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14 **Pro hac vice application to be filed*

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

18 DAVID LOWERY, individually and
19 on behalf of himself and all others
similarly situated,

20 Plaintiffs,

21 vs.

22 SPOTIFY USA INC., a Delaware
23 corporation,

24 Defendant.

Case No. 2:15-cv-09929-BRO-RAO

**DEFENDANT SPOTIFY USA INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ITS MOTION TO DISMISS FOR
LACK OF PERSONAL
JURISDICTION OR, IN THE
ALTERNATIVE, TO TRANSFER
VENUE TO THE SOUTHERN
DISTRICT OF NEW YORK**

Date: April 4, 2016
Time: 1:30 p.m.
Judge: Hon. Beverly Reid O'Connell

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1 **I. INTRODUCTION**

2 This case—a putative nationwide copyright class action brought by a
3 resident of Georgia against Spotify USA Inc. (“Spotify”), a New York-
4 headquartered company—does not belong in this Court for two reasons. First, the
5 Court lacks personal jurisdiction over Spotify. As the Supreme Court’s decision in
6 *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014), makes clear, Spotify is not
7 subject to general personal jurisdiction here because—as a Delaware corporation
8 headquartered in New York—it is not “at home” in California. Nor is it subject to
9 specific personal jurisdiction: Spotify has not itself created the minimum, suit-
10 related contacts directed at California that the Due Process Clause requires to
11 authorize specific jurisdiction. This lawsuit should therefore be dismissed under
12 Federal Rule of Civil Procedure 12(b)(2).

13 Second, even if this Court did have personal jurisdiction over Spotify, the
14 case should be transferred to the Southern District of New York under 28 U.S.C.
15 § 1404. The reason is simple: Venue in California is not convenient for either of
16 the parties or any of the potential witnesses, including potential key third-party
17 witnesses. Spotify’s headquarters and all of its employees relevant to this litigation
18 are located in New York. Plaintiff Lowery is a Georgia resident who has not
19 alleged any ties to California. In addition, one of the most important third-party
20 witnesses to this action, namely, the Harry Fox Agency, is located in New York.
21 Finally, no party documents relevant to this litigation are located in this District.
22 Thus, “for the convenience of parties and witnesses,” and “in the interest of
23 justice” (28 U.S.C. § 1404), this case should be transferred to the Southern District
24 of New York. In fact, if this Court were to transfer this action to New York, it
25 could avoid the need to rule on the constitutional questions presented by the issue
26 of personal jurisdiction, because a court may grant a transfer motion without
27 deciding whether personal jurisdiction exists.

28

1 **II. THIS COURT LACKS PERSONAL JURISDICTION OVER**
 2 **SPOTIFY IN THIS MATTER.**

3 “In opposing a defendant’s motion to dismiss for lack of personal
 4 jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is
 5 proper.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (internal
 6 quotation marks omitted). As this Court is aware, there are two forms of personal
 7 jurisdiction: (a) “general jurisdiction,” which applies where a defendant is so “at
 8 home” in the forum that a court may adjudicate any claims against the defendant
 9 arising from anywhere in the world; and (b) “specific jurisdiction,” which allows a
 10 court to adjudicate claims that arise out of the defendant’s suit-related contacts
 11 with the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.
 Ct. 2846, 2851 (2011).

12 Neither form of personal jurisdiction over Spotify is proper in this case. As
 13 a Delaware corporation with its principal place of business in New York, Spotify is
 14 not subject to general jurisdiction in this State. And this litigation does not arise
 15 out of suit-related contacts that Spotify has directed towards California in
 16 particular, as is required for specific jurisdiction. Thus, the Due Process Clause
 17 does not authorize personal jurisdiction over Spotify here.¹

18 **A. Spotify Is Not Subject To General Jurisdiction In California.**

19 The Supreme Court’s 2014 decision in *Daimler* sharply limits the range of
 20 jurisdictions in which a corporate defendant may be considered “‘essentially at
 21 home’” and therefore subject to general jurisdiction. *Lightfoot v. Cendant Mortg.*
 22 *Corp.*, 769 F.3d 681, 689 (9th Cir. 2014) (quoting *Daimler*, 134 S. Ct. at 755-58).
 23 As the Ninth Circuit recently explained, *Daimler* holds that “[t]he two places
 24 where a corporation is ‘essentially at home’ and therefore subject to general

25 ¹ “Where, as here, no federal statute authorizes personal jurisdiction, the
 26 district court applies the law of the state in which the court sits. California’s long-
 27 arm statute, Cal. Civ. Proc. Code § 410.10, is coextensive with federal due process
 28 requirements.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th
 Cir. 2011) (citations omitted).

1 jurisdiction are its *place of incorporation* and its *principal place of business.*” *Id.*
 2 (citing *Daimler*, 134 S. Ct. at 760) (emphasis added). A corporation can be
 3 considered at home elsewhere only in a truly “exceptional case,” such as when its
 4 *de facto* principal place of business and its formal headquarters are temporarily in
 5 different locations. *Daimler*, 134 S. Ct. at 755–58 & n.8 (citing *Perkins v. Benguet*
 6 *Consol. Mining Co.*, 342 U.S. 437 (1952)).²

7 Those “exceptional” conditions do not apply here, and *Daimler* therefore
 8 conclusively demonstrates that Spotify is not subject to general jurisdiction in
 9 California. As Plaintiff concedes in his complaint, Spotify is incorporated in
 10 Delaware and its principal place of business is in New York. Compl. ¶ 8; *see also*
 11 Declaration of Sachin Doshi ¶ 8. That ends the inquiry under *Daimler*: Because
 12 Spotify is not “at home” in California, it is not subject to general jurisdiction here.
 13 Spotify is subject to general jurisdiction only in Delaware or New York.

14 **B. Spotify Is Not Subject To Specific Jurisdiction In California In**
 15 **This Case.**

16 Spotify is likewise not subject to specific personal jurisdiction in California
 17 in this case. In *Walden v. Fiore*, 134 S. Ct. 1115 (2014), the Supreme Court
 18 reaffirmed the traditional rule that, for specific jurisdiction to exist, “the
 19 defendant’s suit-related conduct must create a substantial connection with the
 20 forum State.” *Id.* at 1121. Under this rule, three requirements must be satisfied
 21 before a court may exercise specific jurisdiction consistent with due process.

22 *First*, the defendant must have established “contacts with the *forum State*
 23 *itself*, not . . . contacts with persons who reside there.” *Id.* at 1122 (emphasis

24 ² *Perkins* is the only case in which the Supreme Court has found general
 25 personal jurisdiction over a non-resident defendant. There, a Philippine corporation
 26 was temporarily relocated to Ohio while the Japanese occupied the Philippines
 27 during World War II. 342 U.S. at 447. During that time, “Ohio was the
 28 corporation’s principal, if temporary, place of business.” *Keeton v. Hustler*
Magazine, Inc., 465 U.S. 770, 779 n. 11 (1984) (describing facts of *Perkins*).

1 added). Thus, “a defendant’s relationship with a plaintiff or third party, standing
2 alone, is an insufficient basis for jurisdiction.” *Id.* at 1123. Further, contacts with
3 individual forum *residents* are irrelevant except to the extent that they demonstrate
4 that the defendant has targeted and directed its activities at the *forum state as such*.
5 *See also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) (explaining
6 that a defendant’s “contract with an out-of-state [plaintiff]” does not
7 “automatically establish sufficient minimum contacts in the [plaintiff’s] home
8 forum” and that courts must instead evaluate “whether the defendant purposefully
9 established minimum contacts *within the forum*”) (emphasis added).

10 *Second*, the contacts between the defendant and the forum state must be
11 “contacts that the ‘defendant *himself*’ creates.” *Walden*, 134 S. Ct. at 1122
12 (quoting *Burger King*, 471 U.S. at 475). This is so because the “[d]ue process
13 limits on the State’s adjudicative authority principally protect the liberty of the
14 nonresident defendant—not the convenience of plaintiffs or third parties.” *Id.*
15 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980)).
16 Thus, “it is the *defendant’s conduct* that must form the necessary connection with
17 the forum State that is the basis for its jurisdiction over him.” *Id.* (emphasis added)
18 (citing *Burger King*, 471 U.S. at 478). Specific jurisdiction may not be based on
19 the “‘unilateral activity’” of persons other than the defendant. *See id.* at 1123
20 (quoting *Burger King*, 471 U.S. at 475).

21 *Third*, the contacts upon which specific jurisdiction is based must be “suit-
22 related.” *Walden*, 134 S. Ct. at 1121. Contacts that have nothing to do with the
23 “underlying controversy” in the litigation are irrelevant to specific jurisdiction. *Id.*
24 at 1121 n.6 (quotation marks omitted).

25 In this case, none of the three due process requirements underscored in
26 *Walden* is met.

27
28

1 **1. Under *Walden*, Spotify Has Not Directed Its Activities**
2 **Towards California Simply By Making Its Internet-Based**
3 **Services Available Around The World.**

4 Lowery does not allege that Spotify has directed any of its activities
5 *specifically toward California* as opposed to other jurisdictions. He does not,
6 because he cannot. The Spotify activities at issue in this lawsuit—Spotify’s
7 licensing of musical compositions in the United States—are activities that are
8 exclusively performed by Spotify employees in New York City or Spotify AB
9 employees in Sweden,³ and/or by Spotify’s exclusive third party licensing agent for
10 mechanical rights in the United States, namely, the Harry Fox Agency, which also
11 performs all of its relevant activities in New York City. *See* Doshi Decl. ¶ 14.
12 These activities have nothing to do with California.

13 Plaintiff tries to overcome this obstacle by pointing to Spotify’s alleged
14 activities with respect to its users, alleging that “residents of California” enter into
15 user agreements and engage in online transactions with Spotify, such as playing
16 musical works through the service. Compl. ¶ 8. He also alleges that the Spotify
17 service interacts with “computers of residents in California” in its operations. *Id.*

18 But the fact that Spotify’s online service is accessible in California and used
19 by certain California *residents* does not indicate that Spotify has purposefully
20 directed its activities *toward California in particular*. Indeed, a federal district
21 court recently reached the same conclusion in a highly analogous case, *Gullen v.*
22 *Facebook, Inc.*, 2016 WL 245910 (N.D. Ill. Jan. 21, 2016). There, a plaintiff sued
23 Facebook in a putative class action, alleging that Facebook’s “tag suggestion”
24 feature violated Illinois law. *Id.* at *1. The plaintiff argued that Facebook was
25 subject to specific jurisdiction in Illinois because it had supposedly “target[ed]” the
26 feature at “millions of users who are residents of Illinois.” *Id.* at *2. But the court

27 ³ Spotify USA Inc. is a wholly-owned subsidiary of Spotify AB, a company
28 organized under the laws of Sweden. Doshi Decl. ¶ 7. Spotify AB is not a party to
 this litigation.

1 disagreed, concluding that that assertion was simply “not true” because the feature
2 was available to *all* Facebook users, not merely those in Illinois. *Id.*

3 The same analysis applies here: Spotify’s service is not directed at
4 California in particular simply because it “is accessible to [California] residents.”
5 *See id.* As with the Facebook feature at issue in *Gullen*, Spotify’s content is
6 available to users throughout the United States (and the world). Millions of people
7 around the world use Spotify’s service—Spotify has at least 75 million active users
8 in 58 countries⁴—and the catalog of content available to users in California is the
9 same as that available to users anywhere else in the country (*see* Doshi Decl. ¶ 13),
10 demonstrating that Spotify does not target its service at California residents in
11 particular. The fact that California residents use Spotify simply reflects that certain
12 “purchasers happen[] to live in” California; it does not indicate that Spotify
13 expressly aimed its activities at California. *Adobe Sys. Inc. v. Cardinal Camera &*
14 *Video Ctr., Inc.*, 2015 WL 5834135, at *5 (N.D. Cal. Oct. 7, 2015); *see also;*
15 *Bubble Genius LLC v. Smith*, 2015 WL 4399483, at *5 (C.D. Cal. July 17, 2015)
16 (holding that website did not target California even though California residents
17 made purchases on it, because its operator did not “deliberately create substantial
18 contacts with California” or intend the site to be “particularly desirable in the
19 California market”).

20 Spotify’s service is not geographically “tethered to [California] in any
21 meaningful way.” *Walden*, 134 S. Ct. at 1125. Spotify is a digital music streaming
22 service that allows users to stream music (and other related media) over the
23 Internet to a wide range of devices, including personal computers, tablets,

24 ⁴ *See* Stillman Decl. Exs. A-B (Business Insider, Spotify Now Has 20 Million
25 Paying Subscribers, available at <http://www.businessinsider.com/spotify-now-has-20-million-paid-subscribers-75-million-users-charm-2015-6?r=UK&IR=T>; The
26 New York Times, Starbucks in Deal with Spotify to Stream Music, available at
27 http://www.nytimes.com/2015/05/19/business/media/starbucks-in-deal-with-spotify-to-stream-music.html?_r=0).

1 smartphones, cars, TVs, speakers, gaming consoles, and more. Doshi Decl. ¶ 10.
2 In order to play music using the Spotify service, users must first log on to the
3 Spotify service through the Spotify software or website on their devices. Doshi
4 Decl. ¶ 13. The Spotify service is completely portable: a Spotify user who created
5 an account in California (for example) can stream music to her device in another
6 state (or sometimes another country). Doshi Decl. ¶ 13. This portability further
7 confirms that Spotify has not directed its actions specifically at California. *See*
8 *Picot v. Weston*, 780 F.3d 1206, 1215 (9th Cir. 2015) (holding that specific
9 jurisdiction was unavailable because the defendant’s actions were not directed at
10 California but instead would “follow [the plaintiff] wherever he might choose to
11 live or travel”).

12 Courts have made similar points with respect to email, another portable
13 Internet service, explaining that email contacts “do[] not show a relation between
14 the [defendant] and [the forum].” *Advanced Tactical Ordnance Sys., LLC v. Real*
15 *Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014). This is so because “[a]s
16 a practical matter, email does not exist in any location at all; it bounces from one
17 server to another . . . and it winds up wherever the recipient happens to be at that
18 instant.” *McGibney v. Retzlaff*, 2015 WL 3807671, at *5 (N.D. Cal. June 18, 2015)
19 (quotation marks omitted). Because a user can access email from anywhere, the
20 relationship between where she happens to do so at any particular time and a
21 lawsuit is “entirely fortuitous,” meaning that an email contact does not show any
22 connection between the defendant and the place where the contact happened to
23 occur. *Id.* (quotation marks omitted).

24 The same is true of the Spotify service. Users can and do access Spotify
25 from nearly anywhere, and it is (as in *McGibney*) “entirely fortuitous” where a user
26 happens to be when she streams a particular song. *Id.* Thus, any contacts between
27 Spotify and users who *happen* to be in California do not support specific
28

1 jurisdiction, because they involve no “deliberate actions by [Spotify] to target or
2 direct itself toward the forum state.” *Advanced Tactical*, 751 F.3d at 803.

3 At bottom, Plaintiff’s theory of jurisdiction cannot be that Spotify has
4 targeted its service *at California*—it clearly has not—but instead that Spotify is
5 subject to specific jurisdiction *anywhere and everywhere* its service can be
6 accessed. Yet that theory would lead to the absurd conclusion that any website or
7 online service would be subject to suit in virtually every jurisdiction. As the
8 Seventh Circuit has put it: “[I]f having an interactive website were enough [to
9 warrant specific jurisdiction], there is no limiting principle—a plaintiff could sue
10 everywhere. Such a result would violate the principles on
11 which *Walden* and *Daimler* rest.” *Id.* at 803; *see also, e.g., GTE New Media Servs.*
12 *Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000) (rejecting the notion
13 that “mere accessibility” of an internet service in the forum suffices for personal
14 jurisdiction, because that “expansive theory of personal jurisdiction would shred
15 the[] constitutional assurance[] [of due process] out of practical existence”). Thus,
16 this Court should hold that Spotify’s contacts with users do not support specific
17 jurisdiction because they are not in any way directed at California in particular.

18 **2. The Only Relevant Contacts Would Be Those Created By**
19 ***Spotify*—Not Those Generated By California Users’**
20 **Interactions With The Spotify Service.**

21 Plaintiff’s argument for specific jurisdiction based on Spotify’s interactions
22 with California-based users fails for a second reason: Spotify does not *itself* create
23 those contacts. In essence, Spotify simply makes available an online service that
24 transmits music when, and only when, a person chooses to become a user and then
25 interacts with the service.

26 Under similar circumstances, courts have repeatedly held that a defendant
27 that operates an Internet-based service—like Spotify—does not *itself* create a
28 contact with the forum state simply because the service has users in that state. For

1 example, the Seventh Circuit has explained that “the operation of an interactive
2 website does not show that *the defendant* has formed a contact with the forum
3 state. And, without *the defendant’s creating* a sufficient connection (or ‘minimum
4 contacts’) with the forum state itself, personal jurisdiction is not proper.”
5 *Advanced Tactical*, 751 F.3d at 803 (emphasis added)).

6 Similarly, a federal court in Chicago recently rejected “the notion that”
7 Facebook’s “operation of an interactive site is sufficient to confer specific
8 jurisdiction on it in every state from which the site can be accessed.” *Gullen*, 2016
9 WL 245910, at *2. Because the plaintiff in *Gullen* had failed to “allege that
10 Facebook targets” the challenged conduct—its “Tag Suggestions” feature—“at
11 Illinois residents” in particular, “the fact that [Facebook’s] site is accessible to
12 Illinois residents does not confer specific jurisdiction over Facebook.” *Id.*

13 The same is true here: Spotify’s operation of an Internet-based service
14 accessible to California users (as well as users around the country and the globe)
15 does not mean that Spotify itself has “formed a contact with” California (*id.*
16 (quoting *Advanced Tactical*, 751 F.3d at 803)). Accordingly, there is no specific
17 personal jurisdiction over Spotify in this case for this additional, independent
18 reason.

19 **3. The Only Contacts That Spotify Itself Has Created With**
20 **The Forum Are Not Suit-Related.**

21 Plaintiff’s complaint points to only one form of contact that conceivably
22 reflects Spotify’s direction of contacts towards California in particular: Spotify’s
23 two California offices. But those offices are irrelevant to specific jurisdiction,
24 because they are not related to this lawsuit. And as *Walden* holds directly, it is the
25 “defendant’s *suit-related* conduct” that “must create a substantial connection with
26 the forum State.” 134 S. Ct. at 1121 (emphasis added).

27 Spotify’s two small offices in California do not fit the bill. They employ a
28

1 total of approximately 50-60 employees. Doshi Decl. ¶¶ 21-22. This is far less
2 than the 450-500 employees located in New York, which is the hub of the
3 company’s United States operations. Doshi Decl. ¶ 9. All but eight of these
4 employees work in roles unrelated to the content part of Spotify’s business. Doshi
5 Decl. ¶ 22. The majority of California employees work in advertising sales and of
6 the few California employees who perform work related to the content side of
7 Spotify’s business, not a single one is involved with music composition
8 licensing—the subject matter of this litigation. *See* Doshi Decl. ¶¶ 22-23. Thus,
9 Spotify’s California offices do not constitute “suit-related” contacts and
10 accordingly cannot support specific jurisdiction in this case.

11 Plaintiff may also seek to argue that Spotify has established contacts with
12 California by litigating in California courts in other cases. But specific jurisdiction
13 is analyzed on a “case-by-case basis.” *Braun v. Crown Crafts Infant Prods., Inc.*,
14 2013 WL 1154498, at *2 (W.D. Wash. Mar. 20, 2013). Thus, the existence of
15 prior litigation in California says nothing about whether specific jurisdiction is
16 available in *this* case.

17 * * *

18 Because there is neither general jurisdiction nor specific jurisdiction over
19 Spotify in California, this case must be dismissed for lack of personal jurisdiction.

20 **III. IN THE ALTERNATIVE, THE CASE SHOULD BE TRANSFERRED**
21 **TO THE SOUTHERN DISTRICT OF NEW YORK.**

22 In the alternative, this Court should transfer this case to the U.S. District
23 Court for the Southern District of New York under 28 U.S.C. §1404(a). As
24 described more fully below, the Southern District of New York, where Spotify’s
25 United States operations are based and where all of its knowledgeable witnesses
26 and documents are located, as well as where key third-party witnesses and
27 documents are located, is a far more convenient and appropriate forum for this
28 litigation than this District, where *no* known documents or witnesses may be

1 found, from the parties or otherwise.

2 **A. Virtually All The Factors Courts Consider In Deciding Whether**
3 **Venue Is Inconvenient Point Toward Transferring This Case to**
4 **the Southern District of New York.**

4 A district court may transfer a civil action to any other district where it could
5 have been brought “[f]or the convenience of the parties and witnesses, in the
6 interests of justice.” 28 U.S.C. § 1404(a). There is no question that Lowery could
7 have brought this suit in the Southern District of New York, because Spotify’s
8 principal place of business is located in New York City and Spotify is therefore
9 subject to personal jurisdiction in that district. *See* 29 U.S.C. §1391(b)(1)-(2).
10 Thus, transfer is appropriate as long as “consideration[s] of convenience and
11 fairness” favor transfer. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th
12 Cir. 2000) (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

13 The Supreme Court has instructed that the “public” and “private” interest
14 factors relevant to transfer include:

- 15 • the parties’ “relative ease of access to sources of proof”;
- 16 • the “availability of compulsory process for attendance of unwilling
17 witnesses”;
- 18 • “some weight to the plaintiffs’ choice of forum”;
- 19 • “local interest in having a localized controversy decided at home”;
- 20 • “administrative difficulties flowing from court congestion”; and
- 21 • in diversity jurisdiction cases, “having the trial . . . in a forum that is at
22 home with the law.”

23 *Atl. Marine Constr. Co. v. U.S. Dist. Court for Western Dist. of Tex.*, 134 S. Ct.
24 568, 581 n.6 (2013) (citations and internal quotation marks omitted).

25 Here, all of the most significant factors weigh squarely in favor of transfer
26 and the remaining factors are largely neutral, while *none* of the factors favors
27 Plaintiff.

28

1 **1. The Southern District Of New York Is A Far More**
2 **Convenient Forum For Both Parties.**

3 The Southern District of New York is a far more convenient forum for *both*
4 parties than this District. Spotify’s headquarters are located in New York City and
5 Plaintiff is a Georgia resident; neither party resides here.

6 Moreover, in a class action lawsuit, the defendant’s presence in the
7 transferee venue is a “weighty consideration” in deciding whether to grant a
8 transfer. *In re Yahoo! Inc.*, 2008 WL 707405, at *3 (C.D. Cal. Mar. 10, 2008)
9 (granting transfer to defendant’s home district, where plaintiffs did not allege that
10 they resided in the transferor district or that the transferor district was otherwise
11 convenient to them for any particular reason). Spotify’s United States operations
12 are based in New York, the company’s largest U.S. office, where Spotify employs
13 approximately 450-500 employees. Doshi Decl. ¶ 9. The most senior employees
14 of Spotify USA Inc., including its Chief Content Officer, Chief Revenue Officer,
15 Chief Marketing Officer, and Global Head of Communications and Public Policy,
16 work in the New York office. Doshi Decl. ¶ 9. Furthermore, this lawsuit makes
17 allegations relating to Spotify’s publishing licensing and royalty payment
18 procedures. Compl. ¶¶ 1-3. All Spotify employees in the United States with
19 knowledge of these policies and procedures work in New York and live either in
20 New York or in the New York metropolitan area. Doshi Decl. ¶ 15. These
21 employees include:

- 22 • *Sachin Doshi*, VP of Content Strategy & Operations, who is
23 knowledgeable about where documents and other evidence relevant to
24 plaintiff’s allegations may be found and where certain potential
25 witnesses are located;
- 26 • *Stefan Blom*, Chief Content Officer and Chief Strategy Officer, who
27 is knowledgeable about Spotify’s overall licensing practices and
28 strategy, including with respect to obtaining mechanical licenses;

- 1 • *Andrew Contompasis*, Technical Account Manager, who is
2 knowledgeable about how content physically is delivered to Spotify
3 from record labels and how it makes its way onto the service;
- 4 • *James Duffett-Smith*, formerly an attorney for Spotify who was
5 recently named Head of Publisher Relations, who is knowledgeable
6 about Spotify's relationship with HFA, Spotify's relationships with
7 music publishers, and Spotify's agreements relating to music
8 publishing rights (including mechanical rights); and
- 9 • *Niklas Lundberg*, formerly Head of Content Insight and recently
10 named Head of Licensing for Labels and Recordings, who is
11 knowledgeable about Spotify's relationship with HFA and Spotify's
12 relationships with music publishers.

13 Doshi Decl. ¶¶ 1, 15. Former employee *Kenneth Parks* also resides in New York
14 and is knowledgeable about Spotify's overall licensing practices and strategy,
15 including with respect to obtaining mechanical licenses (prior to the time of his
16 recent departure). Parks was Spotify's Chief Content Officer until September 2015
17 and from October 2015 to present has been engaged to provide consulting services
18 to Spotify. Doshi Decl. ¶ 15.

19 By contrast, *no* Spotify employees with knowledge relevant to this action
20 may be found in California. Doshi Decl. ¶¶ 15, 23.⁵ Spotify documents relevant to
21 Plaintiff's allegations are most likely to be in the possession of the New York
22 employees named above, and would therefore be collected and reviewed at
23 Spotify's New York offices. Doshi Decl. ¶ 16. Thus, it would be far more
24 convenient for Spotify to defend against this lawsuit in New York. Doshi Decl. ¶

25 _____
26 ⁵ Although Spotify maintains two small offices in California, one in San
27 Francisco and one in Los Angeles, neither of the company's California offices
28 houses documents relevant to this litigation, and none of Spotify's California-based
employees has any knowledge relevant to this litigation. Doshi Decl. ¶¶ 21,23.

1 24.

2 Litigating in New York would also be more convenient and cost-efficient for
3 *Plaintiff*, who is a resident of Georgia. Compl. ¶ 7. Plaintiff would certainly have
4 to appear for any trial in this action, and may well appear at other court
5 proceedings. For such appearances, Georgia is of course much closer to New York
6 than to California. In short, the convenience of both parties favors transfer to New
7 York.

8 **2. The Southern District of New York Is A More Convenient**
9 **Forum For Witnesses.**

10 “The convenience of the witnesses is usually the most important factor to
11 consider in deciding whether to transfer an action.” *Yahoo!*, 2008 WL 707405, at
12 *3. This factor, too, weighs heavily in favor of transfer: virtually *no* relevant
13 witnesses reside in California, while all of Spotify USA’s witnesses and most of
14 the non-party witnesses, with the exception of Spotify AB employees in Sweden,
15 reside in New York (or the New York metropolitan area).

16 For example, all potential party witnesses in this litigation (other than
17 plaintiff Lowery) live either in New York or in the New York metropolitan area.
18 Doshi Decl. ¶ 15.⁶ At least some of these employees are likely to be called as
19 witnesses in this action.

20 Even more relevant is the fact that the *non-party* witnesses likely to be called
21 are also predominantly located in New York. “The convenience of non-
22 party witnesses is often the most important factor in determining whether a transfer
23 under § 1404 is appropriate.” *Hamilton v. Genesis Logistics, Inc.*, 2013 WL
24 3168373, at *6 (C.D. Cal. June 20, 2013); *see also, e.g., Galliani v. Citimortgage,*
25 *Inc.*, 2013 WL 101411, at *4 (E.D. Cal. Jan. 7, 2013) (“It is axiomatic that

26 _____
27 ⁶ As discussed above, there are employees of Spotify’s parent company
28 (Spotify AB) located in Sweden with relevant information, but Spotify AB is not a party to this lawsuit.

1 convenience of non-party witnesses is frequently the most important factor in the
2 section 1404(a) calculus.”); *Yahoo!*, 2008 WL 707405, at *3 (“[I]t is often the
3 convenience of the non-party witnesses that figures most prominently in [the
4 transfer] analysis.”).

5 Here, that “most important” consideration points decisively in favor of
6 transfer: the Harry Fox Agency (“HFA”), a rights management, licensing, and
7 royalty services company headquartered in New York,⁷ plays an important role in
8 connection with activities at issue in the Complaint, as HFA is Spotify’s exclusive
9 third party licensing agent for mechanical rights in the United States. Doshi Decl.
10 ¶ 17. Accordingly, the HFA employees who perform the relevant music licensing
11 services on behalf of Spotify in New York are likely to have especially relevant
12 testimony and documents. Doshi Decl. ¶ 18. Litigating this case in the Southern
13 District of New York would be far more convenient for these key non-party
14 witnesses who work (and presumably reside) in New York than proceeding here.

15 Furthermore, a small number of Spotify AB employees who work and reside
16 in Sweden are also knowledgeable about Spotify’s licensing of musical
17 compositions in the United States and/or the Spotify/HFA relationship. Doshi
18 Decl. ¶ 19. These employees include: Per Malm, Chapter Lead Manager, Content
19 Engineering Chapter; Erik Olsson, Content Analyst; Simon Hartikainen, Senior
20 Content Analysis Manager; and Johan Forshufvud, Strategic Partnership Manager.
21 Doshi Decl. ¶ 19. To the extent that those witnesses might appear at trial, it would
22 obviously be more geographically convenient for them if this litigation took place
23 in New York rather than Los Angeles. And, at a minimum, their presence outside
24 of either of the competing districts does not favor either district.

25 Finally, Cindy Charles, a former legal advisor and business consultant to
26

27 ⁷ See Stillman Decl. Ex. C (S&P Report showing Harry Fox Agency’s
28 primary office location in New York, New York).

1 Spotify, is also knowledgeable about central issues to this litigation. Doshi Decl. ¶
2 20. In particular, Charles was involved in developing Spotify’s musical
3 composition licensing program in the United States and advised Spotify during its
4 negotiations with HFA related to HFA becoming Spotify’s exclusive third party
5 licensing agent for mechanical rights in the United States. Doshi Decl. ¶ 20.
6 Although certain of her testimony and documents are likely to be protected by the
7 attorney-client privilege, any non-privileged testimony and documents will be
8 highly relevant to the issues in this case. Charles primarily resides in New York,
9 but travels frequently to the San Francisco Bay area on business, where her
10 husband also maintains a residence. Doshi Decl. ¶ 20. Although San Francisco is
11 located in California, it is nearly 400 miles away from Los Angeles.

12 Indeed, the location of third party witnesses is more than a matter of mere
13 convenience, as they may be outside this Court’s subpoena power. Courts have
14 often examined whether non-party witnesses are outside the court’s subpoena
15 power in considering whether to transfer a lawsuit. *U.S. v. One Oil Painting*
16 *Entitled Femme en Blanc by Pablo Picasso*, 362 F. Supp. 2d 1175, 1185-86 (C.D.
17 Cal. 2005); *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1165-66 (S.D. Cal. 2005)
18 (ability to compel testimony weighed “strongly in favor of transfer” where current
19 and former employees of a non-party with information material to the lawsuit
20 resided beyond the reach of the transferor court's subpoena power but within the
21 subpoena power of the transferee court); *Leyvas v. Bezy*, 2008 WL 2026276, at *4
22 (D. Ariz. May 9, 2008) (“inability of the Court to compel the attendance of certain
23 witnesses would certainly favor transferring the case”). Accordingly, the fact that
24 numerous potential third-party witnesses work (and presumably live) within the
25 subpoena power of the Southern District of New York—while none, to Spotify’s
26 knowledge, reside within the subpoena power of this District—demonstrates that
27 the “relative ease and access to sources of proof” clearly favors transfer to New
28

1 York. *Atl. Marine*, 134 S. Ct. at 581 n.6.

2 **3. Plaintiff’s Choice Of Forum Is Entitled To No Deference**
3 **Here.**

4 Ordinarily, a plaintiff’s choice of venue is entitled to “some weight” (*Atl.*
5 *Marine*, 134 S. Ct. at 581 n.6), but where (as here) “the forum lacks a significant
6 connection to the activities alleged in the complaint, the degree to which courts
7 defer to the plaintiff’s chosen venue is ‘substantially reduced.’” *Broad. Data*
8 *Retrieval Corp. v. Sirius Satellite Radio, Inc.*, 2006 WL 1582091, at *3 (C.D. Cal.
9 June 6, 2006) (quoting *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D.
10 Cal. 2001)). Here, as discussed above, the operative facts which underlie Plaintiff’s
11 claims—Spotify’s licensing efforts and royalty payment procedures—occurred in
12 New York. Accordingly, California lacks any “significant connection” to this
13 case.

14 Moreover, plaintiff is a Georgia resident, not a California resident, and it is
15 well established that a foreign plaintiff’s choice of venue “deserves less deference
16 than the forum choice of a domestic plaintiff.” *Saleh*, 361 F. Supp. 2d at 1157
17 (quoting *Ravelo Monegro v. Rosa*, 211 F.3d 509, 514 (9th Cir. 2000)); *see also*
18 *Fabus Corp. v. Asiana Express Corp.*, 2001 WL 253185, at *1 (N.D. Cal. Mar. 5,
19 2001) (“[t]he degree to which courts defer to the plaintiff’s chosen venue is
20 substantially reduced where the plaintiff’s venue choice is not its residence”);
21 *Painter’s Dist. Council No. 30 Health & Welfare Fund v. Amgen, Inc.*, 2007 WL
22 4144892, at *3-4 (C.D. Cal. Nov. 13, 2007) (concluding that plaintiff’s choice of
23 forum was entitled to less deference “because California is not Plaintiff’s domicile
24 and Plaintiff has no contact with this district”).

25 In addition, “the Ninth Circuit, ‘like other courts, has noted that the weight
26 to be given the plaintiff[’]s choice of forum is discounted where the action is a
27 class action.’” *Metz v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1146 (C.D. Cal.

28

1 2009) (quoting *Saleh*, 361 F. Supp. 2d at 1157); *see also Lou v. Belzberg*, 834 F.2d
2 730, 739 (9th Cir. 1987); *Painter’s*, 2007 WL 4144892, at *3-4; *Hoefer v. U.S.*
3 *Dep’t of Commerce*, 2000 WL 890862, at *2 (N.D. Cal. June 28, 2000) (“[L]ittle
4 deference . . . is given to a plaintiff’s choice of forum in an action brought on
5 behalf of a nationwide class.”). In short, Plaintiff’s choice of forum in this putative
6 class action filed across the country from where he lives is entitled to little weight
7 and less deference, and thus the factor does not weigh against transfer.

8 **4. The Southern District of New York Has An Interest In And**
9 **Ability To Adjudicate This Matter.**

10 The Southern District of New York has a substantial connection to, and local
11 interest in, this litigation. Because Spotify’s U.S. operations are based in New
12 York, that state has a “local interest” in Plaintiff’s claims against one of its
13 corporate citizens. By contrast, there is *no* relevant connection between Plaintiff’s
14 claims and this District. In addition, no identified witnesses reside in this District,
15 and no documentary evidence is located here.

16 Furthermore, the Southern District of New York is just as familiar with
17 applying federal copyright law as this Court. *See ESPN, Inc. v. Quiksilver, Inc.*,
18 581 F. Supp. 2d 542, 551 (S.D.N.Y. 2008) (both California and New York courts
19 “are familiar with federal copyright law and have substantial experience applying
20 it.”). And no docket congestion considerations favor the Central District of
21 California over the Southern District of New York; to put it mildly, “neither court
22 is lacking for work.” *ESPN*, 581 F.Supp.2d at 551.⁸ Moreover, no unique
23 “administrative difficulties” tethered to docket congestion are likely to arise in
24 either court. *Atl. Marine*, 134 S. Ct. at 581 n.6. This factor is therefore neutral as

25 ⁸ *See Stillman Decl. Ex. D., U.S. Courts, Federal Court Management*
26 *Statistics—June 2015*, [http://www.uscourts.gov/statistics-reports/federal-court-](http://www.uscourts.gov/statistics-reports/federal-court-management-statistics-june-2015)
27 *management-statistics-june-2015* (last updated June 30, 2015) (Central District of
28 California saw 511 civil filings per judgeship in most recent 12-month period,
whereas Southern District of New York saw 401).

1 to transfer.

2 **B. The Court May Grant a Transfer Without Deciding the Question**
3 **of Personal Jurisdiction.**

4 The Supreme Court has explained that “a federal court has leeway ‘to
5 choose among threshold grounds for denying audience to a case on the merits.’”
6 *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007)
7 (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999)). This
8 “leeway” promotes judicial efficiency by allowing a court to take whatever it
9 thinks is the “less burdensome course” in disposing of a case. *Id.* at 436.

10 “The law is clear that the Court need not resolve a motion to dismiss for lack
11 of personal jurisdiction before deciding whether to transfer the case to another
12 district under 28 U.S.C. § 1404.” *Halvorson v. Solaroad Technologies Group,*
13 *LLC*, 2011 WL 1837748, *2 (W.D. Wash. May 12, 2011) (citing *Nelson v. Int’l*
14 *Paint Co.*, 716 F.2d 640, 643 n.4 (9th Cir.1983)). Courts in this District have
15 recognized their power to transfer a case without deciding questions of jurisdiction
16 when there are “sound arguments for transfer” that make the issue of transfer
17 especially easy to resolve. *Pub. Emps.’ Ret. Sys. of Miss. v. Stanley*, 605 F. Supp.
18 2d 1073, 1075 (C.D. Cal. 2009); *see also, e.g., Turner v. Harrah’s New Orleans*
19 *Hotel & Casino*, 2011 WL 1666925, at *3 (C.D. Cal. Apr. 7, 2011) (granting
20 transfer without considering personal jurisdiction); *W. Digital Techs., Inc. v. Bd. of*
21 *Regents of Univ. of Texas Sys.*, 2011 WL 97785, at *6 n.3 (N.D. Cal. Jan. 12,
22 2011) (granting transfer without reaching issues of personal jurisdiction or first-to-
23 file); *Yung v. Institutional Trading Co.*, 2008 WL 1734743, at *1 (N.D. Cal. Apr.
24 14, 2008) (granting transfer without reaching issue of personal jurisdiction);
25 *Abrams Shell v. Shell Oil Co.*, 165 F. Supp. 2d 1096, 1106 (C.D. Cal. 2001)
26 (same); *Whiteman v. Grand Wailea Resort*, 1999 WL 163044, at *3 n.4 (N.D. Cal.
27 Mar. 17, 1999) (same).

28 Accordingly, this Court can order a transfer without reaching the

1 constitutional due process question of personal jurisdiction over Spotify. Such an
2 approach would be an appropriate and expeditious way to resolve the challenges to
3 allowing this case to proceed in California.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court should dismiss this case for lack of
6 personal jurisdiction under Fed. R. Civ. P. 12(b)(2), or, in the alternative, transfer
7 the case to the Southern District of New York pursuant to 28 U.S.C. § 1404.

8
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