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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WILL LOOMIS,	)	CV 12-5525 RSWL (JEMx)
	)	
Plaintiff,	)	<b>STATEMENT OF</b>
	)	<b>UNCONTROVERTED FACTS AND</b>
v.	)	<b>CONCLUSIONS OF LAW Re:</b>
	)	<b>DEFENDANTS' MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT [30]</b>
	)	
JESSICA CORNISH P/K/A	)	
JESSIE J; UMG RECORDINGS,	)	
INC.; and UNIVERSAL	)	
REPUBLIC RECORDINGS,	)	
	)	
Defendants.	)	

After consideration of all the papers submitted pursuant to Defendants Jessica Cornish p/k/a Jessie J, UMG Recordings, Inc., and Universal Republic Records' (collectively "Defendants") Motion for Summary Judgment [30], the Court makes the following findings of fact and conclusions of law.

1 **UNCONTROVERTED FACTS**

2 1. Plaintiff Will Loomis ("Plaintiff") is a self-  
3 employed musician who has, since 2007, been in a rock  
4 band called "Loomis & the Lust." Def.'s Statement of  
5 Uncontroverted Facts and Conclusions of Law in Support  
6 of Def.'s Motion for Summary Judgment ("SUF") ¶¶ 1-2.

7 2. In June or July of 2008, Plaintiff wrote a  
8 composition entitled Bright Red Chords ("BRC"). SUF ¶  
9 3.

10 3. Plaintiff obtained a copyright registration for  
11 BRC by depositing a CD containing a recording of that  
12 composition (the "Deposit Copy Recording"), as well as  
13 several other recordings, with the U.S. Copyright  
14 Office. Id. at ¶ 4.

15 4. The U.S. Copyright Office gave the CD containing  
16 the Deposit Copy Recording the registration number PAU  
17 003479101, which is the only registered copyright  
18 alleged to have been infringed in the Complaint. Id.  
19 at ¶¶ 5-6.

20 5. The Deposit Copy Recording, recorded on August  
21 4, 2008, was never commercially released or exploited.  
22 Id. at ¶¶ 7, 12.

23 6. Plaintiff released CDs entitled "Nagasha" and  
24 "Space Camp," which contained a recording of BRC. Id.  
25 at ¶ 8.

26 7. "Nagasha" was released in or about July 2009 and  
27 "Space Camp" was released in or about 2010. Id. at ¶¶  
28 9-10.

1 8. Plaintiff does not know how many copies of  
2 "Nagasha" or "Space Camp" have been sold. Id. at ¶¶  
3 24-25.

4 9. Defendant Cornish is a recording artist who is  
5 signed to Defendant URR. Compl. ¶¶ 14, 17.

6 10. Defendant URR is owned by Defendant UMG. Id.  
7 at ¶ 18.

8 11. In June 2011, Defendant Cornish, Lukasz  
9 Gottwald p/k/a "Dr. Luke," Claude Kelly, Karl Martin  
10 Sandberg p/k/a "Max Martin," and Henry Walter p/k/a  
11 "Cirkut" (collectively the "Domino Writers") wrote a  
12 composition entitled "Domino." SUF ¶ 14.

13 12. In or about June 2011, Gottwald and Walter  
14 created an instrumental musical track which became the  
15 musical bed for Domino. Id. at ¶¶ 16-17.

16 13. In June 2011, the melody and lyrics were  
17 written and recorded at Conway Studios. Id. at ¶ 18.

18 14. Kelly and Cornish created the melody and lyrics  
19 for the verses and choruses of Domino in collaboration  
20 with Gottwald over the instrumental musical bed. Id.  
21 at 19.

22 15. Walter was present during this session. Id. at  
23 ¶ 20.

24 16. Gottwald and Sandberg provided additional  
25 creative contributions during the session. Id. at ¶  
26 21.

27 17. At this session, Defendant Cornish recorded her  
28 vocal performance of the melody and lyrics that had

1 been created at the session. Id. at ¶ 22.

2 18. After that session at Conway Studios, Gottwald  
3 worked with Walter and Sandberg to fine-tune and polish  
4 Domino. Id. at ¶ 23.

5 19. Domino was released by Defendant URR. Id. at ¶  
6 13.

7 20. Plaintiff has never met or spoken to any of the  
8 Domino Writers. Id. at ¶ 43.

9 21. Plaintiff has never instructed anyone to send  
10 any music to any of the Domino Writers. Id. at ¶ 45.

11 22. Plaintiff alleges that in August 2011,  
12 Defendants infringed upon his copyright by producing  
13 and distributing Domino. Compl. ¶ 19.

14 23. Defendant URR's Artists & Repertoire ("A&R")  
15 department's functions are: (1) to discover and recruit  
16 new artists; (2) work with artists on their sound  
17 recordings; (3) deliver master recordings to the label  
18 for release; and (4) work with the label's sales,  
19 marketing, and other departments to maximize artists'  
20 recording sales. Mackay Decl. ¶ 3.

21 24. Nate Albert is a Senior Vice President, A&R at  
22 Defendant URR. Pl.'s Statement of Disputes of Material  
23 Facts and Conclusions of Law ("SDMF") ¶ 178; Albert  
24 Decl. ¶ 1.

25 25. Albert listened to a recording of BRC in  
26 Brandon Mason's presence and was given a copy of BRC by  
27 Mason. SDMF ¶¶ 179-180; Mason Decl. ¶ 2.

28 26. Albert has no involvement with and no personal

1 knowledge regarding the creation of Domino. SUF ¶ 52.

2 27. Albert has no role or responsibility -  
3 supervisory, creative, business, or otherwise - with  
4 respect to any of Defendant Cornish's music and  
5 recordings, including Domino. SUF ¶ 57.

6 28. Albert has never played, performed, or provided  
7 a copy of BRC to anyone in the world. Id. at ¶ 58.

8 29. Plaintiff has not shown that a genuine issue  
9 exists as to the Domino Writers' access through Albert.

10 30. Sylvia Baker is a specialist in the Shared  
11 Services Department of the Copyright and Royalties  
12 Division of Defendant UMG. Baker Decl. ¶ 1.

13 31. Baker does not know, and has never met, any of  
14 the Domino Writers. SUF ¶ 62.

15 32. Baker's job responsibilities involve processing  
16 mechanical licenses for various writers; she has no  
17 responsibility for finding new artists, selecting  
18 creative material for roster artists, or deciding which  
19 recordings will be released by UMG. Id. at ¶ 63.

20 33. Baker has never had any role or responsibility  
21 - supervisory, creative, business, or otherwise - with  
22 respect to Defendant Cornish's music and recordings,  
23 including Domino. Id. at ¶ 64.

24 34. Baker has never been part of any work unit that  
25 wrote or created Domino or any other music for  
26 Defendant Cornish. Id. at ¶ 65.

27 35. Baker has never provided anything to, or played  
28 or performed any music for, any of the Domino Writers.

1 Id. at ¶ 66.

2 36. Baker has never played, performed, or provided  
3 a copy of BRC to anyone in the world. Id. at ¶ 67.

4 37. Plaintiff has not shown that a genuine issue  
5 exists as to the Domino Writers' access through Baker.

6 38. Josh Feldman is a former A&R representative for  
7 Defendant UMG. Mackay Decl. ¶ 8.

8 39. The Domino Writers do not know, have never met,  
9 and have never received anything from Feldman. SUF ¶  
10 70.

11 40. Feldman had no role or responsibility -  
12 supervisory, creative, business or otherwise - with  
13 regard to any of Defendant Cornish's music and  
14 recordings. Id. at 71.

15 41. While Feldman worked for Defendant UMG, he was  
16 assigned to Cherry Entertainment, an entity signed to a  
17 separate deal with Defendant UMG. Id. at ¶ 73.

18 42. While there, Feldman reported directly to  
19 Jolene Cherry in Santa Monica, California, not  
20 Defendant URR's offices in New York. Id. at ¶ 74;  
21 Mackay Decl. ¶ 8.

22 43. Plaintiff has not shown that a genuine issue  
23 exists as to the Domino Writers' access through  
24 Feldman.

25 44. Sunny Elle Lee is a former employee of  
26 Defendant URR's A&R department. Id. at ¶ 79; Mackay  
27 Decl. ¶ 6.

28 45. Lee was not part of the work unit that created

1 Domino. Id. at ¶ 82.

2 46. The Domino Writers have never met, and have  
3 never received anything from, Lee. Id. at ¶ 81.

4 47. Lee had no role or responsibility -  
5 supervisory, creative, business or otherwise - with  
6 regard to any of Defendant Cornish's music and  
7 recordings, including Domino. Id. at ¶ 83.

8 48. Plaintiff has not shown that a genuine issue  
9 exists as to the Domino Writers' access through Lee.

10 49. Mark Czarra worked as a Vice President of  
11 Promotions at Defendant UMG from February 2005 to June  
12 2009. SDMF ¶ 181. Czarra's job responsibilities  
13 included promotion of Universal Motown artists' sound  
14 recordings to alternative radio stations, and  
15 development and implementation of radio promotional  
16 strategies. Carbonell Supp. Decl. ¶ 3.

17 50. Czarra worked with Loomis & the Lust to help  
18 get them more radio airplay for "Nagasha" in the summer  
19 of 2009 and to promote BRC on the radio in 2010. SDMF  
20 ¶ 182-183.

21 51. Plaintiff has not shown that a genuine issue  
22 exists as to the Domino Writers' access through Czarra.

23 52. Casey Hooper was Plaintiff's former guitar  
24 player. SDMF ¶ 86.

25 53. Plaintiff has not shown that a genuine issue  
26 exists as to the Domino Writers' access through Hooper.

27 54. Plaintiff has asserted a theory that an  
28 individual named Rodney Jerkins purportedly could have

1 provided the Domino Writers with access to BRC based  
2 upon his claim that Jerkins judged a 2010 talent  
3 competition at which a video of BRC was played. SUF ¶  
4 104.

5 55. Plaintiff has not shown that a genuine issue  
6 exists as to the Domino Writers' access through  
7 Jerkins.

8 56. Plaintiff has not shown that a genuine issue  
9 exists as to whether BRC was widely disseminated.

10 57. Plaintiff has not shown that a genuine issue  
11 exists as to striking similarity between BRC and  
12 Domino.

#### 13 CONCLUSIONS OF LAW

14 1. To establish copyright infringement, two  
15 elements must be proven: 1) ownership of a valid  
16 copyright; and 2) copying of protected elements of the  
17 plaintiff's work. See Feist Publ'ns, Inc. v. Rural  
18 Tel. Serv. Co., 499 U.S. 340, 361 (1991); Benay v.  
19 Warner Bros. Entm't, Inc., 607 F.3d 620, 624 (9th Cir.  
20 2010).

21 2. "A copyright registration is 'prima facie  
22 evidence of the validity of the copyright and the facts  
23 stated in the certificate.'" United Fabrics Int'l, Inc.  
24 v. C&J Wear, Inc., 630 F.3d 1255, 1257 (9th Cir. 2011)  
25 (citing 17 U.S.C. § 410(c)). See also Lamps Plus, Inc.  
26 v. Seattle Lighting Fixture Co., 345 F.3d 1140, 1144  
27 (9th Cir. 2003).

28 3. The Court finds that Plaintiff owns a valid



1 copyright in a CD containing a recording of BRC,  
2 registration number PAU 003479101. SUF ¶¶ 4-6.

3 4. "Absent evidence of direct copying, proof of  
4 infringement involves fact-based showings that the  
5 defendant had access to the plaintiff's work and that  
6 the two works are substantially similar." Funky Films,  
7 Inc. v. Time Warner Entm't Co., 462 F.3d 1072, 1076  
8 (9th Cir. 2006).

9 5. A plaintiff satisfies the access element by  
10 showing that a defendant had "an opportunity to view or  
11 to copy plaintiff's work." Three Boys Music Corp. v.  
12 Bolton, 212 F.3d 477, 482 (9th Cir. 2000) (citing Sid  
13 and Marty Krofft Television Prods., Inc. v. McDonald's  
14 Corp., 562 F.2d 1157, 1172 (9th Cir. 1977)). The  
15 burden is on Plaintiff to "show a reasonable  
16 possibility, not merely a bare possibility, that an  
17 alleged infringer had the chance to view the protected  
18 work." Art Attacks Ink, 581 F.3d at 1143 (citing Three  
19 Boys Music Corp., 212 F.3d at 481). Moreover,  
20 "Plaintiff cannot create a triable issue of access  
21 merely by showing 'bare corporate receipt' of his work  
22 by an individual who shares a common employer with the  
23 alleged copier." Gable v. NBC, 727 F. Supp. 2d 815,  
24 826 (C.D. Cal. 2010) (citing Jorgensen v. Epic/Sony  
25 Records, 351 F.3d 46, 52-53 (2d Cir. 2003); Meta-Film  
26 Assocs., Inc. v. MCA, Inc., 586 F. Supp. 1346, 1357-58  
27 (C.D. Cal. 1984)).

28 6. Generally speaking, "[w]here there is no direct

1 evidence of access, circumstantial evidence can be used  
2 to prove access either by (1) establishing a chain of  
3 events linking the plaintiff's work and the defendant's  
4 access, or (2) showing that the plaintiff's work has  
5 been widely disseminated." Art Attacks Ink, LLC v. MGA  
6 Entm't Inc., 581 F.3d 1138, 1143 (9th Cir. 2009); see  
7 also Three Boys Music Corp., 212 F.3d at 482.

8 7. For chain of events, the critical question is  
9 whether Plaintiff submitted the work "to an  
10 *intermediary who is in a position to transmit*  
11 *[Plaintiff's] work to the creators of the infringing*  
12 *work."* Gable, 727 F. Supp. 2d at 826 (citing Meta-  
13 Film, 586 F. Supp. at 1355-56). Such an intermediary  
14 "can be a person who (1) has supervisory responsibility  
15 for the *allegedly infringing project*, (2) contributed  
16 ideas and materials to it, or (3) *worked in the same*  
17 *unit* as the creators." Id. (emphasis added). "At a  
18 minimum, however, 'the dealings between the plaintiff  
19 and the intermediary and between the intermediary and  
20 the alleged copier must involve some overlap in subject  
21 matter to permit an inference of access.'" Id.  
22 (quoting Meta-Film, 586 F. Supp. at 1358).

23 8. Plaintiff has failed to present a genuine issue  
24 of material fact as to access through a chain of  
25 events.

26 9. "Where there is no direct evidence of access"  
27 and Plaintiff cannot show access through "a chain of  
28 events linking plaintiff's work and the defendant's

1 access," plaintiff may still show access by "showing  
2 that the plaintiff's work has been widely  
3 disseminated." Art Attacks Ink, 581 F.3d at 1143. It  
4 appears, however, that "the public dissemination  
5 necessary to infer that a defendant might have had  
6 access to the work is considerable." McRae v. Smith,  
7 968 F. Supp. 559, 564 (D. Colo. 1997) (citing Selle v.  
8 Gibb, 741 F.2d 896, 901 (7th Cir. 1984)).

9 10. As a general matter, in order for a work to be  
10 widely disseminated, it must achieve a high degree of  
11 commercial success or be readily available in the  
12 relevant market. See Art Attacks Ink, 581 F.3d at 1144  
13 (finding T-shirt design was not widely disseminated  
14 where plaintiff sold 2,000 shirts a year, displayed the  
15 design at fair booths and store kiosks, and posted the  
16 designs on the Internet); Rice, 330 F.3d at 1178  
17 (finding insufficient evidence of widespread  
18 dissemination where plaintiff sold 17,000 copies of a  
19 video over a 13 year period); ABKCO Music, Inc. v.  
20 Harrisongs Music, Ltd., 722 F.2d 988 (2d Cir. 1983)  
21 (access found where song was number one on the popular  
22 music charts for weeks in the United States and  
23 England); Jane Russell Designs, Inc. v. Mendelson &  
24 Assocs., Inc., 114 F. Supp. 2d 856, 864 (D. Minn. 2000)  
25 (finding access where product was nationally sold,  
26 generated substantial revenue, and was nationally  
27 advertised to the public); Jane v. Fonda, 526 F. Supp.  
28 774, 776 (C.D. Cal. 1981) (book sales of no more than

1 2,000 copies nationwide and no more than 700 copies in  
2 Southern California did not create more than a bare  
3 possibility of access).

4 11. The Court finds that Plaintiff has failed to  
5 present any evidence creating a triable issue of  
6 material fact as to the issue of access through  
7 widespread dissemination of BRC.

8 12. One alternative to establishing access through  
9 a chain of events or widespread dissemination is  
10 showing a "striking similarity" between the works at  
11 issue. See Smith v. Jackson, 84 F.3d 1213, 1220 (9th  
12 Cir. 1996); Bouchat v. Baltimore Ravens, Inc., 241 F.3d  
13 350, 356 (4th Cir. 2001); Ty, Inc. v. GMA Accessories,  
14 Inc., 132 F.3d 1167, 1170 (7th Cir. 1997) ("a  
15 similarity that is so close as to be highly unlikely to  
16 have been an accident of independent creation is  
17 evidence of access"); Baxter v. MCA, Inc., 812 F.2d  
18 421, 423 (9th Cir. 1987).

19 13. The Court finds that Plaintiff has failed to  
20 present sufficient evidence to create a genuine issue  
21 of material fact as to striking similarity.

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14. Because Plaintiff has failed to present any evidence supporting a plausible theory of access through a "chain of events," a "widespread dissemination" of BRC, or by striking similarity, the Court holds that Plaintiff has failed to present a genuine issue of material fact regarding the Domino Writers' access to BRC.

**IT IS SO ORDERED.**

DATED: November 13, 2013

RONALD S.W. LEW

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**HONORABLE RONALD S.W. LEW**  
Senior, U.S. District Court Judge