

MDL 1780

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

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MDL DOCKET NO. \_\_\_\_\_

**MOTION BY CINDY SELEY AND DAVID PASCHKETT FOR TRANSFER AND  
COORDINATION OR CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407**

By their undersigned counsel, plaintiffs Cindy Seley and David Paschkett in Cindy Seley and David Paschkett v. Universal Music Group, Inc.; Sony Corporation of America; Bertelsmann Music Group; Sony BMG Music Entertainment; EMI Group PLC; Warner Music Group Corp.; and John Does 1-100, 06-CV-1887 (hereinafter referred to as the "Seley" action), pending in the United States District Court for the Southern District of New York, and assigned to the Hon. Loretta A. Preska, move on their own behalf, and on behalf of the class they seek to represent, to transfer and coordinate or consolidate these proceedings, In re: Digital Music Antitrust Litigation, MDL No. \_\_\_\_\_, to promote the just and efficient conduct of all federal actions under the comprehensive jurisdiction of a single court.

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Movants specifically request that the Panel transfer the actions to the United States District Court for the Southern District of New York, and to the Hon. Loretta A. Preska, who is presiding over the Seley action. In support of this Motion, movants state as follows:

1. This motion involves at least eight (8) actions, in addition to movants' own action, which are currently known to movants. A list of those actions is set forth in Exhibit "A" hereto submitted pursuant to Rule 7.2(a)(ii) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, and which is also affixed to the Memorandum of Cindy Sealey and David Paschkett In Support of Their Motion for Transfer And Coordination or Consolidation Pursuant to 28 U.S.C. § 1407.

2. Those actions include cases filed in federal courts in the Northern District of California, Central District of California, Southern District of California, and the Southern District of New York.

3. Each of these actions was filed on behalf of purchasers of digital music against the six (6) defendants named in the Seley action.

4. Five (5) of these six (6) defendants are headquartered in, or are based in, the Southern District of New York.

5. Each of the actions alleges a contract, combination, or conspiracy among the defendants in violation of the antitrust laws, and common issues of fact and law asserted in the actions include:

- (A) whether defendants are liable under the Sherman Act;
- (B) whether defendants combined or conspired to fix, raise, maintain, and stabilize the price of royalties paid by Internet Digital Retailers and, as a

consequence, by consumers;

- (C) whether the defendants were able to charge supracompetitive prices as a result of their alleged unlawful contract, combination, or conspiracy; and
- (D) whether plaintiffs and the proposed class sustained damages as a result of defendants' alleged unfair and unlawful conduct.

8. As such, discovery will be substantially the same in each action, involving the same operative facts, documents and witnesses, and the convenience of the parties will be substantially enhanced by transfer and coordination or consolidation in the Southern District of New York.

Dated: New York, New York  
March 30, 2006

Respectfully submitted,

By:



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*Attorneys for Plaintiffs Cindy Seley and  
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Schedule of Actions

United States District Court

Southern District of California (San Diego)

- 1) Feferman, et al v. Universal Music, et al  
06-cv-378

Plaintiffs

Richard Feferman  
Scott P. Downey

v.

Defendants

Universal Music Group, Inc.  
Sony Corporation of America  
Bertelsmann Music Group, Inc.  
Sony BMG Music Entertainment  
EMI Group PLC  
Warner Music Group Corp.  
Does, 1 through 100, inclusive

United States District Court

Central District of California (Western Division - Los Angeles)

- 2) Guy Williams v. Sony BMG Music Entertainment, et al  
2:06-cv-01661-JFW-JC

Plaintiff

Guy Williams

v.

Defendants

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp  
EMI Group PLC

- 3) Cato Thornton v. Sony BMG Music Entertainment, et al  
2:06-cv-01748-GPS-FMO

Plaintiff

Cato Thornton

v.

Defendants

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group

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Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

**United States District Court**  
**California Northern District (San Francisco)**

- 4) Bulcao, et al v. Sony BMG Music Entertainment, et al  
3:06-cv-01752-EMC

**Plaintiffs**

Dennis Bulcao  
Alexander Justis Clark  
Matt Putman  
McKenna Creamer  
George Creamer  
P. Evans Stephens  
Kim Hanson  
James Miller  
Wayne Gilbert  
Elise R. DeVore  
Mitchell Horton

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

- 5) Ruth v. Sony BMG Music Entertainment, et al  
3:06-cv-02161-MEJ

**Plaintiff**

Scott Ruth

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann, Inc.  
Universal Music Group

Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

**United States District Court**  
**Southern District of New York (Foley Square)**

- 6) Ewing, et al v. Sony BMG Music Entertainment, et al  
1:06-cv-02355-MBM

**Plaintiffs**

Jay S. Ewing  
Tracy Thomas

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

- 7) Seley, et al v. Paschkett, et al  
1:06-cv-01887-LAP

**Plaintiffs**

Cindy Seley  
David Paschkett

v.

**Defendants**

Universal Music Group, Inc.  
Sony Corporation of America  
Bertelsmann Music Group  
Sony BMG Music Entertainment  
EMI Group, PLC.  
Warner Music Group Corp.  
John Does 1through 100

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AFFIDAVIT OF SERVICE

Dennis Kim, pursuant to 28 U.S.C. § 1746, declares

I am not a party to this action, am over eighteen years of age, and reside in Edgewater, New Jersey. On the 5th day of April, 2006, I served true copies of (i) Schedule of Actions upon the counsel listed on the attached service list via the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 5, 2006.

Dated: New York, New York  
April 5, 2006

  
\_\_\_\_\_  
Dennis Kim

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MULTIDISTRICT  
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**Southern District of California (San Diego)**

Feferman, et al v. Universal Music, et al, 06-cv-378

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**Central District of California (Western Division – Los Angeles)**

Guy Williams v. Sony BMG Music Entertainment et al, 2:06-cv-01661-JFW-JC

**Plaintiff**

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**Central District of California (Western Division – Los Angeles)**

Cato Thornton v. Sony BMG Music Entertainment et al, 2:06-cv-01748-GPS-FMO

**Plaintiff**

*Attorneys for Cato Thornton*

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**California Northern District (San Francisco)**

Bulaco et al v. Sony BMG Music Entertainment et al, 3:06-cv-01752

**Plaintiff**

*Attorneys for Dennis Bulaco, Alexander Justis Clark, Matt Putman, McKenna Creamer, George Creamer, P. Evans Stephens, Kim Hanson, James Miller, Wayne Gilbert, Elise R. DeVore, and Mitchell Horton*

**John J. Stoia, Jr., Esq.**

**Bonny E. Sweeney, Esq.**

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**California Northern District (San Francisco)**

Ruth v. Sony BMG Music Entertainment et al, 3:06-cv-02161-MEJ

**Plaintiff**

*Attorney for Scott Ruth*

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**Southern District of New York (Foley Square)**

Ewing et al v. Sony BMG Music Entertainment et al, 1:06-cv-02355-MBM

**Plaintiff**

*Attorney for Jay S. Ewing and Tracy Thomas*

**David Howard Leventhal, Esq.**

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**Southern District of California (San Diego)**

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United States District Court  
Southern District of California  
880 Front Street, Suite 4290  
San Diego, CA 92101-8900

**Central District of California (Western Division – Los Angeles)**

Clerk of Court  
United States District Court  
Central District of California (Western Division)  
312 N. Spring Street, Room G-8  
Los Angeles, CA 90012

**Northern District of California (San Francisco)**

Richard W. Wiekling  
Clerk of Court  
United States District Court  
Northern District of California  
450 Golden Gate Avenue, 16<sup>th</sup> Floor  
San Francisco, CA 94102

**Southern District of New York (Foley Square)**

Clerk of Court  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**Defendants Principal Addresses**

**Sony BMG Music Corporation**

550 Madison Avenue  
New York, NY 10022

**Sony Corporation of America**

550 Madison Avenue  
New York, NY 10022

**Warner Music Group**

75 Rockefeller Plaza  
New York, NY 10019

**Universal Music Group**

2220 Colorado Avenue

Santa Monica, CA 90404

**Bertelsmann Music Group (BMG)**

1540 Broadway  
New York, NY 10036

**EMI Group PLC**

27 Wrights Lane  
London W8 5SW  
England

**Time Warner Inc.**

One Time Warner Center  
New York, NY 10019

# Exhibit A

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# Exhibit A

1

**US District Court  
Southern District of California (San Diego)  
06-cv-378**

**Feferman, et al v. Universal Music, et al**

Assigned to: Judge John A. Houston  
Referred to: Magistrate Judge Anthony J. Battaglia

**Plaintiffs**

Richard Feferman

Scott P. Downey

v.

**Defendants**

Universal Music Group, Inc.

Sony Corporation of America

Bertelsmann Music Group, Inc.

Sony BMG Music Entertainment

EMI Group PLC

Warner Music Group Corp.

Does, 1 through 100, inclusive

# Exhibit A

2

**US District Court  
Central District of California (Western Division – Los Angeles)  
2:06-cv-01661-JFW-JC**

**Guy Williams v. Sony BMG Music Entertainment et al**

Assigned to: Judge John F. Walter  
Referred to: Magistrate Judge Jacqueline Chooljian

**Plaintiff**

Guy Williams

v.

**Defendants**

Sony BMG Music Entertainment

Sony Corporation of America

Bertelsmann Inc.

Universal Music Group

Time Warner Inc.

Warner Music Group Corp

EMI Group PLC

# Exhibit A

3

**US District Court  
Central District of California (Western Division – Los Angeles)  
2:06-cv-01713-MMM-JWJ**

**Radikal Records Inc. v. Warner Music Group Corp et al**

Assigned to: Judge Margaret M. Morrow  
Referred to: Magistrate Judge Jeffrey W. Johnson

**Plaintiff**

Radikal Records Inc.

v.

**Defendants**

Warner Music Group Corp.

Does, 1 through 100



# Exhibit A

4

**US District Court  
Central District of California (Western Division – Los Angeles)  
2:06-cv-01748-GPS-FMO**

**Cato Thornton v. Sony BMG Music Entertainment et al**

Assigned to: Judge George P. Schiavelli  
Referred to: Magistrate Judge Fernando M. Olguin

**Plaintiff**

Cato Thornton

v.

**Defendants**

Sony BMG Music Entertainment

Sony Corporation of America

Bertelsmann Inc.

Universal Music Group

Time Warner Inc.

Warner Music Group Corp.

EMI Group PLC

# Exhibit A

5

**US District Court  
California Northern District (San Francisco)  
3:06-cv-01752-EMC**

**Bulcao et al v. Sony BMG Music Entertainment et al**

Assigned to: Honorable Edward M. Chen

**Plaintiffs**

Dennis Bulcao  
Alexander Justis Clark  
Matt Putman  
McKenna Creamer  
George Creamer  
P. Evans Stephens  
Kim Hanson  
James Miller  
Wayne Gilbert  
Elise R. DeVore  
Mitchell Horton

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

# Exhibit A

6

**US District Court  
California Northern District (San Francisco)  
3:06-cv-02161-MEJ**

**Ruth v. Sony BMG Music Entertainment et al**

Assigned to: Honorable Maria-Elena James

**Plaintiff**

Scott Ruth

v.

**Defendants**

Sony BMG Music Entertainment

Sony Corporation of America

Bertelsmann, Inc.

Universal Music Group

Time Warner Inc.

Warner Music Group Corp.

EMI Group PLC

# Exhibit A

7

**US District Court  
Southern District of New York (Foley Square)  
1:06-cv-02355-MBM**

**Ewing et al v. Sony BMG Music Entertainment et al**

Assigned to: Chief Judge Michael B. Mukasey

**Plaintiffs**

Jay S. Ewing  
Tracy Thomas

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

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**MEMORANDUM OF CINDY SELEY AND DAVID PASCHKETT  
IN SUPPORT OF THEIR MOTION FOR TRANSFER AND COORDINATION  
OR CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407**

**I. Preliminary Statement.**

Plaintiffs Cindy Seley and David Paschkett, by their undersigned attorneys, respectfully submit this memorandum of law in support of their motion for pretrial coordination or consolidation pursuant to 28 U.S.C. § 1407.

This Panel has the statutory authority to transfer civil actions to a single district for coordinated pretrial proceedings whenever "civil actions involving one or more common questions of fact are pending in different districts," where, as here, transferring the actions will serve "the convenience of parties and witnesses" and "promote the just and efficient conduct" of the actions. 28 U.S.C. § 1407(a).

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There is no real dispute that these standards are met in these cases. Each of the actions listed on Exhibit "A" hereto involves common questions of fact and law, including, but not limited to, whether the Defendants violated the Sherman Act; whether Defendants combined or conspired to fix, raise, maintain, and stabilize the price of royalties paid by Internet Digital Retailers and, as a consequence, by plaintiffs and other consumers; whether the Defendants charged supracompetitive prices as a result of their alleged unlawful contract, combination, or conspiracy; and whether plaintiffs sustained damages as a result of Defendants' alleged unfair and unlawful conduct.

Rather, the issue is where the actions should be transferred. As demonstrated below, the Southern District of New York is the most proper forum.

## **II. Factual Background.**

All of the actions that are the subject of this motion involve antitrust claims against the following: Universal Music Group, Inc., Sony Corporation of America, Bertelsmann Music Group, Sony BMG Music Entertainment, EMI Group PLC, and Warner Music Group Corporation (hereinafter collectively referred to as "Defendants"). The complaints allege that Defendants entered into a contract, combination, or conspiracy to fix, raise, maintain and stabilize the price of royalties that Internet Digital Retailers<sup>1</sup> pay for access to the Defendants' substantial inventory of digital music copyrights. See complaint filed in *Cindy Seley and David Paschkett v. Universal Music Group, Inc., Sony Corporation of America, Bertelsmann Music Group, Sony BMG Music Entertainment, EMI Group PLC, and Warner Music Group Corporation* (hereinafter "Compl."), ¶¶21, ¶¶24-25, and ¶32. The Defendants' price fixing conspiracy started as early as January 1, 2003, and

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<sup>1</sup> These include, without limitation, Apple's iTunes, MusicMatch, MSN, Napster, Real Networks, Yahoo, Wal-Mart, and MusicNet.

continues to the present. Id.

The Defendants had the capability to fix their royalty rates because they collectively control over 90% of the market for digital music copyrights. ¶22. Internet Digital Retailers must pay a royalty to the Defendants in order to access these digital music copyrights. Compl. ¶20. Thus, the royalty is the price that Internet Digital Retailers must pay to provide the Defendants' copyrighted material to their own consumers.

Furthermore, the Defendants have used their market power over valuable copyrighted material to reap supra-competitive prices from Internet Digital Retailers and consumers. Consumers use Internet Digital Retailers as their source for purchasing digital music over the Internet allowing them to download the music to their personal computer. Compl. ¶18. The typical price charged by an Internet Digital Retailer for downloading individual recordings for a consumers' personal use ranges from 79 to 99 cents. Id. Alternatively, consumers can purchase the right to access multiple digital music recordings from the Internet Digital Retailers for a monthly fixed fee, which ranges from \$6 to \$15 per month. Id. at ¶19.

Because of the Defendants' unlawful price-fixing conspiracy, Plaintiffs and other Class members have been paying artificially inflated prices to download music from Internet Digital Retailers during the Class Period. Compl. ¶25. Such prices exceeded the amount that Plaintiffs and other Class members would have paid if the price for such music had been determined by a competitive market.

These higher prices have attracted the attention of state and federal regulators. On December 24, 2005, the Wall Street Journal reported that New York State Attorney General Eliot Spitzer subpoenaed the Defendants for information as to possible price fixing in the online digital music

download industry. Compl. ¶26.

On January 12, 2006, the Wall Street Journal reported that several current and former digital music industry members were questioning the subscription service royalties charged by Defendants. Id. ¶27. It was reported that industry members were complaining of Most Favored Nation (“MFN”) clauses that are used as contract terms by Defendants. Id. The clauses allow an individual defendant to increase royalty payment rates if a competitor negotiates a higher royalty rate subsequent to the defendant’s agreement with the Internet Digital Retailer. Id. These clauses allow Defendants to fix, raise, maintain and stabilize royalties to the same level as their competitors. Id.

Because all of the Defendants use MFN clauses, every Defendant gets the benefit of any one negotiation by a competitor. Compl. ¶28. Jonathan Potter, executive director of the Digital Media Association, which is the trade organization that represents Internet Digital Retailers including Napster, AOL, Apple, MSN, and RealNetworks, confirmed in the January 12, 2006 Wall Street Journal article that MFN clauses are frequently used by the Defendants. Id. He also stated that “Seller-side MFNs are inherently price-increasing and anticompetitive.” Id.

On February 15, 2006, the Wall Street Journal stated that Mr. Spitzer issued additional subpoenas concerning digital music and broadened his investigation into industry-wide practices to determine whether they violate antitrust laws. Compl. ¶29. The article also confirmed that all of the Defendants had been subpoenaed by Spitzer. Id.

Then, on March 2, 2006, according to the Wall Street Journal, the United States Department of Justice announced an investigation into anticompetitive practices of the music download industry. Compl. ¶30.

Shortly after these announcements, the Seley complaint was filed on March 9, 2006 in the



United States District Court for the Southern District of New York.

### III. Argument.

#### A. Transfer and Consolidation of The Eight (8) Digital Music Cases for Coordinated Pretrial Proceedings Is Appropriate.

Under 28 U.S.C. §1407, the Panel may transfer or consolidate two or more civil cases for coordinated pretrial proceedings upon determination that: (1) they “involv[e] one or more common questions of fact,” (2) transfer will further “the convenience of the parties and witnesses,” and (3) transfer “will promote the just and efficient conduct of the actions.”

These requirements are clearly satisfied. The eight (8) related actions are characterized almost entirely by common questions of fact and law. Plaintiffs’ complaints in the respective actions assert similar facts and claims against the Defendants. As a result, transfer and consolidation will promote convenience for the parties and efficiency in the pretrial proceedings by eliminating duplicative discovery and the potential for inconsistent rulings.

##### 1. *The eight (8) related actions involve common questions of fact.*

The first requirement of Section 1407 – namely, that the actions transferred involve common questions of fact – is clearly satisfied. The factual issues in the eight (8) cases arise from the same source of conduct, and are therefore common. See, e.g., In re Japanese Elec. Prods. Antitrust Litig., 338 F. Supp. 565, 567 (J.P.M.L. 1975) (stating that “[t]ransfer under §1407 is not dependent on strict identity of issues and parties but rather on the existence of one or more common questions of fact.”).

These common questions include, but are not limited to, the following:

- (1) Whether the Defendants and their co-conspirators engaged in a combination or conspiracy to fix, raise, or maintain the royalty fees charged to Internet Digital Retailers;

- (2) The duration of the conspiracy;
- (3) The effect that the conspiracy had on the prices of royalty fees during the class period; and
- (4) The members of the conspiracy.

Because the factual issues that need to be answered in each of the three actions are nearly identical, transfer and consolidation are highly appropriate here. See, e.g., In re Foundry Resins Antitrust Litig., 342 F. Supp.2d 1346, 1347 (J.P.M.L. 2004) (“[t]hese actions share allegations concerning whether defendants participated in a combination or conspiracy to fix, raise, maintain, or stabilize the price of foundry raisins.”); In re Automotive Refinishing Paint Antitrust Litig., 177 F. Supp.2d 1378, 1379 (J.P.M.L. 2001) (“[t]hese actions share allegations concerning whether defendants participated in a combination or conspiracy to fix, raise, maintain, or stabilize the price of automotive refinishing paint products.”); In re Anthracite Coal Antitrust Litig., 436 F. Supp. 402, 403 (J.P.M.L. 1977) (ordering transfer after finding that, “[a]s is often true in multidistrict antitrust actions, the actions . . . raise[d] common factual questions concerning the existence, scope and effect of the alleged conspiracy.”).

2. *Consolidation of the actions will further the convenience of the parties and the witnesses.*

Because consolidation of these actions will serve the convenience of the parties and witnesses, the second requirement under Section 1407 has been met. Plaintiffs in each of the related actions will request the same types of documents from Defendants, including documents reflecting: (a) how the Defendants established the royalty fees for accessing their copyrighted materials; (b) identification of competitors in the industry; and (c) the Defendants’ sales and marketing of their copyrighted materials.

Consequently, there will be duplicative discovery demands and redundant depositions in these actions. By consolidating these related actions, a single Court will be able to establish a pre-trial program that will minimize the inconvenience to the witnesses and expenses to the parties. These are the criteria that this Panel has traditionally sought in consolidating actions in different jurisdictions. See, e.g., In re Cuisinart Food Processor Antitrust Litig., 506 F. Supp. 651, 655 (J.P.M.L. 1981).

3. *Transfer and consolidation will promote the just and efficient conduct of the related actions.*

Transfer and consolidation are appropriate. Coordinating these pretrial proceedings will promote the just and efficient conduct of these actions. Transfer under Section 1407 will avoid duplicative discovery and “result in substantial savings of judicial time and resources.” The related actions involve common factual allegations of a price-fixing conspiracy. And, discovery has not yet begun in any of the cases. See Japanese Electronic Products Antitrust Litig., 388 F. Supp. 565, 567 (J.P.M.L. 1975); see also In re Nifedipine Antitrust Litig., 266 F. Supp.2d 1382 (J.P.M.L. 2003);<sup>2</sup> In re Parcel Tanker Shipping Services Antitrust Litig., 296 F. Supp.2d 1370, 1371 (J.P.M.L. 2003) (ordering cases transferred to the District of Connecticut and stating that “[a]ll actions share factual questions relating to the existence, scope and effect of an alleged conspiracy to fix the price of international shipments of liquid chemicals in the United States.”); In re European Rail Pass Antitrust Litig., 2001 WL 58755 at \*1 (J.P.M.L., Feb. 7, 2001) (ordering cases transferred to a single

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<sup>2</sup> “All actions share factual allegations that . . . [defendants’] agreement eliminated price competition in violation of the federal and/or various state antitrust statutes. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of class certification), and conserve the resources of the parties, their counsel and the judiciary.” 266 F. Supp.2d at 1382.

district in order to “avoid duplicative discovery”); In re Gas Meter Antitrust Litig., 464 F. Supp. 391, 393 (J.P.M.L. 1979) (stating that transfer of actions alleging price fixing conspiracies “to a single district under Section 1407 will ensure the streamlining of discovery and all other proceedings as well”); In re Fine Paper Antitrust Litig., 453 F. Supp. 118, 121 (J.P.M.L. 1978) (“Section 1407 transfer . . . is necessary in order to prevent duplicative discovery and eliminate any possibility of conflicting class and other pretrial rulings.”).

Plaintiffs in each action will depose many of the same individuals from each of the Defendants and request the production of the same (or similar) documents. Accordingly, consolidating these actions will avoid inconvenience and needless waste of resources. See In re Universal Serv. Fund Tel. Billing Practices Litig., 209 F. Supp. 2d 1385, 1386 (J.P.M.L. 2002); In re Multi-Piece Rim Prods. Liab. Litig., 464 F. Supp. 969, 974 (J.P.M.L. 1979).

Additionally, time and expense will be decreased through consolidation, and thus inuring to the benefit of plaintiffs, other Class members, Defendants, and the judicial system. See Cusinart, 506 F. Supp. at 655 (transferring actions would result in “significant overall savings of cost and a minimum inconvenience to all concerned with the pretrial activities”); see also In re Uranium Indus. Antitrust Litig., 458 F. Supp. 1223, 1230 (J.P.M.L. 1978).

Transfer and consolidation will also eliminate the possibility of inconsistent rulings on such pretrial determinations such as Class certification. See, e.g., In re Commercial Money Center, Inc., Equipment Lease Litig., 2002 WL 31432881 at \*1 (J.P.M.L., October 25, 2002) (finding that consolidation of 23 actions filed nationwide would prevent inconsistent rulings); In re Sugar Industry Antitrust Litig., 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) (noting that the Panel “has consistently held that transfer of actions under 1407 is appropriate, if not necessary, where the possibility of

inconsistent class determinations exists.”).

B. The Related Cases Should Be Transferred to the Southern District of New York.

The Panel has articulated various factors in selecting the transferee forum, including: (1) where the most actions are pending, (2) the preferences of the parties, (3) the convenience of the parties and witnesses, (4) the location of relevant documents, and (5) the progress of the lawsuit. See, e.g., In re New Mexico Natural Gas Antitrust Litig., 482 F. Supp. 333, 337 (J.P.M.L. 1979) (transferring cases to forum where two of three suits were pending and where many witnesses and documents were likely to be found).

Here, these factors weight in favor of the Southern District of New York because: (a) five (5) of the six (6) Defendants are either headquartered or based in the Southern District; <sup>3</sup> (b) substantially all of the relevant documents are located in Southern District of New York; and (c) substantially all of the witnesses are located in Southern District of New York.

Accordingly, the convenience of the parties and witnesses thus will be served by transferring the related actions to the Southern District. See In re Cessna 208 Series Aircraft Products Liability Litig., 408 F. Supp. 1349, 1350 (J.P.M.L. 2005) (transferring to the District of Kansas because the sole common defendant was located there); In re Union Pacific Railroad Co. Employment Practices Litigation, 314 F. Supp.2d 1383, 1384 (J.P.M.L. 2004) (transferring to forum where witnesses and documents were located); In re National Century Financial Enterprises, Inc., Investment Litigation, 293 F. Supp.2d 1375, 1377 (J.P.M.L. 2003) (“many parties, witnesses and documents are likely to

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<sup>3</sup> According to a February 1, 2002 press release by Defendant EMI Group PLC, Mr. David Munns, the head of the company’s North America branch, which is called EMI Recorded Music North America, is located in New York City. See Press Release “David Munns becomes chairman & CEO, EMI Recorded Music North America, February 1, 2002, attached hereto as Exhibit “B.”

be found in that district”); In re Unumprovident Corp. Securities Derivative & “ERISA” Litigation, 280 F. Supp.2d 1377,1380 (J.P.M.L. 2003) (“relevant witnesses and documents will likely be found there”); In re American Continental Corporation/Lincoln Savings and Loan Securities Litig., 130 F.R.D. 475, 476 (J.P.M.L. 1990) (transferring cases to the District of Arizona because the collapsed corporation and witnesses were located there)

**IV. Conclusion.**

For the foregoing reasons and authorities, consolidation is necessary to avoid duplication and wasted efforts. Moreover, transfer of the actions listed on Exhibit “A” to the Southern District of New York is appropriate because most of the Defendants are located in the district.

Dated: New York, New York  
March 30, 2006

Respectfully submitted,

By:



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Craig Essenmacher

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*Attorneys for Plaintiffs Cindy Seley and  
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# Exhibit A

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# Exhibit A

1

**US District Court  
Southern District of California (San Diego)  
06-cv-378**

**Feferman, et al v. Universal Music, et al**

Assigned to: Judge John A. Houston  
Referred to: Magistrate Judge Anthony J. Battaglia

**Plaintiffs**

Richard Feferman

Scott P. Downey

v.

**Defendants**

Universal Music Group, Inc.

Sony Corporation of America

Bertelsmann Music Group, Inc.

Sony BMG Music Entertainment

EMI Group PLC

Warner Music Group Corp.

Does, 1 through 100, inclusive



# Exhibit A

2

**US District Court  
Central District of California (Western Division – Los Angeles)  
2:06-cv-01661-JFW-JC**

**Guy Williams v. Sony BMG Music Entertainment et al**

Assigned to: Judge John F. Walter  
Referred to: Magistrate Judge Jacqueline Chooljian

**Plaintiff**

Guy Williams

v.

**Defendants**

Sony BMG Music Entertainment

Sony Corporation of America

Bertelsmann Inc.

Universal Music Group

Time Warner Inc.

Warner Music Group Corp

EMI Group PLC

# Exhibit A

3

**US District Court  
Central District of California (Western Division – Los Angeles)  
2:06-cv-01713-MMM-JWJ**

**Radikal Records Inc. v. Warner Music Group Corp et al**

Assigned to: Judge Margaret M. Morrow  
Referred to: Magistrate Judge Jeffrey W. Johnson

**Plaintiff**

Radikal Records Inc.

v.

**Defendants**

Warner Music Group Corp.

Does, 1 through 100

# Exhibit A

4

**US District Court  
Central District of California (Western Division – Los Angeles)  
2:06-cv-01748-GPS-FMO**

**Cato Thornton v. Sony BMG Music Entertainment et al**

Assigned to: Judge George P. Schiavelli  
Referred to: Magistrate Judge Fernando M. Olguin

**Plaintiff**

Cato Thornton

v.

**Defendants**

Sony BMG Music Entertainment

Sony Corporation of America

Bertelsmann Inc.

Universal Music Group

Time Warner Inc.

Warner Music Group Corp.

EMI Group PLC

# Exhibit A

5

**US District Court  
California Northern District (San Francisco)  
3:06-cv-01752-EMC**

**Bulcao et al v. Sony BMG Music Entertainment et al**

Assigned to: Honorable Edward M. Chen

**Plaintiffs**

Dennis Bulcao  
Alexander Justis Clark  
Matt Putman  
McKenna Creamer  
George Creamer  
P. Evans Stephens  
Kim Hanson  
James Miller  
Wayne Gilbert  
Elise R. DeVore  
Mitchell Horton

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

# Exhibit A

6

**US District Court  
California Northern District (San Francisco)  
3:06-cv-02161-MEJ**

**Ruth v. Sony BMG Music Entertainment et al**

Assigned to: Honorable Maria-Elena James

**Plaintiff**

Scott Ruth

v.

**Defendants**

Sony BMG Music Entertainment

Sony Corporation of America

Bertelsmann, Inc.

Universal Music Group

Time Warner Inc.

Warner Music Group Corp.

EMI Group PLC

# Exhibit A

7

**US District Court  
Southern District of New York (Foley Square)  
1:06-cv-02355-MBM**

**Ewing et al v. Sony BMG Music Entertainment et al**

Assigned to: Chief Judge Michael B. Mukasey

**Plaintiffs**

Jay S. Ewing  
Tracy Thomas

v.

**Defendants**

Sony BMG Music Entertainment  
Sony Corporation of America  
Bertelsmann Inc.  
Universal Music Group  
Time Warner Inc.  
Warner Music Group Corp.  
EMI Group PLC

# Exhibit B

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1 February 2002

**David Munns becomes chairman & CEO, EMI Recorded Music North America**

**Matt Serletic is appointed chairman & CEO of Virgin Records, with Roy Lott as president & COO**

**Virgin moves to New York; Capitol remains in LA under president Andy Slater**

NEW YORK, 01 February 2002 -- Alain Levy, chairman & CEO of EMI Recorded Music, today announced that David Munns is the new chairman & CEO of EMI Recorded Music North America. Munns, who will retain his worldwide responsibilities as vice chairman of EMI Recorded Music, will move immediately to New York while Levy will continue to be based in London.

Levy and Munns also announced today their appointment of Matt Serletic as chairman & CEO of Virgin Records in the US. One of America's most sought-after producers (matchbox twenty, Carlos Santana's Smooth, Aerosmith, Celine Dion), Serletic is also a composer, arranger and musician and founder of Melisma Records.

Roy Lott is promoted to the position of president & COO, Virgin Records. Currently deputy president of EMI Recorded Music North America, Roy was general manager of Arista Records under Clive Davis throughout the label's successful growth period of the 1990s and was president of Capitol Records for two years.

Virgin Records will move from Los Angeles to New York later this year.

With Capitol Records remaining in Los Angeles under president Andy Slater, and Virgin in New York, EMI Recorded Music will have a more balanced A&R presence in the US together with its other labels Capitol Nashville, EMI Christian Music Group, Angel and Blue Note.

Serletic and Lott succeed Virgin co-presidents Ray Cooper and Ashley Newton who are leaving the company.

Levy said: "Over his long career, David has had a great deal of experience in the US market. Over the last three months in particular he has demonstrated his strength of vision and his qualities of leadership. We need to ensure a very senior presence for EMI in North America and David is ideally suited to the job. In Matt and Andy we have two music-orientated executives who are very much in touch with today's music. I believe that EMI in North America is going to be an exciting place for artists and executives."

Munns said: "I am very excited about this new challenge, while continuing in my role as vice chairman of the record division. Alain and I are sorry to be saying goodbye to Ray and Ash and we wish them the very best for the



future.

Serletic said: "I am honored to be named chairman & CEO of Virgin Records, America. Virgin has long stood for exceptional musical artistry and entrepreneurial business savvy. I will respect this legacy while assembling an outstanding executive team focused on launching, developing, and maintaining the careers of today's premiere artists. I am excited for Roy Lott to join me as president and COO of Virgin, America as I believe Roy is one of the industry's most competent and experienced music executives. At its best, a record label connects the public to the most moving, meaningful, and enjoyable contemporary music. Under my guidance, Virgin will passionately support today's exceptional music makers."

All of EMI Recorded Music's business heads in North America now report to Munns. They are:

Deane Cameron, president, EMI Music Canada  
Richard Cottrell, president & CEO, EMI Music Distribution (EMD)  
Mike Dungan, president & CEO, Capitol Nashville  
Steve Greenberg, president/CEO, S-Curve Records  
Bill Hearn, president & CEO, EMI Christian Music Group  
Bruce Lundvall, president, Angel/Blue Note  
Matt Serletic, chairman & CEO, Virgin Records  
Andy Slater, president & CEO, Capitol Records

Munns will be based in EMI's New York offices, currently at 1290 Avenue of the Americas. Those offices will move to the new location of 150 Fifth Avenue in the fall.

A division of EMI Group, EMI Recorded Music is the world's third largest record company. It operates in nearly 50 countries around the world, has a roster of over 1,500 artists and releases more than 1,000 albums a year. Its record labels include Angel, Blue Note, Capitol, EMI:Chrysalis, EMI Classics, Virgin, Parlophone and Priority.

EMI's recording artists include Air, Beastie Boys, The Beatles, Sarah Brightman, Garth Brooks, Coldplay, Daft Punk, Placido Domingo, Gorillaz, Utada Hikaru, Mick Jagger, Janet, Lenny Kravitz, Massive Attack, Kylie Minogue, Pink Floyd, Paul McCartney, Radiohead, Sir Simon Rattle, the Rolling Stones, Tina Turner, Robbie Williams and the Spice Girls.

-ENDS-

### **Enquiries**

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Dan Klores Communications, New York  
Dan Klores 212 685 4300

### **BIOGRAPHIES**

David Munns

David Munns first joined EMI in 1972 in the marketing department of its London headquarters. He subsequently rose through various marketing positions, including product manager for Paul McCartney and the first Wings album, and from 1977 to 1979 was responsible for the UK marketing of non-UK EMI repertoire such as Dr Hook and Kraftwerk. In 1979 Munns moved to EMI Canada to oversee all of its operations except A&R (which was the responsibility of current EMI Canada head Deane Cameron), returning to EMI UK in 1984 as head of A&R and marketing. In 1987 he moved to PolyGram as managing director of Polydor Records. There he worked with artists including The Cure, the Bee Gees, Andrew Lloyd Webber, Style Council and Van Morrison and trebled the label's turnover in four years.

In 1991 Munns was promoted to the worldwide position of senior vice president – pop marketing for PolyGram, responsible for overseeing all of the company's frontline repertoire. From 1994 to 1999 he was also a board director of Andrew Lloyd Webber's Really Useful Group. After deciding to leave PolyGram in 1998, Munns became Jon Bon Jovi's manager, helping Bon Jovi to sell over seven million copies of their album 'Crush'. Munns rejoined EMI in October 2001 as vice chairman of EMI Recorded Music with special responsibility for global marketing and human resources.

#### **Matt Serletic**

After earning both his bachelors and masters degrees in music performance from the University of Miami, Matt Serletic, 31, discovered and signed matchbox twenty to his production company, Melisma Productions. He produced both their debut and sophomore albums which have together sold over 20 million copies worldwide. In 1999, Serletic produced 'Smooth', the lead track from Carlos Santana's comeback album 'Supernatural'. The album has since sold over 30 million copies worldwide. 'Smooth' and 'Supernatural' earned Serletic two Grammy Awards in 2000 for Record of the Year and Album of the Year. In 2000 he topped Billboard magazine's 'Hot 100 Producers' chart for the year.

In 1999 Serletic formed Melisma Records, a joint venture with Arista Records, and has continued to produce hit records with artists including Aerosmith, Celine Dion, Collective Soul and Edwin McCain. Recently, Serletic produced Willie Nelson's 201st album entitled 'The Great Divide'. Serletic is also a writer, arranger, composer and musician.

#### **Roy Lott**

Roy Lott's career in the music industry began in 1979 when he joined Arista Records in New York as an attorney. He spent the next 19 years at Arista, rising to be the number two to label head Clive Davis as executive vice president and general manager. During his time at the label he helped to establish and build the Arista Nashville division and Arista's joint venture partnerships with LaFace and Bad Boy Records.

In 1998 Lott moved to EMI from Arista as deputy president of EMI Recorded Music North America, responsible for the Angel, Blue Note, Capitol Nashville and EMI Christian Music Group label divisions as well as for EMI Canada. The following year he took on interim responsibility for

Capitol Records, overseeing the label until Andy Slater's appointment last year.

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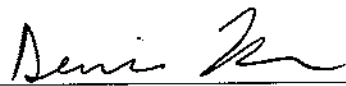
AFFIDAVIT OF SERVICE

Dennis Kim, pursuant to 28 U.S.C. § 1746, declares

I am not a party to this action, am over eighteen years of age, and reside in Edgewater, New Jersey. On the 30th day of March 2006, I served a true copy of (i) Motion by Cindy Seley and David Paschkett for Transfer and Coordination or Consolidation Pursuant to 28 U.S.C. 1407; (ii) Memorandum of Cindy Seley and David Paschkett in Support of their Motion for Transfer and Coordination or Consolidation Pursuant to 28 U.S.C. §1407 upon the counsel listed on the attached service list via the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 30, 2006.

Dated: New York, New York  
March 30, 2006

  
\_\_\_\_\_  
Dennis Kim

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JUDICIAL PANEL ON  
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Feferman, et al v. Universal Music, et al, 06-cv-378

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**Central District of California (Western Division – Los Angeles)**

Guy Williams v. Sony BMG Music Entertainment et al, 2:06-cv-01661-JFW-JC

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**Central District of California (Western Division – Los Angeles)**

Radikal Records Inc. v. Warner Music Group Corp et al, 2:06-cv-01713-MMM-JWJ

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**Central District of California (Western Division – Los Angeles)**

Cato Thornton v. Sony BMG Music Entertainment et al, 2:06-cv-01748-GPS-FMO

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**California Northern District (San Francisco)**

Bulaco et al v. Sony BMG Music Entertainment et al, 3:06-cv-01752

**Plaintiff**

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Ruth v. Sony BMG Music Entertainment et al, 3:06-cv-02161-MEJ

**Plaintiff**

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**Southern District of New York (Foley Square)**

Ewing et al v. Sony BMG Music Entertainment et al, 1:06-cv-02355-MBM

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Central District of California (Western Division)

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United States District Court

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**Southern District of New York (Foley Square)**

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United States District Court  
Southern District of New York  
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New York, NY 10007

**Defendants Principal Addresses**

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**Bertelsmann Music Group (BMG)**

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