

FILED

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CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

Attorneys for Plaintiff
JOSHUA HOMME

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV12-02009-SSO(DTBx)
CASE NO. _____

JOSHUA HOMME, a United States individual,

Plaintiff,

v.

KYUSS LIVES, INC., a California corporation; KYUSS LIVES RECORDING LLC, a California limited liability company; JOHN GARCIA, an individual; BRANT BJORK, an individual; and DOES 1-10, inclusive,

Defendants.

COMPLAINT AND DEMAND FOR INJUNCTIVE RELIEF AND DAMAGES FOR:

1. TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114;
2. FALSE DESIGNATION OF ORIGIN AND/OR UNFAIR COMPETITION – 15 U.S.C. § 1125(a) AND COMMON LAW;
3. MISREPRESENTATION AND PASSING OFF – 15 U.S.C. § 1125(a) AND COMMON LAW;
4. TRADEMARK INFRINGEMENT – AT COMMON LAW;
5. UNFAIR COMPETITION – CAL. BUS. AND PROF. CODE §§ 17200 ET SEQ.;
6. UNFAIR COMPETITION – AT COMMON LAW;
7. FALSE ADVERTISING – CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.

JURY TRIAL DEMANDED

1 Plaintiff Joshua Homme ("Plaintiff" or "HOMME") complains and alleges as
2 follows:

3 **PARTIES**

4 1. Plaintiff is a United States individual, with his principal place of
5 residence located at c/o Myman Greenspan Fineman Fox Rosenberg & Light LLP,
6 11601 Wilshire Boulevard, Suite 2200, Los Angeles, California 90025.

7 2. Plaintiff is informed and believes, and thereupon alleges, that defendant
8 Kyuss Lives, Inc. ("KLI") is a California corporation authorized to do business and
9 currently doing business in the State of California, with its principal place of
10 business located at 12121 Wilshire Boulevard, Suite 1201, Los Angeles, California
11 90025.

12 3. Plaintiff is informed and believes, and thereupon alleges, that defendant
13 Kyuss Lives Recording, LLC ("KLR") is a California limited liability company
14 authorized to do business and currently doing business in the State of California,
15 with a principal place of business located at 12121 Wilshire Boulevard, Suite 1201,
16 Los Angeles, California 90025. KLI and KLR are hereafter collectively referred to
17 as "KL".

18 4. Plaintiff is informed and believes, and thereupon alleges, that defendant
19 John Garcia ("GARCIA") is an individual, whose address is 49940 Aspen Drive,
20 Morongo Valley, California 92250.

21 5. Plaintiff is informed and believes, and thereupon alleges, that defendant
22 Brant Bjork ("BJORK") is an individual, whose address is 72631 Spyglass Lane,
23 Palm Desert, California 92260.

24 6. Plaintiff is unaware of the actions, names and/or true capacities of
25 Defendants, whether individual, corporate and/or partnership entities, named herein
26 as DOES 1 through 10, inclusive (the "DOE Defendants"), and therefore sues them
27 by their fictitious names. Plaintiff will seek leave to amend this complaint when
28 their actions and/or true names and capacities are ascertained. Plaintiff is informed

1 and believes, and thereupon alleges, that said Defendants and the DOE Defendants
2 are in some manner responsible for the wrongs alleged herein, and that at all times
3 referenced each was the agent and servant of the other Defendants and was acting
4 within the course and scope of said agency and service.

5 7. Plaintiff is informed and believes, and thereupon alleges, that at all
6 relevant times herein, each of the Defendants herein, including the DOE Defendants
7 (collectively, "Defendants"), directed, knew or reasonably should have known of the
8 acts and behavior alleged herein and the damages caused thereby, and by their
9 actions and/or inactions directed, ratified and encouraged such acts and behavior.
10 Plaintiff further alleges that Defendants had a non-delegable duty to prevent or cure
11 such acts and the behavior described herein, which duty Defendants failed and/or
12 refused to perform.

13 **JURISDICTION AND VENUE**

14 8. This is a civil action for trademark infringement, misrepresentation,
15 passing off, false designation of origin and unfair competition arising under the
16 United States Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the
17 "Lanham Act") and the common law; for unfair competition under California
18 Business and Professions Code §§ 17200 *et seq.* and common law and other related
19 rights under the statutory and common law of the State of California.

20 9. This Court has subject matter jurisdiction of this action pursuant to 15
21 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 as it involves claims arising under
22 the Lanham Act and the Copyright Act. This Court has supplemental subject matter
23 jurisdiction over all other claims pursuant to 28 U.S.C. § 1367 because they are so
24 related that they form part of the same case or controversy.

25 10. This Court has personal jurisdiction over the Defendants in that they
26 are doing business in the State of California and the Central District of California,
27 and they are committing the acts hereinafter alleged in this State and the Central
28 District of California.

1 11. Venue for this action is proper in the Central District of California
2 pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a) in that Plaintiff resides in this
3 District, Defendants are headquartered and operate in this District and the events
4 giving rise to the claim occurred in the Central District of California.

5 **BACKGROUND FACTS**

6 12. In July 1992, HOMME, GARCIA and Scott Reeder (collectively
7 referred to herein as the "Original Partners") began recording and performing
8 together as a musical group under the name KYUSS (the "Name"). The group was
9 originally formed in the late 1980's and released an eponymous extended-play
10 ("EP") record under the name SONS OF KYUSS in 1990. HOMME and GARCIA
11 were founding members of the group and were the only continuous members
12 throughout the group's working life ending in 1995. A number of other individuals
13 performed with the group; however, HOMME, GARCIA and Reeder were the core
14 group members with decisionmaking power governing group business and creative
15 direction.

16 13. After shortening the group name to KYUSS, the group released a series
17 of albums which included "Wretch" and "Blues for the Red Sun", both released on
18 independent labels, followed by the eponymous "Kyuss" a/k/a "Welcome to Sky
19 Valley", and "...And the Circus Leaves Town." Shortly after the release of the latter
20 album, in or around October, 1995, the group disbanded and ceased performing
21 under the Name. Each of the respective Original Partners moved on to other
22 musical projects.

23 14. Original KYUSS recordings and merchandise remain currently
24 available on the open market, and generate revenue to the Original Partners.

25 15. As of January 1, 1994 the Original Partners entered into an agreement
26 (the "Agreement") that, among other things, set forth the manner in which the
27 Original Partners could exploit the Name. Specifically, Paragraph 14.4 of the
28 Agreement states that

1 "(b) If at any time the Partnership consists of fewer than
2 two (2) original Partners, the Partnership may no longer
3 exploit the Group Name in any manner except with respect
4 to master recordings, compositions, merchandise, endorsed
5 products and other materials placed in commerce prior to
6 such time."

7 Thus, unless there were at least two (2) Original Partners present and participating
8 as group members, no one was authorized to use the Name on or in connection with
9 any performances, recordings, merchandise, endorsements, and other goods and/or
10 services. Each of the Original Partners, including GARCIA, signed the Agreement.

11 16. In November 2010, GARCIA announced a "reunion" under the
12 moniker KYUSS LIVES. At the time he was forming his new group using the
13 KYUSS name, GARCIA stated that "There is never going to be a KYUSS without
14 Josh Homme."

15 17. In 2010 and 2011, GARCIA's new musical group performed in North
16 America, Europe, Australia and New Zealand, and has extensive performance
17 bookings forthcoming in 2012 under the KYUSS LIVES name.

18 18. GARCIA's KYUSS LIVES group has also commenced marketing an
19 extensive line of merchandise bearing the KYUSS and KYUSS LIVES marks in
20 direct competition with the KYUSS merchandise mentioned in Paragraph 13 above.

21 19. GARCIA is the only Original Partner in the KYUSS LIVES group.

22 20. On information and belief, KLI and KLR were formed at GARCIA's
23 and BJORK's direction in connection with their performing, recording,
24 merchandising and all other activities involving their use of the KYUSS and
25 KYUSS LIVES marks.

26 21. Without the authorization or consent of HOMME and/or Mr. Reeder,
27 KL has proceeded to file several United States federal trademark applications for the
28 marks KYUSS and KYUSS LIVES, including Appl. Ser. Nos. 85/418,474,
85/418,458, and 85/418,462 for KYUSS LIVES; and 85/418,433 and 85/418,454 for

1 KYUSS, all in connection with live performances by a musical group, musical
2 recordings, and apparel merchandise, in the name of KLI.

3 22. The Original Partners, with Alfredo Hernandez [sic], own U.S.
4 Registration No. 2,962,692 for KYUSS in connection with "clothing, namely t-
5 shirts, sweatshirts, hats and jackets", granted on June 21, 2005. The registration is
6 incontestable.

7 23. The Original Partners' KYUSS mark has been in use in connection
8 with the foregoing apparel merchandise since at least as early as 1991, and has been
9 in continuous use in connection with sound recordings since that time. The KYUSS
10 mark is thus associated with the 1990's-era incarnation of the group, which included
11 the Original Partners.

12 24. The Original Partners have expended great effort and large sums of
13 money in making and overseeing music, performances and merchandise bearing the
14 Name, which has become well-known to relevant audiences throughout the United
15 States and the world. In so doing, the Name has come to symbolize a certain level
16 of quality and consistency in connection with all products bearing, sold under,
17 and/or in conjunction with the KYUSS mark, which was agreed upon and
18 maintained by the consensus of the Original Partners. The KYUSS mark
19 symbolizes the goodwill created by the Original Partners' collective creative
20 endeavors in live and recorded music and associated ancillary merchandise.

21 25. As a result of the high quality of products sold under and/or in
22 conjunction with the Name, and as a result of the subsequent success of advertising,
23 sale and consumer acceptance of those products, consumers have come to view the
24 KYUSS mark as exclusively identifying products associated with the group
25 comprising the Original Partners, and particularly the performances and recordings
26 during the period in which HOMME was an active member.

27 26. HOMME's success in his subsequent musical endeavors, including his
28 current group "Queens of the Stone Age", has resulted in increased audience

1 curiosity and excitement for the KYUSS name and the group's back-catalog of
2 recordings, leading to continued interest in the group's recordings and merchandise.

3 27. The Original Partners have the sole and exclusive worldwide rights to
4 use and/or to control the use of the Name, and colorable imitations thereof, in
5 connection with music-related goods and services including live performances,
6 recordings and ancillary merchandise, in order to prevent the infringement,
7 disparagement, dilution and/or other misappropriation thereof.

8 28. The Name has not been assigned nor licensed to the Defendants for any
9 purpose.

10 DEFENDANTS' UNLAWFUL ACTIVITIES

11 29. HOMME is informed and believes, and thereupon alleges, that each of
12 the foregoing actions of the Defendants will falsely mislead and/or confuse
13 consumers about the source of origin, association, sponsorship, approval or other
14 business relationship between HOMME and the group as it was comprised of the
15 Original Partners on the one hand, and the KL goods and services on the other.

16 30. Defendants' use of the Name, or colorable or confusingly similar
17 imitations thereof like KYUSS LIVES, is unfair, unlawful, and is likely to lead
18 consumers to mistakenly and/or falsely believe that Defendants' goods and services
19 are associated with, or made, sponsored, or approved by HOMME and/or the
20 Original Partners, which is not the case. Defendants will likely unfairly benefit
21 from HOMME's and the Original Partners' valuable goodwill and hard-earned
22 reputation for quality and consistency.

23 31. As a result, Defendants have acquired a cachet and salability for their
24 products which they would not otherwise have had. These consequences were
25 foreseeable at the time Defendants changed the name of their performing group
26 from "Garcia Plays Kyuss" to KYUSS LIVES.

27 32. HOMME is informed and believes, and thereupon alleges, that as a
28 proximate result of the advantage accruing to Defendants' business as a proximate

1 result of confusion, deception and/or mistake caused by Defendants' wrongful
2 conduct as alleged herein, Defendants have received illicit profits and wrongful
3 gains, and HOMME has suffered damages.

4 33. HOMME is further informed and believes, and thereupon alleges, that
5 Defendants' actions alleged above are willful, intentional, objectively unreasonable
6 and malicious. Given the nature and extent of the unauthorized use and attempted
7 registration of the KYUSS Trademarks, HOMME is further informed and believes,
8 and thereupon alleges that Defendants' actions and infringements are willful and
9 objectively unreasonable, such that HOMME is entitled to recover enhanced
10 damages and his attorneys' fees.

11 **FIRST CAUSE OF ACTION**
12 **TRADEMARK INFRINGEMENT**

13 (15 U.S.C. § 1114)

14 34. HOMME repeats and realleges the allegations in paragraphs 1 through
15 33 as though fully set forth herein.

16 35. The aforesaid acts of Defendants constitute infringement and/or
17 contributory infringement of the Original Partners' registered trademark, in violation
18 of section 32(l) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1114(1).

19 36. As a result of the foregoing infringement, HOMME has been injured,
20 and Defendants have received illicit profits and wrongful gains.

21 37. Defendants' conduct has caused, and if not enjoined, will continue to
22 cause additional harm to HOMME amounting to irreparable in a manner that cannot
23 be calculated or compensated in money damages. HOMME has no adequate
24 remedy at law for such harm.

SECOND CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a) and Common Law)

38. HOMME repeats and realleges the allegations in paragraphs 1 through 37 as though fully set forth herein.

39. With knowledge of HOMME's rights in the Name, Defendants continue to make use of a colorable imitation of the Name, including without limitation through the performance and recording of music, including without limitation music composed by HOMME, as well as the sale, offering for sale, distribution and/or dissemination of prerecorded music and ancillary merchandise products, in order to capitalize on the good name, notoriety, reputation and goodwill of HOMME.

40. Defendants' acts as alleged above are unlawful by, *inter alia*, creating and/or by permitting others to create a false designation of origin and/or to unfairly compete in a manner which is likely to cause confusion, or cause mistake, or deceive consumers as to the affiliation, connection, or association between Defendants and HOMME, or as to the origin, sponsorship, or approval by HOMME of Defendants' goods, services and/or activities, in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A) and/or common law.

41. Defendants' acts as alleged above misrepresent the nature, characteristics and/or qualities of Defendants' goods, services, activities or information in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B) and/or common law.

42. As a result of the foregoing, HOMME has been injured, and Defendants have received illicit profits and wrongful gains.

43. Defendants' conduct has also caused, and if not enjoined, will continue to cause, irreparable damage to the Name, as well as to HOMME's good name, reputation and goodwill, in a manner that cannot be calculated or compensated in money damages. HOMME has no adequate remedy at law.

1 **THIRD CAUSE OF ACTION**

2 **MISREPRESENTATION AND PASSING OFF**

3 (15 U.S.C. § 1125(a) and Common Law)

4 44. HOMME repeats and realleges the allegations in paragraphs 1 through
5 43 as though fully set forth herein.

6 45. With knowledge of HOMME's rights in the Name, Defendants continue
7 to make use of a colorable imitation of the Name, including without limitation
8 through the performance and recording of music, including without limitation music
9 composed by HOMME, as well as the sale, offering for sale, distribution and/or
10 dissemination of prerecorded music and ancillary merchandise products, in order to
11 capitalize on the good name, notoriety, reputation and goodwill of HOMME.

12 46. Defendants' acts as alleged above are unlawful by, *inter alia*, passing
13 themselves off and/or permitting others to pass Defendants off as the group
14 comprising the Original Members, in a manner which is likely to cause confusion,
15 or cause mistake, or deceive consumers as to the affiliation, connection, or
16 association between Defendants and HOMME, or as to the origin, sponsorship, or
17 approval by HOMME of Defendants' goods, services and/or activities, in violation
18 of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A) and/or common law.

19 47. Defendants' acts as alleged above misrepresent the nature,
20 characteristics, qualities, or geographic origin of Defendants' goods, services,
21 activities or information in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)
22 and/or common law.

23 48. As a result of the foregoing, HOMME has been injured, and
24 Defendants have received illicit profits and wrongful gains.

25 49. Defendants' conduct has also caused, and if not enjoined, will continue
26 to cause, irreparable damage to the Name, as well as to HOMME's good name,
27 reputation and goodwill, in a manner that cannot be calculated or compensated in
28 money damages. HOMME has no adequate remedy at law.

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FOURTH CAUSE OF ACTION
COMMON LAW TRADEMARK INFRINGEMENT

(Common Law)

50. HOMME repeats and realleges the allegations in paragraphs 1 through 49 as though fully set forth herein.

51. The aforesaid acts of Defendants constitute infringement and/or contributory infringement under common law of the KYUSS Mark owned by the Original Partners.

52. As a result of the foregoing infringement, HOMME has been injured, and Defendants have received illicit profits and wrongful gains.

53. By reason of Defendants' acts as alleged herein, HOMME has also suffered, is suffering, and will continue to suffer irreparable damage and, unless Defendants are restrained from continuing their wrongful acts, the damage to HOMME will increase. HOMME has no adequate remedy at law for such harm.

FIFTH CAUSE OF ACTION
STATUTORY UNFAIR COMPETITION

(California Business and Professions Code §§ 17200 *et seq.*)

54. HOMME repeats and realleges the allegations in paragraphs 1 through 53 as though fully set forth herein.

55. Defendants, by virtue of their acts as alleged above, have willfully, knowingly and intentionally engaged in acts of unfair competition under California Business and Professions Code § 17200 *et seq.*

56. As a result of the foregoing, HOMME has been injured, and Defendants have received illicit profits and wrongful gains.

57. Defendants' conduct has also caused, and if not enjoined, will continue to cause irreparable damage to HOMME in a manner that cannot be calculated or compensated in money damages. HOMME has no adequate remedy at law for such harm.

1 **SIXTH CAUSE OF ACTION**
2 **COMMON LAW UNFAIR COMPETITION**

3 (Common Law)

4 58. HOMME repeats and realleges the allegations in paragraphs 1 through
5 57 as though fully set forth herein.

6 59. Defendants, by virtue of their acts as alleged above, have willfully,
7 knowingly, maliciously, and intentionally engaged in acts of unfair competition
8 under the common law of the State of California, including without limitation,
9 palming off, and/or attempting to palm off, and/or enabling others to palm off the
10 KL goods and services as products and performances made by, sponsored by, or
11 authorized by the Original Partners, including HOMME.

12 60. As a result of the foregoing, HOMME has been injured, and
13 Defendants have received illicit profits and wrongful gains.

14 61. Defendants' conduct has also caused, and if not enjoined, will continue
15 to cause irreparable damage to HOMME in a manner that cannot be calculated or
16 compensated in money damages. HOMME has no adequate remedy at law for such
17 harm.

18 62. Defendants' conduct has been willful, deliberate and malicious.

19 **EIGHTH CAUSE OF ACTION**
20 **FALSE ADVERTISING**

21 (California Business & Professions Code §§17500 et seq. and Common Law)

22 63. HOMME repeats and realleges the allegations in paragraphs 1 through
23 62 as though fully set forth herein.

24 64. In engaging in the aforesaid acts, Defendants have acted and are
25 continuing to act, directly or indirectly, with the intent to sell and/or induce the
26 public to purchase and/or disseminate and/or cause to be disseminated before the
27 public, by way of publications or other advertising devices, statements concerning
28 Defendants' goods and services which are untrue and/or misleading, and which

1 Defendants know, or upon exercise of reasonable care should know, are untrue
2 and/or misleading.

3 65. By the aforesaid acts, Defendants have engaged in and are engaging in
4 false advertising in violation of California Business and Business Code §17500
5 *et seq.*

6 66. If Defendants are permitted to proceed with the aforesaid acts,
7 HOMME will continue to be irreparably injured by reason of Defendants' false
8 advertising. Defendants have proceeded and are proceeding with the aforesaid acts
9 deliberately and willfully. Unless enjoined by this Court, HOMME is informed and
10 believes, and thereon alleges, that there is a substantial possibility and threat of
11 ongoing false advertisement by Defendants for which HOMME is without adequate
12 remedy at law.

13 67. In addition, HOMME is informed and believes, and thereon alleges,
14 that Defendants' acts have resulted and will continue to result in substantial profits
15 to Defendants to which they are not entitled. Disgorgement by Defendants of all
16 money and property, including profits, illegally obtained by Defendants by means of
17 such unfair business acts and practices should be ordered by this Court pursuant to
18 California Business and Professions Code §17535.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, HOMME prays for judgment against Defendants as follows:

22 **INJUNCTIVE RELIEF:**

23 For preliminary and permanent injunctive relief that:

24 1. Defendants, their officers, agents, servants, employees, attorneys,
25 parents, subsidiaries and related companies and all persons acting for, with, by,
26 through or under them, and each of them, be temporarily restrained from, and
27 preliminarily and thereafter permanently enjoined and restrained from:

1 a. seeking to register and/or using in any manner the KYUSS mark,
2 or any word, words, packaging or trade dress likely to cause confusion therewith,
3 including without limitation the mark KYUSS LIVES, in connection with the live
4 performance and/or recording of music, the sale, manufacture, distribution,
5 advertising or promotion of their goods and services, including but not limited to
6 recordings and ancillary merchandise such as apparel goods, so long as such goods
7 and/or services do not emanate from, do not originate with, or are not licensed by
8 the Original Partners and/or HOMME; or,

9 b. using any false designation of origin or false description that can,
10 or is likely to, lead the public, or individual members thereof, to believe that any
11 goods and services created, performed, distributed, or sold by Defendants, including
12 but not limited to live performances, sound recordings and/or ancillary apparel and
13 other merchandise, is in any manner associated or connected with the Original
14 Partners and/or HOMME, or is sold, manufactured, licensed, sponsored, or
15 approved or authorized by the Original Partners and/or HOMME; or,

16 c. doing or causing to be done any further acts in violation of
17 California Business and Professions Code § 17500 *et seq.*; or,

18 d. otherwise engaging in any other activity constituting an
19 infringement of the KYUSS name and mark, or any other trademark owned by or
20 associated with HOMME, and/or from unfairly competing with HOMME in any
21 way.

22 2. Defendants file with the Court and serve upon HOMME's counsel
23 within thirty (30) days after entry of Judgment a report in writing under oath setting
24 forth in detail the manner and form in which Defendants have complied with the
25 requirements of the Injunction and Order.

26 **DAMAGES:**

27 3. Defendants be required to account for and pay over to HOMME all
28 damages sustained by HOMME and any and all profits realized by Defendants by

1 reason of their unlawful acts alleged herein, in an amount to be proven at trial, and
2 that such amounts be trebled, as and where provided by law.

3 4. Defendants be required to disgorge all money and property, including
4 profits, illegally obtained by Defendants as a result of their false advertising acts and
5 practices pursuant to all applicable statutes and common law including, without
6 limitation, California Business and Professions Code § 17535 *et seq.*

7 5. Defendants pay HOMME increased, enhanced, and/or punitive
8 damages to the fullest extent authorized by law for their oppression, fraud, and
9 malice for their violation of HOMME's rights under common law.

10 6. Defendants be required to pay to HOMME all of his costs,
11 disbursements and attorneys' fees in this action.

12 **OTHER RELIEF:**

13 7. HOMME have such other and further relief as the Court may deem
14 appropriate to prevent the infringement of the KYUSS mark, and to prevent further
15 and/or additional acts of unfair competition, and each of them.

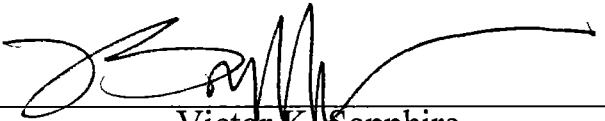
16 8. For prejudgment interest.

17 9. HOMME have such other relief as the Court deems proper.

18
19 DATED: March 9, 2012

CONNOLLY BOVE LODGE & HUTZ LLP

20
21
22 By: _____


Victor K. Sapphire
Attorneys for Plaintiff
JOSHUA HOMME


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DEMAND FOR JURY TRIAL

Plaintiff Joshua Homme hereby demands a jury trial in this action.

DATED: March 9, 2012

CONNOLLY BOVE LODGE & HUTZ LLP

By: 
Victor K. Sapphire
Attorneys for Plaintiff
JOSHUA HOMME

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

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

CV12- 2009 SJO (DTBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Victor K. Sapphire (SBN 218634)
Email: vsapphire@cblh.com
CONNOLLY BOVE LODGE & HUTZ LLP
333 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
Tel: (213) 787-2500; Fax: (213) 687-0498
Attorneys for Plaintiff JOSHUA HOMME

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSHUA HOMME, a United States individual,

PLAINTIFF(S)

v.

KYUSS LIVES, INC., a California corporation; KYUSS LIVES
RECORDING, LLC, a California limited liability
company; JOHN GARCIA, an individual; BRANT BJORK, an
individual; and DOES 1-10, inclusive,

DEFENDANT(S).

CASE NUMBER

CV12-02009-SJO(DTBx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Victor K. Sapphire, whose address is 333 South Grand Avenue, Suite 2300, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 3/9/2012

By: 
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) JOSHUA HOMME	DEFENDANTS KYUSS LIVES, INC.; KYUSS LIVES RECORDING, LLC; JOHN GARCIA; BRANT BJORK
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Connolly Bove Lodge & Hutz LLP 333 South Grand Avenue, Suite 2300 Los Angeles, CA 90071; telephone (213) 787-2500	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="border: none;">Citizen of This State</td> <td style="border: none; text-align: center;">PTF <input checked="" type="checkbox"/> 1</td> <td style="border: none; text-align: center;">DEF <input checked="" type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;">PTF <input type="checkbox"/> 4</td> <td style="border: none; text-align: center;">DEF <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ to be determined

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. Secs. 1114 and 1125(a)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: **CV12-02009-SJC(DTBx)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles, Riverside	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date March 9, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))