiction. Third, the federal court’s exercise of personal jurisdiction must comport
17 with due process.” *Holland Am. Line, Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 461
18 (9th Cir. 2007). Notably, “[t]he due process analysis under Rule 4(k)(2) is nearly
19 identical to traditional personal jurisdiction analysis with one significant difference:
20 rather than considering contacts between [the defendant] and the forum state, we
21 consider contacts with the nation as a whole.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*,
22 874 F.3d 1064, 1072 (9th Cir. 2017) (alternations in original); *see also Saudi v. Northrop*
23 *Grumman Corp.*, 427 F.3d 271, 275 (4th Cir. 2005) (Rule 4(k)(2) “does not operate to
24 relax the [Due Process] requirement that the defendant's contacts with the forum be
25 constitutionally sufficient”).

26 Here, although the first two requirements of the FRCP 4(k)(2) analysis are
27 satisfied (because Plaintiffs’ claims are under the Copyright Act and Juston is not subject
28 to general jurisdiction in any state in the United States), the third requirement

1 indisputably is not. As set forth above, Juston’s “aggregated contacts with the United
2 States are no greater than, and not meaningfully different from, [its] contacts with
3 California,” so jurisdiction cannot exist under Rule 4(k)(2). *See EcoDisc Tech. AG v.*
4 *DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d 1074, 1087 (C.D. Cal. 2010); *see*
5 *also Pebble Beach Co.*, 453 F.3d at 1160 (nationwide “foreseeable effects alone”
6 insufficient under Rule 4(k)(2)). Juston entered into a few contracts with residents of
7 Florida and New York, but it is hornbook law that “an individual’s contract with an out-
8 of-state party alone [cannot] automatically establish sufficient minimum contacts to
9 support personal jurisdiction.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478
10 (1985); *see also Unocal*, 248 F.3d at 924 (no purposeful avilment of California where
11 contracts were entered into by fax and telephone or via meetings in Asia, France and
12 Bermuda); *Peterson v. Kennedy*, 771 F.2d 1244, 1262 (9th Cir. 1985) (“use of the mails,
13 telephone or other international communications simply do not qualify as purposeful
14 activity invoking the benefits and protection of the [forum] state”). And, as regards
15 Juston’s most significant contacts with the United States concerning the Allegedly
16 Infringing Works (i.e. its contracts with Florida entity Energy) Plaintiffs’ claims do not
17 arise out of or relate to those contracts in any event, since the act of licensing Clarks’
18 existing song “El Cosita Mix” does not constitute an infringement of any of the rights
19 purportedly exclusively belonging to Plaintiffs under Section 106 of the Copyright Act.

20 Moreover, the fact that Juston entered into arms’-length licenses for the Allegedly
21 Infringing Works with other foreign parties who ultimately, directly or through their own
22 licensees, were responsible for or involved in distribution of the Allegedly Infringing
23 Works in the United States also is not sufficient to satisfy the requirements of due
24 process. *See Astor Chocolate Corp. v. Elite Gold Ltd.*, 510 F. Supp. 3d 108, 136-37
25 (S.D.N.Y. 2020) (“the Court is...unpersuaded...that a trademark licensing agreement
26 between foreign parties subjects the licensor to jurisdiction in any U.S. district court
27 solely because the agreement does not forbid a licensee from selling products into the
28 United States”). It obviously cannot be the case that every foreign licensor of an

1 allegedly infringing work is subject to personal jurisdiction anywhere in the United
2 States under FRCP 4(k)(2) merely because its licensee (or, in this case, its licensee’s
3 licensee) is responsible for or involved in distributing the allegedly infringing work in
4 the United States. That would effectively vitiate the protections of due process
5 altogether.

6 **III. CONCLUSION**

7 For the foregoing reasons Juston respectfully submits that this Court lacks
8 personal jurisdiction over Juston and requests that its motion to dismiss be granted and
9 that the Court grant such other and further relief as may be just and appropriate.

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Dated: February 15, 2022

PRYOR CASHMAN LLP

By: /s/ Benjamin S. Akley

Benjamin S. Akley

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13 JUSTON RECORDS

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16 CLEVELAND CONSTANTINE) Case No.: 2:21-cv-02840-AB-AFM

17 BROWNE; ANIKA JOHNSON as)

18 personal representative of THE) **DECLARATION OF SIHEM OUILLANI**

19 ESTATE OF WYCLIFFE) **IN SUPPORT OF DEFENDANT**

20 JOHNSON; and STEELY & CLEVIE) **JUSTON RECORDS' MOTION TO**

21 PRODUCTIONS, LTD.) **DISMISS THIRD AMENDED**

22) **COMPLAINT PURSUANT TO FED. R.**

23 Plaintiffs,) **CIV. P. 12(b)(2)**

24)

25 v.)

26)

27 RODNEY SEBASTIAN CLARK) Date: March 18, 2022

28 DONALDS, *et al.*) Time: 10:00 a.m.

) Place: Courtroom 7B

) Defendants.)

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DECLARATION OF SIHEM OUILLANI

I, Sihem Ouillani, declare as follows under penalty of perjury:

1. I am the President of Juston Records (“Juston”).
 2. I am fully familiar with the facts and circumstances set forth in this Declaration.
 3. I understand that the Plaintiffs have brought suit against various defendants, including Juston, for alleged copyright infringement regarding two versions of the song “Dame tu Cosita.”
 4. In their Third Amended Complaint (“TAC”), Plaintiffs allege that that Juston “released” the versions of “Dame tu Cosita” with co-defendant Sony Music Entertainment (“SME”) in 2018. (TAC ¶¶31-32).
 5. Plaintiffs further allege in the TAC that Juston has been “doing business in and with the state of California, including in this judicial district.” (TAC ¶14).
 6. However, as explained below, Juston has no presence in California (or the United States), never contracted with any California resident (or SME) with respect to the versions of “Dame tu Cosita,” and never directly or indirectly exploited the versions of “Dame tu Cosita” in California (or the United States).
- A. Juston Has No Contacts with California**
7. Juston is a *société par actions simplifiée* (“SAS”) under French law, which I understand to be roughly equivalent to a limited liability company under United States law. Juston is organized and exists under French law.
 8. Juston is a music recording and publishing company which owns and/or administers a catalog of sound recordings and compositions and conducts business almost exclusively in France.
 9. Juston’s sole office and headquarters is located in Paris, France.
 10. Juston has only six employees, all based in the Paris office.
 11. Juston has no representatives outside of Paris.
 12. Juston has no bank accounts outside of France.

1 13. Juston owns no property outside of France.

2 14. Juston has no connection to California whatsoever.

3 **B. Juston Did Not Engage In Any Suit-Related Acts In Or Otherwise Directed**
4 **At California**

5 15. In 2018 Juston decided to record “Dame tu Cosita” as a new version of a
6 song (“El Cosita Mix”) that had previously been created and released by defendant
7 Rodney Sebastian Clark Donalds p/k/a El Chombo (“Donalds”).

8 16. To that end Juston entered into several agreements with Donalds and his
9 company defendant Energy Music Corp. (a Florida entity) to acquire the rights to “El
10 Cosita Mix” and to exploit the recording of and publish “Dame tu Cosita.”

11 17. Juston also entered into an agreement for non-party Philip Thomas p/k/a
12 Cutty Ranks—a resident of Jamaica—to act as a featured artist on “Dame tu Cosita.”

13 18. Later, Juston decided to record a remix of “Dame tu Cosita” and in
14 connection therewith entered into a mixing agreement with defendants Giordano
15 Ashruf, Sharif Badloe, and Rashid Badloe (collectively, the “Afro Bros”) through non-
16 party Spinnin’Records B.V. (a Dutch entity) and featured artist agreements with
17 defendants Carolina Giraldo Navarro p/k/a Karol G (a resident of New York) and
18 Armando Christian Perez p/k/a Pitbull (a resident of Florida).

19 19. To exploit the original and remixed versions of “Dame tu Cosita” Juston
20 entered into a co-exploitation agreement with French record label and publisher Play
21 Two. Upon information and belief, Play Two subsequently licensed the versions of
22 “Dame tu Cosita” to the distributor(s) of those works in the United States (and
23 elsewhere).

24 20. Juston never entered into any agreement with SME, Ultra Records, LLC,
25 or any of the other defendants in this action concerning the exploitation of the original
26 and remixed versions of “Dame tu Cosita,” in the United States or elsewhere.

27 21. None of the agreements to which Juston is a party concerning “El Cosita
28 Mix” or either version of “Dame tu Cosita” were entered into in California or with a

1 California resident or entity, and none of the agreements were entered into under or
2 invoke California law or the law of any of the United States (rather, they are all subject
3 to French choice of law and venue provisions.

4 22. None of Juston’s employees has been physically present in California or
5 the United States for any purpose related to either version of “Dame tu Cosita” or the
6 allegations in this case.

7 23. Again, Juston has never contracted with persons or entities in California
8 for any purpose relating to the exploitation of the versions of “Dame tu Cosita.”

9 **C. It Would Be Unreasonable And Burdensome to Force Juston to Litigate**
10 **This Case In California Or the United States**

11 24. As I have said, Juston is a French company, existing and organized under
12 French law. Juston has no permanent connection to California or the United States and
13 has never engaged in any suit-related conduct (or any other conduct) in or otherwise
14 directed to California or the United States.

15 25. Juston’s contacts with California are non-existent, and there is absolutely
16 nothing tying it to the State of California or the United States generally. Juston never
17 expected to be haled into Court in California or otherwise subject to California’s law or
18 jurisdiction, nor would it have any reason to so expect.

19 26. It would be extremely difficult for Juston to defend itself and fully
20 participate in a United States Federal District Court case over 5,000 miles away from
21 Juston’s offices and the home city of all of its employees and records.

22 27. In addition, as the accompanying memorandum of law explains more fully,
23 Juston has never engaged in any suit-related conduct in California or the United States,
24 and it never directed any of its alleged suit-related conduct to California or the United
25 States.

26 28. As such, it would be unreasonable and burdensome to require Juston to
27 litigate this case in California.

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29. For all of these reasons, Juston respectfully submits that its motion to dismiss the SAC for lack of personal jurisdiction over Juston should be granted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 25, 2022



Sihem Ouillani

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13 JUSTON RECORDS

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16 CLEVELAND CONSTANTINE) Case No.: 2:21-cv-02840-AB-AFM

17 BROWNE; ANIKA JOHNSON as)

18 personal representative of THE) **DECLARATION OF BENJAMIN S.**

19 ESTATE OF WYCLIFFE) **AKLEY IN SUPPORT OF DEFENDANT**

20 JOHNSON; and STEELY & CLEVIE) **JUSTON RECORDS' MOTION TO**

21 PRODUCTIONS, LTD.) **DISMISS THIRD AMENDED**

22) **COMPLAINT PURSUANT TO FED. R.**

23 Plaintiffs,) **CIV. P. 12(b)(2)**

24)

25 v.)

26)

27 RODNEY SEBASTIAN CLARK) Date: March 18, 2022

28 DONALDS, *et al.*) Time: 10:00 a.m.

) Place: Courtroom 7B

) Defendants.)

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DECLARATION OF BENJAMIN S. AKLEY

I, Benjamin S. Akley, declare as follows under penalty of perjury:

1. I am an attorney duly licensed to practice before all the courts in the State of California and am a partner with the law firm of Pryor Cashman LLP, attorneys of record herein for Juston Records (“Juston”).

2. I am fully familiar with the facts and circumstances set forth in this Declaration.

3. On or about December 29, 2021 I conducted a teleconference with Plaintiffs’ counsel during which I (i) informed Plaintiffs’ counsel of Juston’s position that this Court has no basis to exercise personal jurisdiction over Juston and (ii) provided facts (substantially as set forth in the accompanying Declaration of Sihem Ouillani (“Ouillani Decl.”)) and discussed the law in support of that position.

4. During that phone conference Plaintiffs’ counsel represented that it would research and provide any caselaw or other authority in support of Plaintiffs’ contrary position that personal jurisdiction over Juston in this Court would be appropriate.

5. On or about January 12, 2022—after and pursuant to multiple additional telephone discussions between counsel—I provided to Plaintiffs’ counsel a draft of the Ouillani Decl. (in substantially the same form as ultimately filed) as well as a 108-page document production containing all of Juston’s material contracts and documentation concerning the allegedly infringing songs at issue in this action.

6. As represented during the December 29, 2021 teleconference, and as set forth in the Ouillani Decl., the evidence voluntarily provided by Juston to Plaintiffs’ counsel also indicated and further evidenced that there is no basis for this Court to exercise personal jurisdiction over Juston.

7. On or about January 24, 2022—after and pursuant to multiple further telephone discussions between counsel—I wrote to Juston’s counsel as follows:

David: please advise if you have found any authority supporting personal jurisdiction in California over a non-affiliated, non-principal,

1 arms'-length foreign licensor of a foreign licensor of a licensee
2 responsible for distribution and public performance in the United
3 States, or if you have found any authority supporting personal
4 jurisdiction in California where a foreign entity has entered into a few
5 contracts with a person who resides in Florida. If so, please provide it.
6 If not, I suggest you dismiss Juston without prejudice so as not to
7 burden the Court with, from our perspective, an unnecessary motion
8 that should easily be resolved in Juston's favor. In any event, please let
9 us know how you intend to proceed at your earliest convenience since
10 Juston's current response deadline is this Friday (January 28).

11 8. On or about February 8, 2022—after and pursuant to more telephone
12 discussions between counsel—I wrote to Juston's counsel as follows:

13 David: I write to follow up on our conversations re Juston (including
14 today's). At this point you still have not provided any authority
15 supporting the exercise of jurisdiction over Juston in the Central
16 District of California in light of the significant facts and information we
17 have provided to you (presumably because you cannot), and based on
18 our discussions it seems that your only basis for proceeding against
19 Juston in this District is that it would be inconvenient for Plaintiffs to
20 state their claim(s) against Juston in a separate action before a court
21 which does have jurisdiction over Juston. Of course, from our
22 perspective and as a matter of law that is not good enough, and we
23 consider your continued prosecution of claims against Juston in this
24 District—and particularly your forcing us to make a motion to dismiss
25 for lack of personal jurisdiction where there clearly is no basis for the
26 same—to be nothing more than an attempt to harass and amplify legal
27 fees. We again reiterate our request that Plaintiffs dismiss Juston from
28 this action without prejudice, and continue to hope that you will not

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burden the Court and the parties with what should be unnecessary motion practice.

9. Notwithstanding multiple requests and the significant efforts this firm has made to explicate and support Justons' position that this Court lacks personal jurisdiction over Juston, Plaintiffs have never provided any authority supporting their position to the contrary.

10. Thus, unfortunately, Juston has been forced to file the present motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 15, 2022



Benjamin S. Akley

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLEVELAND CONSTANTINE) Case No.: 2:21-cv-02840-AB-AFM
BROWNE; ANIKA JOHNSON as)
personal representative of THE) **[PROPOSED] ORDER**
ESTATE OF WYCLIFFE)
JOHNSON; and STEELY & CLEVIE)
PRODUCTIONS, LTD.)
)
Plaintiffs,)
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v.)
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RODNEY SEBASTIAN CLARK)
DONALDS, *ET AL.*)
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Defendants.)
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ORDER

IT IS HEREBY ORDERED, based on Defendant Juston Records’ Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the Declarations submitted therewith, the hearing on March 18, 2022, and all other papers and pleadings submitted in this action, that:

1. Defendant Juston Records’ Motion to Dismiss is granted pursuant to Fed. R. Civ. P. 12(b)(2) because this Court lacks personal jurisdiction over Juston Records; and
2. The Third Amended Complaint is dismissed without prejudice as against Defendant Juston Records.

IT IS SO ORDERED.

Dated: _____, 2016 By: _____
United States District Judge