

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE FOOTBALL ASSOCIATION)	
PREMIER LEAGUE LIMITED and)	
BOURNE CO., on behalf of themselves)	
and all others similarly situated,)	
)	
Plaintiffs,)	07 Civ. 3582 (LLS)
)	
v.)	
)	
YOUTUBE, INC., YOUTUBE, LLC and)	
GOOGLE, INC.,)	
)	
Defendants)	

**RESPONSE OF CAL IV ENTERTAINMENT, LLC
IN SUPPORT OF PLAINTIFFS’ MOTION FOR APPOINTMENT OF
INTERIM CLASS COUNSEL PURSUANT TO FED.R.CIV.P. 23(g)(2)(A)**

Cal IV Entertainment, LLC (“Cal IV”), a member of the proposed class, respectfully submits this response to the motion for appointment of interim class counsel filed by Plaintiffs The Football Association Premier League Limited and Bourne Co. (collectively “PB/L”).

1. Cal IV is a Nashville-based independent music publisher whose works have been infringed by YouTube.

Cal IV is a privately-held, independent music publisher which holds the copyrights to nearly 15,000 songs. (*See* Declaration Of Daniel Hill In Support Of Plaintiffs’ Motion For Appointment Of Interim Class Counsel Pursuant To Fed.R.Civ.P. 23(g)(2)(A) (“Hill Decl.”), ¶ 3.) Leading country music artists have enjoyed considerable commercial success with recordings of several of Cal IV’s copyrighted works. For example, Cal IV holds the copyrights to fourteen number one hit singles on the country music charts. (*Id.*) As is customary practice in the music publishing business, Cal IV routinely files copyright registrations for all of its compositions that are recorded and released commercially. (*Id.*, ¶ 10.)

In 2006, Cal IV's officers became aware of the existence of the YouTube website, www.youtube.com, and began to monitor the website for the existence of Cal IV's copyrighted works. (*Id.*, ¶ 4.) Upon discovering that a number of songs in its catalog had been posted to the YouTube website without authorization, Cal IV began to explore its legal options to enforce its copyrights. (*Id.*) On or about April 5, 2007, Cal IV retained Barrett, Johnston & Parsley; Girard Gibbs LLP; and Burr & Forman LLP, three firms with substantial experience in complex litigation, class actions and copyright cases. For example, Barrett Johnston has been appointed to leadership positions in numerous complex class actions and multidistrict litigations. Girard Gibbs is experienced class counsel, and has obtained significant recoveries against myriad large corporate defendants, including MCI, Apple, Hyundai Motor America, and PayPal. Girard Gibbs also enjoys experience in copyright class action litigation, having served as co-lead counsel in *In re Literary Works In Electronic Databases Copyright Litigation*, MDL No. 1379 (GBD) (S.D.N.Y.) (\$18 million cash settlement to freelance authors whose works were published without their authorization). Burr & Forman, a large firm with nearly 200 attorneys in several states, offers a wide range of litigation services to clients nationwide.

Beginning in April 2007, Cal IV's counsel conducted a thorough investigation into Cal IV's claims, as well as those of other similarly-situated parties. Counsel advised Cal IV on what rights and remedies it might have due to the massive copyright infringement of its works on YouTube. (*Id.*, ¶ 5.)

2. **Following a diligent investigation, Cal IV filed a class action against YouTube for copyright infringement.**

Cal IV proceeded with caution before taking legal action. Cal IV contacted YouTube, per its request, in the form of a "take-down" notice in an attempt to avail itself of any available technology to protect its copyrighted works. (*Id.*) These efforts failed to prevent continued

infringement. As a result, on June 7, 2007, Cal IV filed suit, as was its right, on behalf of itself and all others similarly situated, against Defendants YouTube, Inc., YouTube, LLC and Google Inc., in the United States District Court for the Middle District of Tennessee in a class action styled *Cal IV Entertainment LLC v. YouTube, Inc., et al.*, 3:07-cv-0617 (M.D. Tenn.).

Well after Cal IV began its investigation but before filing suit, PL/B initiated their class action in this Court on May 4, 2007. The *Football Association* and *Cal IV* actions shared common questions of law and fact. Both cases alleged that Defendants violated the Copyright Act by unauthorized reproduction, distribution, and/or public performance of protected works through YouTube's website. In addition, Cal IV and PL/B sought to represent overlapping classes of copyright owners whose protected works were reproduced, adapted, distributed, publicly displayed, performed, or otherwise transmitted or disseminated on or through YouTube.com on or after December 15, 2005. Cal IV did not limit the proposed class in its case to country-music artists or to copyright holders who had sent take-down notices to YouTube. Rather, Cal IV sought to represent a broad class of copyright holders whose works Defendants had infringed. While Cal IV was reluctant to sue in light of the recently-filed *Football Association* class action, Cal IV believed that its pursuit of litigation was critical to ensure that its interests and those of the proposed class were adequately represented.

The filing of multiple class actions against common defendants within a relatively short time span is commonplace in nationwide litigation, and contemplated by the *Manual for Complex Litigation* (Fourth) § 20.13 (2005) and the statutes governing multidistrict litigation proceedings. See 28 U.S.C. § 1407. That the *Cal IV* and *Football Association* complaints made similar allegations should come as no surprise, as these actions detailed a common factual pattern of YouTube's alleged infringement which is widely-known and has been a problem for

numerous copyright holders. (See, e.g., Katie Hafner, “We’re Google. So Sue Us.” *New York Times*, October 23, 2006.)¹ To promote the efficient conduct of the *Football Association* and *Cal IV* class actions, as well as the two other individual actions (*Tur* and *Viacom*), then pending in three judicial districts, on July 2, 2007, Cal IV filed a motion for transfer and consolidation before the Judicial Panel on Multidistrict Litigation (“JPML”) pursuant to 28 U.S.C. § 1407.

3. Cal IV continues to focus its attention on promoting the interests of the proposed class.

Following the filing of the *Cal IV* class action, Cal IV and PL/B, through counsel, engaged in extensive discussions about how these cases should proceed. Cal IV’s primary concerns in these negotiations were to protect the interests of the proposed class, prevent duplicative litigation, and conserve the resources of the parties and the Court. Based on these discussions, Cal IV became persuaded of the following: (1) the Southern District of New York is an appropriate forum for this litigation, as the *Viacom* and *Football Association* actions are already proceeding here; (2) the proposed class would be well-represented by the appointment of PL/B’s attorneys, Proskauer Rose LLP and Bernstein Litowitz Berger & Grossmann LLP, as interim co-lead counsel; and (3) Cal IV could support the interests of the class most effectively by withdrawing its suit in Tennessee and participating in this class action as a named plaintiff through its own counsel. (See Hill Decl., ¶ 6.) As a result, on July 5, 2007, Cal IV filed a notice of dismissal of the Tennessee class action and withdrew its motion for transfer and consolidation before the JPML. (*Id.*)

Along with its counsel, Cal IV intends to participate actively in this litigation. PL/B’s counsel has agreed to add Cal IV as a named plaintiff in this case. While Cal IV is well-qualified

¹<http://www.nytimes.com/2006/10/23/technology/23google.html?ex=1184212800&en=e93c63515ab0cc3c&ei=5070> (last visited July 10, 2007).

to represent the entire class, Cal IV is in a unique position to express the concerns of Nashville-based artists and copyright holders. Nashville is the home of thousands of song writers and independent publishers who have a direct interest in the outcome of this litigation. (*See* Hill Decl., ¶ 9.) Cal IV believes that these copyright holders should have a voice in this litigation, and that its participation in this case will benefit the proposed class as a whole. (*Id.*)

4. The proposed class will be well-served by the appointment of PL/B's attorneys as interim class counsel.

Following the dismissal of the *Cal IV* class action, the risk that competing cases would cause proposed class members to suffer confusion or prejudice has been eliminated. Cal IV recognizes, however, that appointment of interim class counsel at this time is an appropriate means of advancing the interests of the proposed class. Rule 23(g) vests the Court with discretion to “designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(2)(A). Cal IV believes that appointment of interim class counsel is in the interests of the proposed class, and will promote judicial efficiency and economy. Of particular note, PL/B's counsel, which is well-experienced with complex class action and copyright litigation, has arranged to coordinate class discovery with counsel for Viacom. Moreover, PL/B's counsel recently participated in the Rule 26(f) conference, and has already commenced discovery. Cal IV supports the appointment of PL/B's counsel to represent the proposed class.

Dated: July 11, 2007

Respectfully submitted,

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/s/ Jonathan K. Levine

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