UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY MARTINO, an Illinois citizen, *Plaintiff*, v. THE ORCHARD ENTERPRISES, INC., a Delaware corporation; INDEPENDENT ONLINE DISTRIBUTION ALLIANCE, INC., a California corporation; and MEDIANET, INC., a Delaware corporation *Defendants*.	No. 1:20-CV-02267 Judge Virginia Kendall Magistrate Judge Susan Cox

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE OR, IN THE ALTERATIVE, TO TRANSFER FOR IMPROPER VENUE AND FOR A STAY OF DISCOVERY AND ANY ANSWER

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I. INTRODUCTION

Plaintiff concedes that this Court has no general personal jurisdiction over Defendants. Opp. to MediaNet MTD 3 n.4; Opp. to Orchard MTD 2. With respect to specific jurisdiction, Plaintiff concedes that (1) Defendants made no sales of the recordings in dispute in or into Illinois; (2) the retail record stores down the stream of commerce "offer[ed] [Plaintiff's recordings] for sale through *their own* respective interactive websites," which are "entirely managed and updated by the respective retailers themselves" (Opp. to MediaNet MTD 5, 15 (emphasis added)); and (3) the only sales arguably made into Illinois of Plaintiff's recordings were to Plaintiff and his father (Opp. to MediaNet MTD 6). These undisputed facts demonstrate that Defendants have not purposefully directed their activities at Illinois or purposefully availed themselves of the privilege of conducting business in this State. Accordingly, there is no specific jurisdiction over Defendants in Illinois and this district is an improper venue for this dispute.

II. THIS COURT DOES NOT HAVE SPECIFIC JURISDICTION OVER DEFENDANTS

A. Defendants' Licensing Third Parties Does Not Support The Exercise of Specific Jurisdiction

Plaintiff improperly seeks to "hale" Defendants into court in Illinois based on the chain of licensing from New York-based the Orchard to Washington-based MediaNet to Virginia-based Broadtime to the websites of retail record stores, certain of which happen to be based in Illinois. Defendants' actions in this chain occurred outside Illinois; did not target this State; and were steps removed from Plaintiff and his father's ultimate purchases over the internet while residing in Illinois. Because the transactions upon which Plaintiff relies took place between Plaintiff (and his father) and third party stores, Plaintiff has failed to show that Defendants took actions "purposefully directed toward the forum state" sufficient to demonstrate the requisite "'substantial connection' between a defendant and the forum state." *Asahi Metal Indus. Co. v.*

Super. Ct. of Cal., 480 U.S. 102, 103, 112 (1987) (plurality opinion); *see also Walden v. Fiore*, 571 U.S. 277, 286, 290 (2014) (specific jurisdiction requires conduct by the defendant that "connects [it] to the forum in a meaningful way," such that defendant would reasonably anticipate being "haled into court" here). Rather, at best, Plaintiff and his father's purchases of recordings from these retail stores establish contacts only "between the plaintiff (or third parties) and the forum State." *See Walden*, 571 U.S. at 28. That is insufficient as a matter of law to support the exercise of specific jurisdiction. Orchard MTD 9–10 (accumulating cases); MediaNet MTD 9–12 (same).

Plaintiff's stream of commerce allegations are insufficient. The handful of downstream sales to Plaintiff and his father cannot establish Defendants' minimum contacts with Illinois because Plaintiff cannot show that Defendants control any distribution channel or affirmatively sought to have recordings sold in Illinois.[1] Plaintiff does not meaningfully dispute that Defendants only license content for others to use and do not control (a) how Defendants' direct licensees (or any indirect licensees further down the distribution chain) conduct their business, (b) where those direct or indirect licensees conduct their business, or (c) with whom they do business. *See* Goldstein Decl. ¶¶ 17–19; McCrady Decl. ¶ 19. Accordingly, Defendants' actions in directly or indirectly authorizing Broadtime to develop downstream licensing opportunities with various retail record stores located throughout the United States, which transacted with Plaintiff and his father in Illinois, is insufficient to support jurisdiction. *See, e.g.*, *Jennings v. AC Hydraulic A/S*, 383 F.3d 546, 551 (7th Cir. 2004) (jurisdiction exists when "the defendant's

[1] As a plurality of the Supreme Court has explained, such proof may include "designing the product for market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marking the product through a distributor who has agreed to serve as the sales agent in the forum State." *Asahi Metal*, 480 U.S. at 112. None of this additional conduct is present here.

distribution scheme" rather than "the 'unilateral activity' of a third party" "landed the [product]" in the forum); *Johnson v. Barrier*, No. 15-CV-03928, 2017 WL 36442, at *4 (N.D. Ill. Jan. 4, 2017) ("Broad allegations concerning [defendant's] 'authorization' of third-party distribution activities 'throughout the United States, including in Illinois' do not [demonstrate] that jurisdiction is proper here." (citation omitted)); *Lorusso v. Menard, Inc*., No. 15-CV-7208, 2016 WL 704839, at *2 (N.D. Ill. Feb. 29, 2016) (no specific jurisdiction, even where defendant knew its products would be offered in Plaintiff's Illinois stores, unless defendant affirmatively sought that result); *Original Creations, Inc. v. Ready Am., Inc*., 836 F. Supp. 2d 711, 717–18 (N.D. Ill. 2011) (the stream of commerce case law "distinguishe[s] between those defendants who control the distribution channel and those who do not," such as licensees).

Indeed, plaintiff's ability to use the stream of commerce to show purposeful availment in a case like this is far from clear. The Seventh Circuit's most recent decision on specific jurisdiction, issued just two days before Defendants filed their opening brief, rejected the applicability of the stream of commerce theory outside of the products liability context (and noted its uncertain viability even in that context). *See J.S.T. Corp. v. Foxconn Interconnect Tech., Ltd*., 965 F.3d 571, 575–76 (7th Cir. 2020) (stating that "the stream of commerce theory is typically associated only with products liability suits" and "the viability of the stream of commerce theory has been uncertain; circuit courts have split on the issue and the Supreme Court has twice failed to resolve it conclusively"). This is not a products liability case. While the Seventh Circuit has found personal jurisdiction in a products liability case where a defendant sold its product (fireworks) to a middleman with the knowledge that its fireworks would reach Illinois consumers in the stream of commerce (*id.* at 576 (citing *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 946–47 (7th Cir. 1992))), that stream of commerce theory should not apply here,

which does not involve any sales by Defendants, but merely the licensing of the right to exploit recordings owned by others. (Notably, both the Orchard and MediaNet are themselves licensees within the licensing chain, having directly or indirectly obtained rights from the owners of the sound recordings to distribute such works. McCrady Decl. ¶¶ 3, 7; Goldstein Decl. ¶ 5; *see JST Corp.*, 965 F.3d at 576 ("downstream sales" can "support personal jurisdiction" in a stream-of-commerce cause only to the extent it shows "the defendant [took] steps to reach consumers in the forum state").

At best, Plaintiff contends that Defendants did not "set restrictions on the Illinois market" preventing sales into Illinois. Opp. to Orchard MTD 6; Opp. to MediaNet MTD 6–7. Contrary to Plaintiff's contentions, such passive inaction does not establish that Defendants "willfully targeted Il[linois] residents and Il[linois] businesses" (Opp. to MediaNet MTD 20) or engaged in some affirmative "act by which [they] purposefully avail[ed] [themselves] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."[2] *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985) (citation omitted).

The sales by the retail stores to Plaintiff and his father are also insufficient because they are limited in scope to a handful of transactions. *See*, *e.g.*, *Matlin v. Spin Master Corp.*, 921 F.3d 701, 706 (7th Cir. 2019) (scale of contact with Illinois is relevant to the specific jurisdiction inquiry); *Johnson*, 2017 WL 36442, at *6 (same). In *Matlin*, the Seventh Circuit stated that specific jurisdiction should not be found under a stream of commerce theory based on one sale, even where that sale was foreseeable. 921 F.3d at 706. It contrasted that with a defendant's systematic contact with the forum state through repeated sales of a regulated product over a

[2] Plaintiff relies on *Illinois v. Hemi Group LLC*, 622 F.3d 754, 758–59 (7th Cir. 2010), for this geographical restriction argument, but, as set forth below (*see infra* p.5 n.4), *Hemi* involved a defendant's own direct sales into Illinois and is not applicable here.

period of multiple years. *Id*. This case involves a handful of sales, in under one month, to just Plaintiff and his father. That is insufficient under *Matlin* to support specific jurisdiction.

For all these reasons, the retail record stores' independent sales to Plaintiff and his father constitute "the sort of 'unilateral activity' of a third party that 'cannot satisfy the requirement of contact with the forum State.'" *Walden*, 571 U.S. at 291 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)); *Original Creations*, 836 F. Supp. 2d at 717–18.

Whether Defendants could have predicted downstream sales in Illinois is irrelevant. Defendants' purported "knowledge" that "Plaintiff's recordings would end up being sold in Illinois" (Opp. to Orchard MTD 6; *see also* Opp. to MediaNet MTD 8–9) cannot establish jurisdiction. "'[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause" because "the mere likelihood that a product will find its way into the forum State" does not show that a defendant purposefully established minimum contacts there. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 297 (1980). Rather, what matters are "contacts that the 'defendant *himself*'" creates with the forum. *Walden*, 571 U.S. at 284; *see also J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011) (plurality opinion) (jurisdiction must rest on "defendant's actions, not his expectations").

Curry v. Revolution Labs., LLC, 949 F.3d 385 (7th Cir. 2020), and Plaintiff's other cited cases are not to the contrary. *See* Opp. to Orchard MTD 5–7; Opp. to MediaNet MTD 8–9. All of Plaintiff's cases concern out-of-state defendants that engaged in direct sales to, or direct business transactions with, Illinois residents. While the decisions did assess whether those direct transactions were foreseeable, nothing in them endorses exercising personal jurisdiction in this case just because Defendants allegedly could have foreseen that the recordings would be sold into Illinois down the licensing chain.

Curry, for example, involved a nutritional-supplement company whose products allegedly infringed the plaintiff's trademark. The Seventh Circuit found specific jurisdiction because the company (a) "created an interactive website and explicitly provided that Illinois residents could its purchase its products through that website," and (b) directly sold its products to 767 Illinois residents. 949 F.3d at 399–400. The Seventh Circuit based jurisdiction on the defendant's "own actions in establishing . . . commercial contacts with Illinois," which "provide[d] solid evidence that [the defendant] has 'purposely exploited the Illinois market'" and "reasonably could foresee that its product would be sold in the forum."[3] *Id.* Plaintiff's other cases are the same: the defendants there conducted their own direct sales or business into the forum.[4]

Defendants do not operate "interactive websites" that make "direct sales . . . in Illinois"—let alone the "substantial number" of such sales at issue in *Curry*. *See id.* Rather, independent retail stores based in Illinois and in other states and at the end of Defendants' licensing chain

[3] The defendant in *Curry* was not subject to jurisdiction in Illinois based on sales by "*other* interactive third-party websites," as Plaintiff wrongly contends. Opp. to MediaNet MTD 9. The defendant sold its product via its own website, and it also sold product through third party "marketplace" websites such as Amazon and eBay. 949 F.3d at 390. However, the sales defendant made via those third-party platforms were still defendant's sales. *Id*. Here, the retail record stores made their own sales through their own websites; the sales they made were not Defendants' sales.

[4] *See Hemi Group*, 622 F.3d at 758–59 (defendant sold 300 packs of unregistered cigarettes into Illinois); *Greene v. Karpeles*, No. 14-CV-1437, 2019 WL 1125796, at *7 (N.D. Ill. Mar. 12, 2019) (defendant created and maintained online bitcoin exchange that held assets owned by Illinois residents); *Carter v. Pallante*, 256 F. Supp. 3d 791, 797 (N.D. Ill. 2017) (defendant sold copyright licenses to Illinois-based entities); *Valtech, LLC v. 18th Ave. Toys Ltd.*, No. 14-CV-134, 2015 WL 603854, at *4 (N.D. Ill. Feb. 12, 2015) (defendant sold products to Illinois consumers through various online sales); *Ty, Inc. v. Baby Me, Inc.*, No. 00-CV-6016, 2001 WL 34043540, at *4 (N.D. Ill. Apr. 20, 2001) (defendant sold products to Illinois consumers via its own interactive website); *see also uBID, Inc. v. GoDaddy Grp.*, 623 F.3d 421, 423, 428 (7th Cir. 2010) (defendant had hundreds of thousands of Illinois customers from which it earned millions of dollars in revenue).

sold a handful of recordings to Plaintiff and his father through their own independent websites. These ultimate third-party sales do not demonstrate that Defendants purposefully availed themselves of the privilege of doing business in this State.

Where Plaintiff suffered his alleged economic loss is irrelevant. It is also irrelevant that Plaintiff allegedly experienced an economic loss here in Illinois, where he resides. *See* Opp. to Orchard MTD 15–16. The "proper question is not where the plaintiff experienced an alleged injury but whether the defendant's conduct connects him to the forum in a meaningful way." *Walden*, 571 U.S. at 290. For the reasons set forth above, Defendants conduct has not connected Defendants to Illinois.

Orchard's other business is irrelevant. It is also irrelevant that Orchard (1) allegedly "licensed and distributed [a] number [of] other recordings" ultimately sold in Illinois, including some derived from an "Illinois-based record label" (Opp. to Orchard MTD 4–5); or (2) derives some "commercial benefit" through "unrestricted domestic licensing" of that material (*id*. 7). Specific jurisdiction focuses on a defendant's "suit-related conduct;" it cannot be based on Orchard's exploitation of recordings not in dispute in this case. *Walden*, 571 U.S. at 284; *see also Matlin*, 921 F.3d at 706 (improper to aggregate all of a defendant's contacts with a state to support the exercise of specific jurisdiction); *accord Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923–24 (2011). Moreover, "financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with the State." *World-Wide Volkswagen*, 444 U.S. at 299; *see also Lexington Ins. Co. v. Hotai Ins. Co., Ltd*., 938 F.3d 874, 881 (7th Cir. 2019) (rejecting reliance on "financial benefit" accruing from defendant's broad geographic business reach).

There is no "deflecting of blame." Contrary to Plaintiff's contentions, a finding that Illinois lacks personal jurisdiction over Defendants would not let Defendants "deflect blame." (Opp. to MediaNet MTD 7, 11–12; *see also* Opp. to Orchard Br. 3–4). Such a finding would not extinguish Plaintiff's claims, which Plaintiff will remain free to prosecute in the proper forum upon a finding that Plaintiff cannot do so in this Court. Indeed, this Court may immediately transfer this case to Southern District of New York so that Plaintiff may do that seamlessly. Orchard Br. 15; MediaNet Br. 14. Plaintiff's misguided "blame-shifting" arguments improperly conflate "jurisdiction and liability," which "are two separate inquiries." *Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 944 (7th Cir. 2000). "The fact that a defendant would be liable . . . if personal jurisdiction over it could be obtained is irrelevant to the question of whether such jurisdiction can be exercised." *Id.*

B. MediaNet's Order Fulfillment Does Not Support The Exercise of Specific Jurisdiction

MediaNet's provision of back-end operations to Broadtime, which, in turn, services the retail stores, does not vest this Court with personal jurisdiction over MediaNet. As MediaNet explained in its opening brief, after an end user purchases a recording from a retail store using Broadtime's services, MediaNet emails the purchaser a link through which the purchaser may download his music purchase from MediaNet computer servers. MediaNet MTD 10; Opp. to MediaNet MTD 7.

The Seventh Circuit has already rejected the notion that such *de minimis* order fulfillment into the State can confer personal jurisdiction, reasoning that such logic would "creat[e] . . . *de facto* universal jurisdiction" that "runs counter to the approach the [Supreme] Court has [long] followed" and repeatedly "reaffirmed." *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 801–02 (7th Cir. 2014); *see also Johnson*, 2017 WL 36442, at *4

("product shipment alone" does not necessarily "satisf[y] the constitutional standard for minimum contacts, particularly in this intentional tort case").

The same is true here. The links Plaintiff and his father received from MediaNet are automatically circulated to consumers who purchase content from any third-party website using Broadtime's e-commerce platform, regardless of where either the consumer or retailer is located. MediaNet MTD 10. The fact that Plaintiff and his father happened to be in Illinois when they transacted business over the internet with the third party retail stores and received MediaNet's e-mails is too "random, fortuitous, or attenuated" to have consequence to the specific jurisdiction analysis. *See Walden*, 571 U.S. at 286 (citing *Burger King*, 471 U.S. at 475).[5] Indeed, the Seventh Circuit has already correctly reasoned that receiving an e-mail in the forum "does not show a relation" between the defendant and the forum sufficient to confer jurisdiction because an "email does not exist in any location at all"; it "bounces from one server to another" until "it winds up wherever the recipient happens to be at that instant. The connection between the place where an email is opened and a lawsuit is entirely fortuitous." *Advanced Tactical*, 751 F.3d at 803.

For these same reasons, jurisdiction cannot be tethered to the 30-second preview samples available for streaming anywhere in the United States via the retail stores' independent websites. Although Plaintiff alleges that the retail stores made these samples available for streaming on

[5] Even if MediaNet's transmissions were sufficient to establish personal jurisdiction over MediaNet, that would not vest this Court with personal jurisdiction over the Orchard, which must be based on the Orchard's own contacts with Illinois. *See Bristol-Myers Squibb Company v. Superior Court of the State of California, San Francisco County*, 137 S. Ct. 1773, 1783 (2017) ("[T]he requirements of [personal jurisdiction] . . . must be met as to each defendant over whom a state court exercises jurisdiction." (citation omitted)). Plaintiff may not evade this requirement by speculating that the Orchard and MediaNet "appear to be in a[n] . . . agency relationship." Opp. to Orchard MTD 17; *see also* SAC ¶ 27(a)). That speculation is, moreover, inconsistent with Plaintiff's admission that MediaNet is a *licensee* of the Orchard, operating on its own behalf within the scope of the license, not an agent of the Orchard. Opp. to Orchard MTD 7.

their own websites, he does not allege that any sample actually was streamed, including in Illinois. Opp. to MediaNet MTD 14; F. Martino Decl. in Opp. to MediaNet MTD ¶ 12 (alleging that websites allowed Plaintiff's father to sample recordings, not that he did sample them); A. Martino Decl. in Opp. to MediaNet MTD ¶¶ 22, 25 (same for Plaintiff).[6]

C. In Any Event, Plaintiff and His Father's Purchase of Plaintiff's Own Recordings Does Not Support the Exercise of Specific Jurisdiction

Plaintiff cannot invoke this Court's jurisdiction based solely on purchases that he and his father made, which are the only purchases at issue in this case. Numerous courts have held that a plaintiff cannot establish jurisdiction over an out-of-state defendant based on the plaintiff's own purchases or purchases made on the plaintiff's behalf. *Matlin*, 921 F.3d at 707; *Clarus Transphase Sci., Inc. v. Q-Ray, Inc*., No. 06-XC-3450, 2006 WL 2374738, at *3 n.3 (N.D. Cal. Aug. 16, 2006); *Millennium Enters., Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 911 (D. Or. 1999); *Edberg v. Neogen Corp.*, 17 F. Supp. 2d 104, 112 (D. Conn. 1998).

It is of no moment that *Matlin* and *Clarus* involved purchases made by a plaintiff only after the plaintiff had filed suit. *Matlin* did find that such "*ex post facto*" purchases were a particularly egregious example of an improper attempt to manufacture jurisdiction (921 F.3d at 707), but nothing in either case suggests that a court should treat differently a purchase made just a handful of weeks before a plaintiff files suit, which is what happened here. *Compare* Complaint (signed and filed by Plaintiff on April 8, 2020), *with* Opp. to MediaNet MTD 12

[6] Plaintiff makes confusing arguments in his brief about who "integrated" the sample feature into the retail store sites and whether MediaNet "supplied" the samples to the websites of the two Illinois-based retail stores. Opp. to MediaNet MTD 14. Plaintiff's declaration, however, correctly clarifies that (1) the websites are owned by the retailers and were designed by Broadtime, with just the musical content being licensed by MediaNet (A. Martino Decl. in Opp. to MediaNet MTD ¶ 41); and (2) samples, if and when accessed by an end-user, are transmitted directly to that user from MediaNet's servers (*id*. ¶ 27) and are thus not distributed by MediaNet to the Illinois stores.

(Plaintiff and his father made their purchases between March 2 and March 30, 2020). It is evident from the timing of Plaintiff and his father's purchases as well as the email that Plaintiff sent to MediaNet on March 2, 2020, that Plaintiff and his father made their purchases to set up this lawsuit. Indeed, when Plaintiff emailed MediaNet on March 2, 2020, he did not notify MediaNet of his infringement contentions. Instead, he inquired "as to how many third-parties MEDIANET has distributed and/or made available his recordings to, as well as a list of all third-parties that MEDIANET had distributed or was scheduled to distribute royalties to in connection with any sales of his sound recordings" (SAC ¶ 143) and asked MediaNet to "name . . . the party that assigned MediaNet the right to license" the works (Opp. to MediaNet MTD 17). Contrary to Plaintiff's contentions, this inquiry did not suggest that MediaNet may have lacked authority to distribute Plaintiff's works. At best, it suggested that the third parties from whom MediaNet derived its rights to exploit these works may have owed Plaintiff certain royalties. *Id*.

It is clear, moreover, that Plaintiff's father purchased the recordings to help Plaintiff assert his claims. Plaintiff and his father attempt to deflect this obvious point by contending that the father was not Plaintiff's "agent." *See* Opp. to MediaNet MTD 12; F. Martino Decl. in Opp. to MediaNet MTD ¶¶ 6–7; A. Martino Decl. in Opp. to MediaNet MTD ¶ 14. But Plaintiff and his father admit that (a) each bought the recordings for "research" or "investigat[ion]" purposes and not for their listening pleasure (Opp. to MediaNet MTD 12, 18; F. Martino Decl. in Opp. to MediaNet MTD ¶ 7); (b) the father made his first purchase after telling Plaintiff that he had discovered the recordings for sale and Plaintiff advised that he would "look into the situation" (F. Martino Decl. in Opp. to MediaNet MTD ¶¶ 8–9; A. Martino Decl. in Opp. to MediaNet MTD ¶ 13); (3) the father reported his initial purchase to Plaintiff (F. Martino Decl. in Opp. to MediaNet MTD ¶ 9); (4) the father contacted both MediaNet and the Orchard about Plaintiff's

claim, at Plaintiff's "direct instruction" or request (*id*. ¶ 10; A. Martino Decl. in Opp. to MediaNet MTD ¶ 16; SAC ¶ 106); and (4) the father made other purchases after doing more "research" (F. Martino Decl. in Opp. to MediaNet MTD ¶ 12). The father bought the recordings for Plaintiff to set up this action.

D. Plaintiff's Emails Do Not Support The Exercise of Specific Jurisdiction

Plaintiff's pre-suit correspondence cannot vest this Court with personal jurisdiction over Defendants even if such correspondence did notify, or put Defendants on notice, of Plaintiff's address (and the correspondence did not).[7] Contrary to Plaintiff's contentions (Opp. to MediaNet MTD 17), personal jurisdiction requires more than Defendants' knowledge or the "discoverability" of Plaintiff's residence. As the Seventh Circuit has explained, "[t]o find express aiming based solely on the defendant's receipt of [a demand] letter would make any defendant accused of an intentional tort subject to personal jurisdiction in the plaintiff's home state as soon as the defendant learns what that state is." *See Mobile Anesthesiologists Chicago, LLC v. Anesthesia Assocs. of Houston Metroplex, P.A.*, 623 F.3d 440, 447 (7th Cir. 2010).

Plaintiff's cases are not to the contrary. Jurisdiction existed in those cases based on correspondence between the parties only because the correspondence itself, containing allegedly fraudulent statements or other unlawful content, gave rise to the plaintiffs' claims. *See Am. Med. Ass'n v. 3Lions Publ'g, Inc*., No. 14-CV-5280, 2015 WL 1399038, at *3 (N.D. Ill. Mar. 25, 2015) (sending letters into jurisdiction sufficient to sustain personal jurisdiction where substance

[7] Plaintiff contends that he informed Defendants of his residence through his email correspondence. Except for the December 2019 letter he contends he sent to the Orchard (which Orchard has no record of receiving), Plaintiff provided only his email address in this correspondence and not his physical address. Ex. A to the A. Martino Decl. in Opp. to MediaNet MTD. Defendants were under no duty to investigate Plaintiff's residence via his copyright registration (Opp. to MediaNet MTD 17; Opp. to Orchard MTD 14), especially since registrations include mailing addresses effective as of the date of registration and not necessarily a registrant's current residence addresses.

of letters formed the basis of RICO and other claims and litigation thus "arises out of the letter."); *see also Felland v. Clifton*, 682 F.3d 665, 676 (7th Cir. 2012) (same for communications containing alleged misrepresentations); *Greene v. Karpeles,* No. 14-CV-1437, 2019 WL 1125796, at *7 (N.D. Ill. Mar. 12, 2019) (repeated communications sent to Illinois to conceal the fraud); *Levin v. Posen Found*., 62 F. Supp. 3d 733, 740 (N.D. Ill. 2014) (same for e-mails containing alleged misrepresentations).

This case does not arise out of any letter sent by Defendants to this jurisdiction. Plaintiff exchanged one set of emails with MediaNet in which he posed questions about the recordings and MediaNet said it would endeavor to respond. SAC ¶¶ 143–44. That correspondence does not form the basis of Plaintiff's copyright infringement claims, which arise from MediaNet's exploitation of the works.

The Orchard sent no correspondence to Plaintiff. Instead, Plaintiff, relies on Orchard's correspondence with Sound Exchange regarding the parties' competing claims to royalties. But Sound Exchange is based in Washington DC (*see* Ex. B to Opp. to Orchard MTD, at ¶ 12(a)), so Orchard's correspondence directed there cannot confer jurisdiction over it here. In any event, SoundExchange's 2017 emails to Plaintiff do not form the basis of Plaintiff's conversion claim against the Orchard, which stems from The Orchard's original registration of "a sound recording rights claim" with SoundExchange in 2012. Opp. to Orchard MTD 9. And SoundExchange did not send its communications to Plaintiff as the Orchard's agent. The contracts that Plaintiff provides this Court appoint SoundExhange as Orchard's agent only for the collection of royalties. *See* Ex. B to Opp. to Orchard MTD, at ¶¶ 1(b) and 2(b).[8]

[8] Plaintiff challenges certain factual points Defendants proffered in their opening papers. Although this Court need not to resolve these points to rule on this motion, Defendants stand behind many of them (the revenue earned from the exploitation of Plaintiff's works; Orchard's

III. VENUE IS IMPROPER IN THIS DISTRICT

Venue is improper in this District under 28 U.S.C. § 1406(a) because no personal jurisdiction exists over Defendants. Contrary to Plaintiff's contention, the Court is not to weigh whether it would be fair or convenient to proceed in this venue. Opp. to MediaNet MTD 18–19. Rather, if the Court determines that it may not exercise jurisdiction over Defendants, and thus venue is not proper here, the Court is to either dismiss this case or transfer it to a district with proper venue. Orchard MTD 15. *Cf. Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219 (7th Cir. 1986) (a federal district considers the convenience of parties and witnesses only where the court is a proper venue and is considering a discretionary transfer under 28 U.S.C. § 1404(a)).

IV. THE COURT SHOULD STAY DISCOVERY AND ANY ANSWER

Plaintiff has not opposed a stay of discovery and any deadline for Defendants to answer the Second Amended Complaint, and the Court should grant this relief for the reasons stated in Defendants' moving papers. Orchard MTD 15; MediaNet MTD 14.

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non-receipt of Plaintiff's December 2020 letter; and which Orchard entity receives payments from Sound Exchange). However, Orchard and MediaNet acknowledge and apologize for any inaccuracies regarding these other ancillary points: SoundExchange remitted a nominal amount of performance royalties (less than one dollar) to Orchard many years back; Orchard listed a job opening for one part-time college rep job in Illinois; and MediaNet sent Plaintiff a brief response to his e-mail in March 2020 (and in which Plaintiff did not accuse MediaNet of infringement or inform MediaNet of his residence).

CONCLUSION

For these reasons, this Court should grant Defendants' Motions To Dismiss Plaintiff's Second Amended Complaint For Lack Of Personal Jurisdiction And Improper Venue Or, In The Alterative, To Transfer For Improper Venue And For A Stay Of Discovery And Any Answer.

Dated: New York, New York
September 11, 2020

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