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20 Music

21 **UNITED STATES DISTRICT COURT**  
22 **NORTHERN DISTRICT OF CALIFORNIA**  
23 **SAN FRANCISCO DIVISION**

24 UMG RECORDINGS, INC., CAPITOL  
25 RECORDS, LLC, CONCORD BICYCLE  
26 ASSETS, LLC, CMGI RECORDED MUSIC  
27 ASSETS LLC, SONY MUSIC  
28 ENTERTAINMENT, and ARISTA MUSIC

Plaintiff(s),

vs.

INTERNET ARCHIVE, BREWSTER  
KAHLE, KAHLE/AUSTIN FOUNDATION,  
GEORGE BLOOD, and GEORGE BLOOD,  
L.P.

Defendant(s).

) Case No.: 3:23-cv-06522-MMC

) **Plaintiffs' Memorandum of Points and**  
) **Authorities in Opposition to Defendants**  
) **Internet Archive, Kahle, Blood, and**  
) **George Blood L.P.'s Motion to Dismiss**

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## Introduction

Defendants are violating Plaintiffs’ rights in protected pre-1972 sound recordings<sup>1</sup> on a colossal scale as part of what Defendants have dubbed the “Great 78 Project.” Under that rubric, Defendants have created a massive online storefront providing digital copies of thousands of these protected sound recordings to anyone to stream or download for free. The Great 78 Project is illegal. Defendants have obtained no rights from any of the Plaintiffs to copy, distribute or publicly perform any of Plaintiffs’ iconic works, and have no rights as a matter of law.

Defendants are acutely aware of the copyright laws, yet ignore them, dreaming up baseless arguments to try to justify a course of conduct that is nothing more than the wanton and willful violation of others’ intellectual property rights. Among those baseless arguments is their most recent “Rice Krispies” argument, where they claim that the “hisses, crackles, and pops” contained on their aging copies of Plaintiffs’ recordings give them complete license to throw out the copyright laws. They do not.

Defendants now bring this motion to dismiss that, by its own terms, purports to raise only the narrow issue of the statute of limitations. That issue has a straightforward answer: Defendants’ motion is without merit and should be denied, for it does not and cannot identify any specific claims that should be dismissed. A motion to dismiss claims as time-barred can be granted only if the statute of limitations clearly applies from the face of the Complaint. Plaintiffs’ Complaint alleges that Defendants copied, distributed, and publicly performed without authorization 2,749 of Plaintiffs’ protected sound recordings, which is but a small sample of the works Defendants are infringing. Defendants cannot point to any allegations specific to any particular recording that shows the statute of limitations bars the claim for that work. While Defendants ask this Court to opine at this early stage of the case about how abstract legal

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<sup>1</sup> Prior to 2018, sound recordings created before February 15, 1972, while protected under state law, were not eligible for federal copyright protection. In 2018, Congress enacted the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, 17 U.S.C. § 1401 *et seq.*, which provides that, for sound recordings fixed before February 15, 1972, anyone who violates any of the exclusive rights under 17 U.S.C. § 106—including the rights of reproduction, distribution, and public performance by means of a digital audio transmission—is subject to the remedies the Copyright Act provides under sections 502 through 505 and 1203 to the same extent as an infringer of copyright. 17 U.S.C. § 1401(a)(1).

1 principles relating to the statute of limitations will apply to facts that have not yet been  
2 developed through discovery, there are no facts currently before the Court on which to ground  
3 such an advisory opinion. Indeed, conspicuously lacking from Defendants' Motion are the  
4 crucial facts of when Defendants made copies of each recording (which could have occurred  
5 multiple times on different dates) or when Defendants distributed or publicly performed those  
6 sound recordings. Thus, there is not a single date in Defendants' Motion associated with a single  
7 recording from which the Court could opine on a single claim.

8 Later in the case, discovery will adduce the multitude of dates pivotal to the statute of  
9 limitations analysis, including: all of the dates Defendants created copies of the sound recordings  
10 at issue; the corresponding dates Defendants uploaded the sound recordings at issue to the Great  
11 78 Project website; and the dates that the Defendants distributed and/or transmitted the sound  
12 recordings at issue to others. Plaintiffs expect that discovery will show that infringements of all  
13 of the sound recordings at issue fall squarely within the limitations period.

14 Contrary to Defendants' assertions, granting Defendants' motion would not narrow the  
15 case in any way. The relief Defendants seek would not render their earlier digitizations of  
16 Plaintiffs' recordings irrelevant, alter the scope of discovery, or affect Defendants' burden to  
17 prove, for each work, when the infringements they claim are time-barred occurred and when  
18 Plaintiffs discovered or should have discovered those infringements. Consequently, granting  
19 Defendants' improper request for an advisory opinion would have no pragmatic or judicial  
20 efficiency benefits.

21 That is the only issue the Court needs to address to resolve Defendants' motion and  
22 enable this case to move forward. Nevertheless, despite purporting to bring their motion only on  
23 the narrow issue of statute of limitations, Defendants also use their motion as a vehicle for  
24 irrelevant digressions that advocate their novel theories on fair use and secondary liability. Both  
25 the facts and the law belie Defendants' efforts to defend their actions on the basis of the hisses,  
26 crackles, and pops in their copies of Plaintiffs' recordings (to the extent this is not a post-hoc  
27 rationale invented to excuse the Defendants' willful infringement). When these recordings were  
28

1 released, they did not have all of the same hisses, crackles, and pops they have today. Many of  
2 those flaws result from the brittle discs' many decades of age. Contrary to Defendants'  
3 arguments, recording the hisses and crackles does not preserve how the records sounded on  
4 release. Instead, it anachronistically captures how an older format behaves after more than  
5 seventy years of aging.

6 Legally, there is zero basis for arguing that the hisses, crackles, and pops that have  
7 developed over time grant Defendants the right to copy, distribute, and transmit on a mass scale  
8 recordings that they know copyright law protects. Fair use cannot be perverted into forfeiting a  
9 sound recording's protection under copyright law just because the recording is copied,  
10 distributed, and performed in something other than its cleanest sound. If ever there were a theory  
11 of fair use invented for litigation, this is it. Defendants' wholesale theft of generations of music  
12 is far divorced from their purported limited purposes of "preservation and research." Compl. ¶ 3.  
13 Defendants' creation of a massive, unlicensed online music store, whose sole purpose is to  
14 provide to consumers for free the same recordings that are widely available from licensed  
15 sources, is nothing more than blatant infringement.

16 Moreover, this is not the first time that these particular Defendants have concocted novel  
17 legal arguments in a failed attempt to avoid liability for their blatant copyright infringement.  
18 Defendants' newly devised Rice Krispies argument for fair use here is even less credible than  
19 Internet Archive's previous fabricated fair-use theory for books that the Southern District of New  
20 York recently eviscerated. *Hachette Book Grp., Inc. v. Internet Archive*, 664 F. Supp. 3d 370,  
21 391 (S.D.N.Y. 2023) (granting summary judgment for plaintiffs and holding that "[w]hat fair use  
22 does not allow... is the mass reproduction and distribution of complete copyrighted works in a  
23 way that does not transform those works and that creates directly competing substitutes for the  
24 originals"). Nor is Brewster Kahle's and Internet Archive's hostility toward copyright law a  
25 recent development. In *Kahle v. Ashcroft*, this Court rejected Kahle's and Internet Archive's  
26 attempts to have the Copyright Term Extension Act declared unconstitutional in contravention of  
27

1 clear Supreme Court precedent. No. C-04-1127 MMC, 2004 WL 2663157 (N.D. Cal. Nov. 19,  
2 2004) (Chesney, J), *aff'd sub nom. Kahle v. Gonzales*, 487 F.3d 697 (9th Cir. 2007).

3 Finally, Defendants' motion should be denied as untimely because Defendants waited to  
4 file their motion until thirty-eight days after the transfer to this Court became effective.

5 Defendants' motion to dismiss should be denied.

### 6 **Background**

7 Plaintiffs are renowned, historic record companies, widely recognized as some of the  
8 most distinguished music labels in history. *See* Compl. ¶¶ 5, 22, 83. Plaintiffs have long served  
9 as the homeplace for iconic artists, including: Frank Sinatra, Thelonious Monk, Ella Fitzgerald,  
10 Billie Holiday, Miles Davis, and Louis Armstrong, to name a few. Compl. ¶ 2. As part of their  
11 businesses, Plaintiffs produce, manufacture, distribute, sell, license, and otherwise  
12 commercialize sound recordings in the United States and around the world. *Id.* ¶¶ 7, 21.  
13 Plaintiffs own protected rights in, and/or control exclusive rights with respect to, millions of  
14 sound recordings. *Id.* Plaintiffs create, promote, and maintain a variety of different channels for  
15 customers to legitimately access their music. *Id.* ¶¶ 5, 18. Their investments and creative efforts  
16 have shaped the musical landscape as we know it. *Id.* ¶ 5.

17 Without regard for copyright law, Defendants created an online music storefront called  
18 the Great 78 Project, which distributes and/or transmits to the public digital copies of hundreds  
19 of thousands of sound recordings, including Plaintiffs', for free. *Id.* ¶¶ 1-3, 8. Each Defendant  
20 played an essential role in infringing Plaintiffs' protected sound recordings as part of the Great  
21 78 Project. Defendant Internet Archive created and operates the Great 78 Project website,  
22 located at <https://great78.archive.org/>. *Id.* Defendant Brewster Kahle ("Kahle") is Internet  
23 Archive's Founder, chief executive, and Chair of the Board, where he directly oversees Internet  
24 Archive's infringing activity. *Id.* ¶¶ 70-73. He has publicly admitted that his goal is to "poison  
25 the whole web with our 78s." *Id.* ¶ 3. Defendant Kahle/Austin Foundation (the "Foundation"),  
26 of which Kahle is President, has funded the vast majority of Internet Archive's infringing  
27

1 activity as its “digitizing sponsor.”<sup>2</sup> *Id.* ¶¶ 11, 50, 75–76. Internet Archive hired Defendant  
 2 George Blood (“Blood”), a professional audio engineer, and his company, Defendant George  
 3 Blood L.P. (“GBLP”), to create the digital files that the Great 78 Project website provides for  
 4 streaming and downloading. *Id.* ¶¶ 48-49. Internet Archive, Blood, and GBLP have willfully  
 5 reproduced thousands of Plaintiffs’ protected sound recordings without authorization by copying  
 6 physical records into digital files. *Id.* ¶ 1. Internet Archive then willfully uploaded, distributed,  
 7 and digitally transmitted those illegally copied sound recordings millions of times from Internet  
 8 Archive’s website. *Id.*

9 Defendants know they have no authorization to use Plaintiffs’ protected sound recordings  
 10 in any way, yet that is exactly what they do. Compl. ¶¶ 1, 9, 19, 58. Indeed, Defendants proudly  
 11 trumpet their infringement, describing themselves as engaged in “an ambitious undertaking to  
 12 systematically digitize” Plaintiffs’ protected sound recordings and bragging that “the digital  
 13 versions of the recordings are uploaded to the Great 78 Project’s website by the Internet Archive,  
 14 where they can be accessed by researchers, historians, and members of the public to listen to  
 15 online.” Defs. Internet Archive, Kahle, Blood, and George Blood L.P.’s Notice of Mot. and Mot.  
 16 to Dismiss and Supp. Mem. of Points and Authorities at 1, 5 ECF No. 75 (“IA Mot.”). In other  
 17 words, Defendants concede that their infringements are willful and brazen.

### Legal Standard

19 To withstand a motion to dismiss, a complaint need only “contain sufficient factual  
 20 allegations, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Clifton v.*  
 21 *Houghton Mifflin Harcourt Publ’g Co.*, 152 F. Supp. 3d 1221, 1223 (N.D. Cal. 2015) (quoting  
 22 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A claim has facial plausibility when the plaintiff  
 23 pleads factual content that allows the court to draw the reasonable inference that the defendant is  
 24 liable for the misconduct alleged.” *Id.* (quoting *Iqbal*, 556 U.S. at 678). In resolving a motion to  
 25 dismiss, “a court must accept all of the plaintiff’s allegations as true and construe them in the  
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27 <sup>2</sup> The Foundation’s role is addressed in more detail in Plaintiffs’ concurrently filed Memorandum of Points and  
 28 Authorities in Opposition to Defendant Kahle/Austin Foundation’s Motion to Dismiss.

light most favorable to the plaintiff.” *Burns v. City of Concord*, 99 F. Supp. 3d 1007, 1020 (N.D. Cal. 2015); *Iqbal*, 556 U.S. at 663; see also *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

### Argument

#### **I. Defendants’ motion should be denied because the Complaint does not establish that the statute of limitations bars recovery for any single work in suit.**

Nothing on the face of Plaintiffs’ Complaint establishes that the statute of limitations bars recovery for any of the works in suit. It is well-settled law—as Defendants acknowledge—that a complaint can be dismissed under Rule 12(b)(6) on the basis of statute of limitations only if the defense “is apparent from the face of the complaint.” *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir.1980); *Riera v. Somatics, LLC*, 800 F. App’x 537, 538 (9th Cir. 2020) (“Where a complaint does not reveal on its face that it is barred by the statute of limitations, a plaintiff has no obligation to plead around the defense.”); IA Mot. at 9 (citing *Cross v. City of San Francisco*, 386 F. Supp. 3d 1132, 1141 (N.D. Cal. 2019)). Where the statute of limitations defense “turns on factual issues that may be disputed, the question is more appropriately addressed at a later stage of the proceeding.” *Coleman v. Kohl’s Dep’t Stores, Inc.*, No. 15-CV-02588-JCS, 2015 WL 5782352, at \*3 (N.D. Cal. Oct. 5, 2015) (citing *Jablon*, 614 F.2d at 682); see also *Clifton*, 152 F. Supp. 3d 1221, 1226 (N.D. Cal. 2015) (holding that “there are insufficient facts to allow the court to dismiss the complaint (at least now) based on the defense’s affirmative defense on which they bear the burden of proof”); *24/7 Customer, Inc. v. 24–7 Intouch*, No. 5:14–cv–02561–EJD, 2015 WL 1522236, at \*4 (N.D. Cal. Mar. 31, 2015) (“statute of limitations defenses often require a fact-intensive investigation that is inappropriate on a motion to dismiss.”).

Plaintiffs have asserted claims for 2,749 unique works in suit. Compl. Ex. A. In a copyright infringement action, whether the statute of limitations applies must be analyzed on a work-by-work basis. *Schneider v. YouTube, LLC*, No. 20-CV-04423-JD, 2023 WL 3605981, at \*6 (N.D. Cal. May 22, 2023) (“Every copyright claim turns upon facts which are particular to that single claim of infringement, and separate from all the other claims. Every copyright claim

1 is also subject to defenses that require their own individualized inquiries.”) (internal citations  
2 omitted). Defendants cannot identify anything in the Complaint showing that the statute of  
3 limitations bars claims for any one of the works in suit. Defendants cannot point to any  
4 allegations in the Complaint establishing when Defendants copied, distributed, and/or publicly  
5 performed any of those works, or when Plaintiffs became aware of Defendants’ infringement of  
6 any of those works. Without such allegations, no time bar can be established. Accordingly, none  
7 of Plaintiffs’ claims can be dismissed. *See Clifton*, 152 F. Supp. at 1226 (denying motion to  
8 dismiss on statute of limitations defense because the complaint was “silent about when [Plaintiff]  
9 discovered or should have discovered any infringement at some particular time.”).

10 Defendants point only to a letter sent to Internet Archive in July 2020 generally putting  
11 Internet Archive on notice of infringement.<sup>3</sup> Yet Defendants misrepresent the contents of that  
12 letter. Defendants claim that the RIAA—Plaintiffs’ trade organization—“wrote to the Internet  
13 Archive asserting that the Great 78 Project had infringed its members’ copyrights by digitizing  
14 *certain works*,” IA Mot. at 6 (emphasis added), implying that the letter identified specific works  
15 in suit that Plaintiffs were aware Defendants had infringed as early as July 2020. Defendants  
16 distort the facts: the letter did not refer to *any* specific works and did not identify any dates  
17 related to Defendants’ infringements. Thus, the letter cannot demonstrate that Plaintiffs were  
18 aware, or should have been aware, that Defendants infringed any of the particular works in suit at  
19 the time the letter was sent.

20 In any event, that Defendants were generally engaged in infringing conduct before July  
21 2020 does not conclusively demonstrate that Defendants infringed any particular work in suit  
22 before that time. Nor does it establish that no infringement occurred after that point.  
23 Infringements within the limitations period are discrete acts, the claims for which are not barred  
24 by prior infringements outside the limitations period. *Petrella v. MGM*, 572 U.S. 663, 672

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25  
26 <sup>3</sup> Defendants’ argument also relies on documents beyond those included in the Complaint’s allegations. In  
27 particular, Defendants request judicial notice of news articles, ECF No. 75-4 to ECF No. 75-10, which Plaintiffs  
28 oppose for the reasons stated in Plaintiffs’ opposition to Defendants’ request for judicial notice, filed concurrently  
with this Memorandum.

1 (2014) (“[W]hen a defendant commits successive violations, the statute of limitations runs  
2 separately from each violation. . . . [E]ach infringing act starts a new limitations period.”).  
3 Thus, every new unauthorized digitization, upload, download, or stream of each work triggers a  
4 separate limitations period for that new infringement.

5 Defendants cite several cases for the proposition that a plaintiff’s cease-and-desist letter  
6 triggers the running of the limitations period, but, in all of those cases, the plaintiff’s cease-and-  
7 desist letter identified the infringement of the specific copyrighted works on which the plaintiff  
8 later sued. *Monbo v. Nathan*, 623 F. Supp. 3d 56, 80 (E.D.N.Y. 2022) (plaintiff brought an  
9 infringement claim based on use of two films, each of which was identified by name in cease-  
10 and-desist letters to defendants); *Colo’n v. Akil*, 2012 WL 13012726, at \*1 (C.D. Cal. May 8,  
11 2012) (cease-and-desist letter identified manuscript and materials belonging to plaintiff); *Big*  
12 *East Ent., Inc. v. Zomba Enter., Inc.*, 453 F. Supp. 2d 788, 792–93 (S.D.N.Y. 2006) (cease-and-  
13 desist letter specified name of composition at issue); *Barksdale v. Robinson*, 211 F.R.D. 240, 244  
14 (S.D.N.Y. 2002) (cease-and-desist letter “unambiguously asserted that [Plaintiff] is the sole and  
15 exclusive owner of the compositions and directed [Defendant] to cease and desist from making  
16 any further representations with respect to the Compositions”) (internal citations omitted). Here,  
17 the RIAA’s letter to Internet Archive did not identify any specific works as being infringed.  
18 Whether any of the Plaintiffs should have known about any particular infringement before July  
19 2020 is clearly an issue of fact that is not apparent from the face of the Complaint, and thus  
20 cannot be resolved on a motion to dismiss.

21 **II. Granting Defendants’ motion would not narrow the case in any way because**  
22 **doing so would not remove any claims from the case.**

23 Defendants are wrong that granting their motion would narrow the case with regard to  
24 “the at least thousands of recordings with respect to which Plaintiffs’ claims are time-barred  
25 . . . .” IA Mot. at 13. Because Defendants cannot identify claims for infringement of any  
26 specific works at issue that are time-barred, granting Defendants’ motion would not eliminate  
27 any works in suit or infringements thereof from discovery or trial. Defendants would still have  
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1 the burden to prove later in the case how the statute of limitations applies to every work at issue,  
2 requiring Defendants to prove, for each work, when the infringements they claim are time-barred  
3 occurred and when Plaintiffs discovered or should have discovered those infringements.

4 Defendants are also wrong that, if their motion is granted, “the case would be reduced to  
5 Plaintiffs’ claims for contributory or vicarious liability related to third-party patrons’ streaming  
6 or downloading of recordings on the Great 78 Project’s website (after August 11, 2020).” *Id.*  
7 Defendants ignore that Plaintiffs have pled that Defendants *directly* infringed Plaintiffs’  
8 protected works by reproducing and distributing and/or transmitting Plaintiffs’ protected works  
9 to their users. Compl. ¶¶ 103–120 (Second and Third Causes of Action). Defendants have not  
10 moved to dismiss any causes of action (including these), all of which will still be live regardless  
11 of the outcome of this motion. Defendants’ conduct outside the statute of limitations period is  
12 also relevant to Plaintiffs’ claims for secondary infringement occurring within the statute of  
13 limitations period, as well as to statutory damages and willfulness. Thus, Defendants’ motion  
14 will have no practical effect at all, as the case will proceed identically regardless of how the  
15 Court resolves this motion.

16 Essentially, Defendants seek an improper advisory opinion from the Court about the  
17 relevant law even though there are not yet any facts to which to apply that law. Defendants cite  
18 no cases countenancing such a tactic. Instead, they rely on factually inapposite cases.  
19 Defendants cite *Johnson v. UMG Recordings, Inc.*, in which the plaintiff brought state-law  
20 copyright infringement, misappropriation, and unfair competition claims against UMG  
21 Recordings, Inc. based on a 1968 recording the plaintiff alleged he owned. *Johnson v. UMG*  
22 *Recordings, Inc.*, 2019 WL 5420278, at \* 2 (C.D. Cal. Oct. 23, 2019). The court granted a  
23 motion to dismiss on the basis of the statute of limitations because the complaint there, unlike the  
24 Complaint here, clearly revealed the time-barred nature of the infringements of the specific  
25 works at issue. *Id.* at \* 3 (dismissing claims as time-barred where plaintiff conceded first  
26 instance of infringement occurred in 1991 and that plaintiff became aware of infringement in  
27 2013 yet did not file complaint until 2019). Similarly, *Goldberg v. Cameron* granted a motion to  
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1 dismiss in part where the complaint, which pled infringement of a copyrighted film script and  
2 corresponding soundtrack, acknowledged the release date of the first allegedly infringing film.  
3 482 F. Supp. 2d 1136, 1147–49 (N.D. Cal. 2007) (dismissing claims that accrued more than  
4 years before filing while denying motion to dismiss for claims that occurred within three years of  
5 filing); *see also Dermansky v. Young Turks, Inc.*, 2023 WL 8884364, at \*3–4 (C.D. Cal. Nov. 3,  
6 2023) (granting motion to dismiss in part because the “initial infringing act undisputedly  
7 occurred” when defendant posted the video on its YouTube channel and “Plaintiff failed to  
8 allege any discrete act that would create a separately accruing harm within the past three years”);  
9 *Good Morning to You Productions Corp. v. Warner-Chappell Music, Inc.*, 2013 U.S. Dist.  
10 LEXIS 198676, at \*8 (C.D. Cal. Oct. 13, 2013) (dismissing declaratory judgment claims as time-  
11 barred where plaintiffs did not dispute that claims fell outside the three-year limitations period  
12 but argued that a longer state-law limitations period applied).

13 **III. Defendants’ motion is untimely because Defendants waited thirty-eight days**  
14 **after transfer became effective to file their motion.**

15 Defendants’ motion should be denied as untimely because Defendants did not file their  
16 motion until thirty-eight days after the case was transferred to this Court. Plaintiffs originally  
17 filed this case in the Southern District of New York before Judge Lorna Schofield. Compl. at 1.  
18 Defendants were served on August 24, 2023 and August 31, 2023. Affidavits of Service, ECF  
19 Nos. 12–13, 15–16. Defendants were granted an extension of their time to respond to the  
20 Complaint until October 13, 2023. Order, ECF No. 24. Defendants then filed pre-motion letters  
21 requesting leave to file motions to dismiss and to transfer venue, ECF No 35, which under Judge  
22 Schofield’s individual rules “stay[ed] the time to answer or move until further ordered by the  
23 Court.” Individual Rules and Procedures for Civil Cases for Judge Lorna G. Schofield, Rule  
24 III.C.2. Judge Schofield subsequently granted Defendants’ motion to transfer, ECF No. 59, and  
25 the transfer became effective on December 19, 2023. ECF No. 60.

26 When Judge Schofield transferred the case out of her court, Judge Schofield divested  
27 herself of jurisdiction and thereby voided her stay of Defendants’ time to answer. With that stay  
28

1 no longer in effect, Defendants' responses to the Complaint became due immediately, as their  
 2 time to respond under the Federal Rules and their previous extension had already expired. *See*  
 3 Fed. R. Civ P. 12(a)(1)(A)(i) (requiring Defendants to serve an Answer within twenty-one days  
 4 of being served with the Summons and Complaint). At most, Rule 12 required Defendants to  
 5 respond to the Complaint within either fourteen days (if Fed. R. Civ. P. 12(a)(4)'s fourteen-day  
 6 deadline for action following resolution of a Rule 12 motion applies) or twenty-one days (if Fed.  
 7 R. Civ P. 12(a)(1)(A)(i) twenty-one-day deadline to respond to a Complaint applies) of the  
 8 transfer becoming effective.

9 Yet Defendants never moved for an extension of time and waited more than six weeks  
 10 after the transfer became effective to file their motion (which, per their pre-motion letter, they  
 11 had been planning to file since at least October 2023). Defendants' argument that their time to  
 12 respond did not begin to run until January 9, 2024, when Plaintiffs served copies of the Initial  
 13 Case Management Conference Order and the pertinent supplementary materials specified in  
 14 Civil L.R. 4-2, ECF No. 70, is specious: Rule 12(a) pegs its deadlines to service of the Summons  
 15 and Complaint only, and the Local Rules do not alter that rule.

### 16 Conclusion

17 For the reasons stated above, Plaintiffs respectfully request that Defendants' Motion to  
 18 Dismiss be denied and Defendants be required to serve an Answer within fourteen days.

19  
 20 Dated: February 16, 2024

Respectfully submitted,

21 /s/ Corey Miller

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