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11 [Additional Parties and Counsel Appear on Signature Page]

12 UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
14

15 **IN RE: MUSICAL INSTRUMENTS AND
EQUIPMENT ANTITRUST LITIGATION**

CASE NO. 3:09-md-02121-LAB-POR
(and related cases)

MDL No. 2121

16
17 This Document Relates To:

18 **ALL ACTIONS**

**NOTICE OF MOTION AND MOTION TO
DISMISS SECOND AMENDED
CONSOLIDATED CLASS ACTION
COMPLAINT**

Date: May 21, 2012
Time: 12:00 P.M.
Place: Courtroom 9, 2nd Floor

The Hon. Larry A. Burns, District Judge

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to this Court’s March 13, 2012 order (Dkt. 180),
3 on May 21, 2012, at 12:00 p.m. or as soon thereafter as counsel may be heard, in Courtroom 9,
4 defendants Fender Musical Instruments Corporation, Gibson Guitar Corp., Guitar Center, Inc.,
5 Hoshino (U.S.A.), Inc., Kaman Music Corp., Yamaha Corporation of America, and National
6 Association of Music Merchants, Inc. (collectively “defendants”), shall and hereby do move this
7 Court for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing
8 with prejudice plaintiffs’ Second Amended Consolidated Class Action Complaint (“Second
9 Amended Complaint”) filed February 22, 2012 (Dkt. 178). As explained in defendants’
10 Memorandum of Points and Authorities filed herewith, dismissal is warranted because the Second
11 Amended Complaint does not satisfy the pleading requirements set forth in *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 544 (2007) and *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042 (9th Cir. 2008).
13 Dismissal with prejudice is appropriate because plaintiffs attempted to cure the defects in their
14 Consolidated Class Action Complaint with the benefit of a limited discovery period, but failed to
15 do so.

16 Dated: March 26, 2012

LATHAM & WATKINS LLP

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Additional Signature Page To
Notice Of Motion And Motion To Dismiss
Second Amended Consolidated Class Action Complaint

Dated: March 26, 2012

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Second Amended Consolidated Class Action Complaint

Dated: March 26, 2012

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Additional Signature Page To
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Second Amended Consolidated Class Action Complaint

Dated: March 26, 2012

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ELECTRONIC CASE FILING ATTESTATION

I, Margaret M. Zwisler, am the ECF User whose identification and password are being used to file this **NOTICE OF MOTION AND MOTION TO DISMISS SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**. I hereby attest that the concurrence in the filing of this has been obtained from signatories to this document.

s/ Margaret M. Zwisler
Margaret M. Zwisler

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CERTIFICATE OF SERVICE

On March 26, 2012, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Southern District of California, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice of service of this document by electronic means. Any other counsel of record will be served by electronic mail and/or first class mail on the same date.

s/ Margaret M. Zwisler
Margaret M. Zwisler