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8 Attorneys for Defendant SPECIFIC
 9 MEDIA, INC.

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 SOUTHERN DIVISION

13
 14 GENEVIVE LA COURT; DEIRDRE
 15 HARRIS; CAHILL HOOKER; BILL
 16 LATHROP; JUDY STOUGH; and E.H., a
 17 minor, by and through her parent, JEFF
 HALL; individually, on behalf of
 themselves and others similarly situated,

18 Plaintiffs,

19 v.

20 SPECIFIC MEDIA, INC., a Delaware
 21 Corporation,

22 Defendant.

Case No. SACV 10-1256 JVS(VBKx)

**DEFENDANT SPECIFIC MEDIA,
 INC.'S OPPOSITION TO
 PLAINTIFFS' NOTICE OF
 RELATED CASES**

[Local Rule 83-1.3.2]

Honorable James V. Selna

Complaint filed August 19, 2010

23
 24 Pursuant to Local Rule 83-1.3.2, Defendant Specific Media, Inc. (misidentified
 25 in the Complaint as a Delaware Corporation, but in fact a California corporation
 26 headquartered in Orange County, California) respectfully submits the following
 27 Opposition To Plaintiffs' Notice of Related Cases ("Notice"), which Plaintiffs' counsel
 28 filed on November 16, 2010 in the above-referenced matter pending before the

1 Honorable James V. Selna (hereinafter “the Specific Media action”) and the following
2 three cases (hereinafter “Unrelated Party actions”) pending before the Honorable
3 George H. Wu:

- 4 • *In re Quantcast Advertising Cookie Litigation*, Case No. 2:10-CV-05484-
5 GW;
- 6 • *In re Clearspring Flash Cookie Litigation*, Case No. 2:10-CV-05948-GW;
- 7 and
- 8 • *Davis, et al., v. VideoEgg, Inc.*, Case No. 2:10-CV-07112-GW.

9 Three months after filing the Specific Media action, Plaintiffs’ counsel now seek
10 to relate this action – a discrete case naming a single defendant headquartered in
11 Orange County – to three cases filed by the same group of plaintiffs’ lawyers several
12 months before the Notice and *before* the Specific Media action on behalf of *different*
13 *plaintiffs* and against almost twenty *different defendants* that are wholly unrelated to
14 Specific Media.¹ The Court should deny Plaintiffs’ counsel’s attempted and
15 unsupported “related case” transfer. There is no allegation in *any of the lawsuits* that
16 Specific Media acted together or colluded in any way with any of the defendants in any
17 of the other cases, nor is there any overlap among the parties to the Specific Media
18 action and the parties to the Unrelated Party actions. Thus, the underlying events,
19 transactions, and conduct at issue in the Specific Media action are wholly different
20 from, and independent of, the events, transactions, and conduct at issue in the

21
22 ¹ The plaintiffs in the Unrelated Party actions are Edward Valdez; Alan
23 Bonebrake; Byron Griffith; Mary Huebner; Jose Marquez; Brittany Sanchez;
24 Gerardo Valdez; Austin Muhs; Kayla Valdez; Jennifer Aguirre; Alejandro
25 Godoy; Brian White; R.H., a minor, by and through her parent, Jeff Hall; A.A., a
26 minor, by and through her parent, Jose Aguirre; J.H., a minor, by and through
27 his parent, Jeff Hall; Kira Miles; Toni Miles; Terrie J. Moore; Erica Intzekostas;
28 David Rona; Timothy Davis; Jessica Fishbein; Jeff Hall; Amanda Spear. The
defendants in the Unrelated Party actions are: Quantcast Corp.; MySpace, Inc.;
American Broadcasting Cos.; ESPN; Hulu; Jibjab Media; MTV Networks; NBC
Universal; Scribd, Inc.; Clearspring Technologies; Walt Disney Internet Group;
Demand Media, Inc.; Project Playlist, Inc.; Soapnet, LLC; Sodahead, Inc.;
Ustream, Inc.; Warner Bros. Records; Inc.; Fox Entertainment Group; and
VideoEgg, Inc.

1 Unrelated Party actions. And Plaintiffs’ counsel cannot overcome this fact by baldly
2 asserting –without a scintilla of evidentiary support – that the Specific Media action is
3 related to the Unrelated Party actions merely because each of the cases is a putative
4 class action in which *different* plaintiffs allege similar “statutory violations and
5 fraudulent and unfair business practices” against *different* defendants alleged to have
6 used “Flash cookies” for allegedly improper purposes. Notice at 2-3. Indeed, relating
7 the Specific Media action to the Unrelated Party actions would be entirely unfounded,
8 given that *none* of the factors for establishing a related case under Local Rule 83-1.3.1
9 is present here.

10 **First**, none of the claims asserted in the Specific Media action “arise from the
11 same or a closely related transaction, happening or event” in any of the Unrelated Party
12 actions. L.R. 83-1.3.1(a). To the contrary, Plaintiffs’ counsel have alleged in each of
13 these cases that *different* defendants installed *different* “Flash cookies” on *different*
14 internet users’ computers through *different* websites. Accordingly, the factual
15 determinations in the Specific Media action necessarily will be specific to the facts of
16 that case, and will in no way overlap with the separate “transaction[s], happening[s] or
17 event[s]” at issue in the Unrelated Party actions. For example, if the Complaint in the
18 Specific Media action survives a motion to dismiss (and Specific Media does not
19 believe it can), a trier of fact ultimately may have to make the following factual
20 determinations, each of which would be completely independent of, and would not
21 hinge in any way on, any actions the defendants in the Unrelated Party actions took or
22 did not take:

- 23 • Whether Specific Media uses Flash cookies (it does not), and if so, in what
24 way (*see* Complaint, ¶ 1);
- 25 • The identity of Specific Media’s affiliates and related websites, which the
26 Complaint defines as “SpecificClick Flash Cookie Affiliates” (*id.*, ¶¶ 1-2);

- The precise activities of the named plaintiffs and putative class members in the Specific Media action (the “Specific Media Plaintiffs and Putative Class”) on Specific Media’s affiliates’ websites (*see id.*, ¶ 3);
- The specific terms and conditions and privacy policies applicable to Specific Media’s affiliates’ websites (*see id.*, ¶¶ 2, 33-48);
- The precise scope of any “personal identifying information” allegedly obtained through any use of Flash cookies from the Specific Media Plaintiffs and Putative Class (*id.*, ¶¶ 7-8);²
- The members of the putative class, which hinge on facts unique to Specific Media – *e.g.*, the universe of persons who (1) “accessed” a Specific Media-affiliated website, and (2) had a Specific Media Flash cookie set on their computer “for the purposes of restoring” browser cookies later (*see id.*, ¶¶ 3, 5, 16-21);
- The browser settings and Flash cookie preferences established by each of the Specific Media Plaintiffs and Putative Class members in the case (*see, e.g., id.*, ¶¶ 3, 67-68, 82);
- The extent to which each of the Specific Media Plaintiffs and Putative Class members downloaded Flash players or engaged in other activities resulting in the authorized creation of Flash cookies (*see id.*, ¶ 5); and
- The extent to which each of the Specific Media Plaintiffs and Putative Class members were damaged (if at all) by alleged Specific Media Flash cookies that purportedly were used to respawn browser cookies (*see id.*, ¶¶ 87-117).

Each of these factual determinations has no overlap at all with any of the factual determinations that may be made in the Unrelated Party actions.

² In fact, Specific Media does not collect or maintain any “personal identifying information.”

1 **Second**, Plaintiffs’ counsel are incorrect that the Specific Media action “call[s]
2 for determination of the same or substantially related or similar questions of law”
3 Notice at 2; L.R. 83-1.3.1(b). Assuming Plaintiffs’ Complaint survives a motion to
4 dismiss, the legal issues in the Specific Media action – as in the separate Unrelated
5 Party actions – will hinge on specific facts unique to each case. For example, the
6 Specific Media Plaintiffs’ allegations that Specific Media violated the Computer Fraud
7 and Abuse Act and California’s Computer Crime Law involve legal determinations
8 concerning: (1) whether Specific Media accessed the computers of each of the Specific
9 Media Plaintiffs and Putative Class Members; (2) Specific Media’s intent; (3) whether
10 any access by Specific Media to these computers was authorized (including under the
11 terms and conditions and privacy policies specific to the Specific Media affiliates’
12 websites accessed by the Specific Media Plaintiffs); and (4) whether “as a result of
13 [Specific Media’s alleged] conduct,” the Specific Media Plaintiffs and Putative Class
14 members sustained “damage and loss” (and if so, whether such damage and loss
15 “aggregat[ed] at least \$5,000 in value”). *See* 18 U.S.C. § 1030(a)-(c); California Penal
16 Code § 502(b). Separately, the Specific Media Plaintiffs’ claims against Specific
17 Media under California’s Business and Professions Code Section 17200 require a
18 finding that *Specific Media* (not the defendants in the Unrelated Party actions) engaged
19 in conduct that was “unlawful, unfair or fraudulent.” Cal. Bus. & Prof. Code § 17200.
20 **In short, to the extent that the Specific Media Plaintiffs have stated a claim in the**
21 **Specific Media action at all (and they have not), the legal determinations to be**
22 **made in that action will be inextricably intertwined with the specific facts unique**
23 **to Specific Media – and in no way overlap with the separate legal determinations**
24 **in the Unrelated Party actions.**

25 At bottom, Plaintiffs’ Notice asks the Court to relate the Specific Media action
26 to the Unrelated Party actions because different plaintiffs make the same or similar
27 claims against *different and non-overlapping defendants*. But the fact that two or more
28 entities in different cases are accused of violating the same laws or engaging in similar

1 types of conduct plainly does not satisfy the standard for demonstrating that the cases
2 are “related.” *See* L.R. 83-1.3.1. For example, a lawsuit by a plaintiff against a
3 defendant for negligence stemming from an automobile accident is not related to
4 another lawsuit filed by a different plaintiff for another automobile accident occurring
5 a week later and involving a different defendant, even if the plaintiffs (as here) are
6 represented by the same law firm. L.R. 83-1.3.1 Nor is it the case that all lawsuits
7 involving similar causes of action against defendants in the same general industry
8 (such as “online advertising and web analytics companies” (Notice at 3)) are
9 considered related, any more than separate product liability actions against different
10 car manufacturers relating to a similar alleged defect would be deemed related or heard
11 by the same judge. Here, it would only confuse matters to lump Specific Media
12 together with close to twenty other defendants in different lawsuits involving wholly
13 different facts and legal issues, particularly where those defendants are not alleged to
14 have acted together with Specific Media in any way.

15 In similar cases, where plaintiffs have attempted to relate cases against different
16 defendants based upon similar – but separate – conduct, courts in this District have not
17 hesitated to deny “related case” status and transfer. *See, e.g.*, Exh. A (6-2-06 Orders
18 from Judge Schiavelli (Ret.)) (“These cases are not related. The low number case . . .
19 stems from allegations that [Defendant 1] engaged in various anticompetitive practices
20 [The high number] case alleges similar practices committed by [Defendant 2].
21 Thus, the cases involve different defendants and will turn on different questions of law
22 and fact.”).

23 ***Third***, there would be no “substantial duplication of labor” if the Specific Media
24 action and Unrelated Party actions are heard by different judges, as Plaintiffs’ counsel
25 assert without any explanation. L.R. 83-1.3.1(c). As demonstrated above, there are no
26 overlapping legal or factual issues in the Specific Media action and Unrelated Party
27 actions. Moreover, the Unrelated Party actions have been pending for several months,
28 and the parties already have engaged in “considerable discussion[s]” and activity in

1 those actions. *See, e.g.*, Case No. 2:10-CV-05484, Docket No. 30. Whereas the
2 parties in the Unrelated Party actions appear to have engaged in meet and confer
3 discussions and possibly discovery exchanges – and will be participating in a case
4 management conference before Judge Wu on December 2, 2010 – the Specific Media
5 Plaintiffs have not even served the Complaint in the Specific Media action (even
6 though they filed the Complaint three months ago). Moreover, the parties in the
7 Unrelated Party actions appear to have been actively engaged in settlement
8 discussions. *See id.*³ By contrast, Specific Media first spoke with counsel for the
9 Specific Media Plaintiffs late last week, and Specific Media has indicated that it
10 intends to move to dismiss the Complaint filed in the Specific Media action.

11 The consolidation of the *Quantcast Advertising Cookie Litigation* and the
12 *Clearspring Flash Cookie Litigation* does not support relating the wholly distinct
13 Specific Media action to these cases. The *Quantcast* and *Clearspring* cases resulted
14 from consolidations of multiple cases (a total of six) that named either Quantcast or
15 Clearspring as a defendant. Although it was appropriate for those cases to be
16 consolidated before the same judge since each involved the same claims against the
17 *same defendants and their publisher clients*, no efficiencies are gained by lumping the
18 sole Specific Media action into that group, especially where Specific Media is not
19 stipulating to such combined treatment. And with respect to the third and final Non-
20 Specific Media action, *Davis v. VideoEgg*, defendant VideoEgg has filed a Motion to
21 Transfer Venue to the Northern District of California (Document No. 12, Case No.
22 2:10-CV-07112), such that the *VideoEgg* case also may not be before the Court much
23 longer.

24
25
26 ³ Of course, should any of the parties in the Unrelated Party actions reach a
27 settlement, the administration of notice to the putative class members in the
28 Unrelated Party actions and this Court’s evaluation of the settlement terms under
Fed. Rule Civ. P. 23(e) necessarily would be unique for each of the settling
parties.

1 **Finally**, in addition to each of the foregoing reasons (which provide more than
2 an adequate basis for the Court to deny a “related case” transfer), the Court should
3 deny a transfer here because the Notice is entirely untimely. L.R. 83-1.3.1 provides in
4 no uncertain terms that plaintiffs’ counsel are required to file a notice of related cases
5 “[a]t the time a civil action . . . is filed, or as soon as known thereafter[.]” L.R. 83-
6 1.3.1 (emphasis added). Here, Plaintiffs’ counsel filed the Notice seeking to relate the
7 Specific Media case three months *after* they filed suit against Specific Media on
8 August 19, 2010 – and *more than three months after* filing the initial Unrelated Party
9 actions. Compare *Valdez v. Quantcast* (filed 7-23-10), *Aguirre v. Quantcast* (filed 7-
10 30-10), and *White v. Clearspring* (filed 8-10-10) with the Specific Media Action (filed
11 8-19-10). During that three-month time period, Specific Media retained Orange
12 County counsel (specifically, attorneys from Gibson, Dunn, & Crutcher’s Orange
13 County office) based upon the expectation that the case would proceed in Orange
14 County. Specific Media would be unfairly prejudiced if this case were now to be
15 transferred to Los Angeles. Plaintiffs’ counsel have advanced no good reason – and
16 there is none – why they filed their Notice **three months late**, and a transfer (even if it
17 would otherwise be proper, which it would not) should be denied on those grounds
18 alone.

19 For each of the foregoing reasons, Specific Media respectfully requests that the
20 Court deny Plaintiffs’ request for a “related case” transfer and leave the Specific Media
21 action pending before Judge Selna.

22 Dated: November 18, 2010

23 JEFFREY T. THOMAS
24 JEFFREY H. REEVES
25 JOSHUA A. JESSEN
26 GIBSON, DUNN & CRUTCHER LLP

27 By: /s/ Jeffrey H. Reeves
28 Jeffrey H. Reeves

Attorneys for Defendant SPECIFIC MEDIA,
INC.

EXHIBIT A

ORIGINAL

(X)

SEND
FILED
CLERK, U.S. DISTRICT COURT
JUN - 2 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TSR Records, Inc.

Plaintiff(s),

v.

Warner Music Group Corp

Defendant(s).

CASE NUMBER:

MMM
CV 06-1853 ~~ABC~~ (MANx)

ORDER RE TRANSFER PURSUANT
TO GENERAL ORDER 224
(Related Cases)

CONSENT
TRANSFER ORDER

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 224.

DECLINED

George P. Schiavelli

Date

United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:
CV-06-1853 ABC (MANx): These cases are not related. The low-number case, CV-05-7479 GPS (RCx) stems from allegations that Sony BMG Music engaged in various anti-competitive practices aimed at securing radio airplay for its artists. Case CV-06-1853 alleges similar practices committed by Warner Music Group. Thus, the cases involve different defendants and will turn on different questions of law and fact..

May 31, 2006

Date

United States District Judge / George P. Schiavelli

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case CV 05-7479 GPS (RCx) and the present case:

- 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.

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge _____ to Magistrate Judge _____

TRANSFER ORDER

On all documents subsequently filed in this case, please substitute the initials _____ after the case number in place of the initials of the prior judge, so that the case number will read _____. This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the Western Southern Eastern Division.

Subsequent documents must be filed at the Western Southern Eastern Division.
Failure to file at the proper location will result in your documents being returned to you.

16

ORIGINAL

(X)

SEND

FILED
CLERK, U.S. DISTRICT COURT

JUN - 2 2006

CENTRAL DISTRICT OF CALIFORNIA
BY [initials] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Radikal Records, Inc.

Plaintiff(s),

v.

Warner Music Group Corporation

Defendant(s).

CASE NUMBER:

CV 06-1713 MMM (JWJx)

ORDER RE TRANSFER PURSUANT
TO GENERAL ORDER 224
(Related Cases)

CONSENT

**TRANSFER ORDER
DECLINED**

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 224.

George P. Schiavelli

Date

United States District Judge

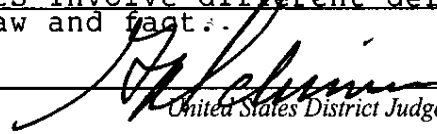
DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

CV-06-1713 MMM (JWJx): These cases are not related. The low-number case, CV-05-7479 GPS (RCx) stems from allegations that Sony BMG Music engaged in various anti-competitive practices aimed at securing radio airplay for its artists. Case CV-06-1713 alleges similar practices committed by Warner Music Group. Thus, the cases involve different defendants and will turn on different questions of law and fact.

May 31, 2006

Date



United States District Judge

George P. Schiavelli

REASON FOR TRANSFER AS INDICATED BY COUNSEL

Case CV 05-7479 GPS (RCx) and the present case:

- 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.

NOTICE TO COUNSEL FROM CLERK

Pursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge _____ to Magistrate Judge _____

**TRANSFER ORDER
DECLINED**

On all documents subsequently filed in this case, please substitute the initials _____ after the case number in place of the initials of the prior judge, so that the case number will read _____. This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the Western Southern Eastern Division.

Subsequent documents must be filed at the Western Southern Eastern Division.
Failure to file at the proper location will result in your documents being returned to you.

19

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 18, 2010, I electronically filed the foregoing
3 **DEFENDANT SPECIFIC MEDIA, INC.’S OPPOSITION TO PLAINTIFFS’**
4 **NOTICE OF RELATED CASES** with the Clerk of the Court by using the CM/ECF
5 system, which will send a notice of electronic filing to the following:

6 David C Parisi - dcparsi@parisihavens.com

7 Azita Moradmand - amoradmand@parisihavens.com

8 /s/ Jeffrey H. Reeves

9 Jeffrey H. Reeves

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