

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

CASE NO.: 19-25045 –CIV-MARTINEZ-OTAZO-REYES

VICKY CORNELL, individually, and in her capacity,
and as the Personal Representative of the Estate
of Christopher John Cornell a/k/a Chris Cornell,

Plaintiffs,

v.

SOUNDGARDEN, a purported Washington
General Partnership, et al., KIM A. THAYIL,
MATT D. CAMERON, HUNTER BENEDICT SHEPHERD,
RIT VENERUS and CAL FINANCIAL GROUP, INC.,

Defendants.

**DEFENDANTS SOUNDGARDEN, KIM A. THAYIL, MATT D. CAMERON,
AND HUNTER BENEDICT SHEPHERD’S MOTION TO DISMISS OR TRANSFER FOR
LACK OF PERSONAL JURISDICTION OVER THE SURVIVING BAND MEMBERS,
DISMISS OR TRANSFER FOR IMPROPER VENUE,
OR TRANSFER UNDER 28 U.S.C. § 1404(A)**

**DEFENDANTS SOUNDGARDEN, KIM A. THAYIL, MATT D. CAMERON,
AND HUNTER BENEDICT SHEPHERD’S NOTICE OF JOINDER IN MOTIONS TO
DISMISS BY DEFENDANTS RIT VENERUS AND CAL FINANCIAL GROUP, INC.**

MEMORANDUM IN SUPPORT

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Table of Contents

| | | |
|------|---|----|
| I. | PRELIMINARY STATEMENT | 1 |
| II. | STATEMENT OF FACTS | 2 |
| A. | GENERALLY RELEVANT FACTS REGARDING TRANSFER AND PERSONAL JURISDICTION..... | 2 |
| i. | Facts Relating to Defendants | 2 |
| ii. | Facts Relating to Plaintiff Vicky Cornell..... | 10 |
| iii. | Facts Relating to Planned Counterclaims | 11 |
| III. | ARGUMENT | 12 |
| A. | THE COURT LACKS PERSONAL JURISDICTION OVER THE SURVIVING BAND MEMBERS | 12 |
| B. | THE COURT SHOULD DISMISS OR TRANSFER FOR IMPROPER VENUE. | 14 |
| C. | THE COURT SHOULD TRANSFER VENUE TO WASHINGTON UNDER 28 U.S.C. § 1404(A) | 17 |
| IV. | CONCLUSION..... | 20 |

Table of Authorities

| <u>Case Law</u> | Pages(s) |
|---|-----------------|
| <i>Algodonera De Las Cabezas S.A. v. Am. Suisse Capital, Inc.</i> , 432 F.3d 1343 (11th Cir. 2005)..... | 17 |
| <i>Am.'s Best Inns, Inc. v. Best Inns of Abilene, L.P.</i> , 980 F.2d 1072 (7th Cir. 1992)..... | 10 |
| <i>Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.</i> , 134 S. Ct. 568 (2013)..... | 15 |
| <i>Cellularvision Tech. & Telecomm., L.P. v. Alltel Corp.</i> , 508 F. Supp. 2d 1186 (S.D. Fla. 2007)..... | 18, 19 |
| <i>Fraser v. Smith</i> , 594 F.3d 842 (11 th Cir. 2010)..... | 14 |
| <i>Gilbert v. David</i> , 235 U.S. 561 (1915)..... | 10 |
| <i>Guy v. Layman</i> , 932 F. Supp. 180 (E.D. Ky 1996)..... | 14 |

| | |
|--|--------|
| <i>Hemispherx Biopharma, Inc. v. MidSouth Capital, Inc.</i> , 69 F. Supp. 2d 1353 (S.D. Fla. 2009)..... | 15 |
| <i>Int'l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)..... | 12 |
| <i>Mason v. Smithkline Beecham Clinical Labs.</i> , 146 F. Supp. 2d 1355 (S.D. Fla. 2001)..... | 19 |
| <i>Medtronic, Inc. v. Am. Optical Corp.</i> , 337 F. Supp. 490 (D.C.Minn., 1971)..... | 16 |
| <i>Meterlogic, Inc. v. Copier Solutions, Inc.</i> , 185 F. Supp. 2d 1292, 1299 (S.D. Fla. 2002)..... | 17, 18 |
| <i>Poncy v. Johnson & Johnson</i> , 414 F. Supp. 551 (S.D. Fla. 1976)..... | 19 |
| <i>Performance Brokerage Servs., Inc. v. Pomeroy</i> , 2018 WL 4207917 (M.D. Fla., Sep. 3, 2018)..... | 10, 17 |
| <i>Ramos v. Motamed</i> , Case No. 502015CA012820XXXXMB, Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida..... | 11 |
| <i>Rush v. Savchuk</i> , 444 S. Ct. 571 (1980)..... | 14 |
| <i>Sculptchair, Inc. v. Century Arts, Ltd.</i> , 94 F.3d 623 (11th Cir. 1996)..... | 12 |
| <i>Van Dusen v. Barrack</i> , 376 U.S. 612 (1964)..... | 17 |
| <i>Wai v. Rainbow Holdings</i> , 315 F. Supp. 2d 1261 (S.D. Fla. 2004)..... | 15 |
| <i>Walden v. Fiore</i> , 134 S. Ct. 1115 (2014)..... | 13 |
| <i>Windemere Corp. v. Remington Prods., Inc.</i> , 617 F. Supp. 8 (S.D. Fla. 1985)..... | 18 |

Statutes and Rules

| | |
|-------------------------------|---|
| Fed. R. Civ. P. 12(b)(2)..... | 1 |
|-------------------------------|---|

| | |
|-------------------------------|------------|
| Fed. R. Civ. P. 12(b)(3)..... | 1, 15 |
| 28 U.S.C. § 1391(b)..... | 15, 16, 17 |
| 28 U.S.C. § 1391(c)..... | 10, 15, 16 |
| 28 U.S.C. § 1400(a)..... | 15, 16 |
| 28 U.S.C. § 1404(a)..... | 1, 17 |
| 28 U.S.C. § 1406(a)..... | 1, 15 |

MOTION TO DISMISS OR TRANSFER; NOTICE OF JOINDER

Defendants Soundgarden, Kim A. Thayil, Matt D. Cameron, and Hunter Benedict (“Ben”) Shepherd (the “Defendants”) move this Court for an Order: (1) dismissing or transferring this action to the U.S. District Court for the Western District of Washington for lack of personal jurisdiction over certain defendants under Fed. R. Civ. P. 12(b)(2); (2) dismissing or transferring this action for improper venue under Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a); or (3) transferring this action under 28 U.S.C. § 1404(a) (the “Motion”). Defendants also provide this Notice of Joinder in Defendants Rit Venerus and Cal Financial Group, Inc.’s concurrently-filed Motions To Dismiss (“Venerus Motions to Dismiss”).

I. PRELIMINARY STATEMENT

In this action, Plaintiff Vicky Cornell (“Vicky Cornell” or “Plaintiff”), the widow and heir of deceased famous lead-singer Christopher Cornell (“Cornell”), has brought claims in Florida against Cornell’s Seattle-based band, Soundgarden, and Cornell’s Soundgarden ex-bandmates and their financial manager. Vicky Cornell’s complaint (“Complaint”) is an offensive recitation of false allegations and hurtful personal accusations. Defendants categorically deny every material contention lobbed against them including, most callously, that they were uncaring following Cornell’s death in 2017.

This action is premised on basic falsehoods. Vicky Cornell is not the owner of the recordings at issue, which are provably Soundgarden’s and intended for a new Soundgarden album. Vicky Cornell is entitled to distributions from the Soundgarden partnership for Cornell’s share of band revenues, but only on the vote of the partnership which has not taken place. There is no “conspiracy” with the band’s financial manager. Most relevantly for this Motion, this action should not, and cannot legally, proceed in Florida for several reasons: (1) there is no personal jurisdiction over at least the band *members*; (2) venue is improper for all defendants; and (3) the

recognized interests of party and witness convenience, and the interests of justice, demand that this honorable Court transfer this action to the Western District of Washington. This action belongs in Washington if it survives dismissal. The overwhelming number of relevant events occurred in Washington. Defendants, most witnesses, and pertinent evidence are located in Washington. In contrast, it is not even clear that Vicky Cornell resides in Florida, which is the only apparent basis on which this action was filed by her in Miami.

II. STATEMENT OF FACTS

A. Generally Relevant Facts Regarding Transfer and Personal Jurisdiction

i. Facts Relating to Defendants

Soundgarden is a general partnership (the “Partnership”) formed in the State of Washington between Cornell, Kim Thayil (“Thayil”), Matt Cameron (“Cameron”) and Ben Shepherd (“Shepherd,” collectively, the “Band Members”). “Soundgarden” is also a world-famous rock band (the “Band”). The Band was originally formed in Seattle, Washington, in 1984, by Cornell (drums, vocals), Thayil (guitars), and Hiro Yamamoto (bass, vocals). Cameron became the Band’s full-time drummer in 1986. Shepherd became a permanent bassist replacing Yamamoto in 1990. (Declaration of Matt Cameron (“Cameron Decl.”) ¶10.)

Cornell and Thayil were born and raised in Seattle. All of the Band Members met in Seattle and began their principal music careers together there, eventually becoming a seminal influence on “grunge” rock music and the associated cultural movement originating in Seattle. (Cameron Decl. ¶11.) The Band immediately garnered critical acclaim and increasing commercial success with a series of independent releases and their major label debut. The Band’s fourth album, *Badmotorfinger*, recorded in Seattle and released in 1991, was the first to feature all four Band Members, and would be the Band’s highest charting album to date on the Billboard 200. With accomplishment came a series of financial decisions, and the Band Members all agreed to operate

as a partnership and to evenly share the revenue from their songs, recordings and performances. (Cameron Decl. ¶12.)

The Band's fifth studio album, *Superunknown*, recorded in Seattle, was released in March 1994 and catapulted them into mainstream success: debuting at number one on the Billboard 200 and earning the Band two Grammy Awards. The Band's sixth studio album, *Down on the Upside*, recorded in Seattle, was released in May 1996. By early 1997, the Band Members experienced creative musical differences as Cornell chose to pursue a singer-songwriter direction. On April 9, 1997, the Band announced it was disbanding. For a few years, each Band Member pursued other projects, both as solo artists and with other lineups—such as Cornell's work with Audioslave, and Cameron's joining the multi-Platinum-certified group Pearl Jam—but they remained close friends and actively supported each other's new ventures (for example, Cameron performed on Cornell's 1999 solo album, *Euphoria Morning*). (Cameron Decl. ¶¶13-16.)

In early 2010, the Band Members again began working on projects as a group. In November 2012, the Band released their seventh studio album, *King Animal*, recorded in Seattle. (Cameron Decl. ¶17.) The Band also began work on songs for a new studio album, as confirmed by Thayil in interviews in late 2014.

We're probably gonna start working on another album in 2015. I know Chris [Cornell] has been writing stuff while we're on tour. It's hard to write on tour....But Chris spent some time – he travels with a computer and ProTools equipment – and he'll work on songs in his hotel room, which is great.¹

In an interview with Rolling Stone, published on August 24, 2015, Cornell confirmed that he and the Band were working on songs for a new Soundgarden studio album: "...Cornell says [Soundgarden] is alive and well. 'We're already working on new material for an album....There's

¹ <https://web.archive.org/web/20141210113431/http://www.fasterlouder.com.au/features/40341/Soundgarden-talk-Soundwave-2015-and-Superunknown>

a lot of things coming...as well as a new Soundgarden album.”² In late 2015 and early 2016, the Band Members returned to a Seattle studio to continue working on their new album. (Cameron Decl. ¶18.) Shepherd and Cameron publicly confirmed the progress of these efforts in an interview in July 2016: “I think we’ve got six solid tunes right now, we’re gonna get together in August for about a week, do more writing, and hopefully got five or six more going at that point. We’re off to a very good start.”³

In an effort to finish the album, the Band booked more multi-day recording sessions at “Strange Earth” studios in Seattle during August-September 2016 and January 2017. (Cameron Decl. ¶19.) In an interview published on February 6, 2017, Cornell again publicly confirmed that the Band was working on its album and had developed “a lot of interesting songs.”

How’s the new [Soundgarden album] material shaping up?

“We have a lot of interesting songs - sort of similar in that nothing really sounds like anything we’ve done before, and there’s definitely new territory, but it definitely sounds like us. That’s what I’m doing today, as soon as we hang up.”⁴

In late April 2017, the Band again assembled in Seattle for studio time. (Cameron Decl. ¶19.) Among the finished or nearly-finished Soundgarden tracks in existence by the end of April 2017 were the following (defined in the Complaint as the “Unreleased Sound Recordings”)⁵:

| Title | Finished Vocals | Songwriters | Running Time |
|-----------------------------|-----------------|----------------------------|--------------|
| Road Less Travelled | Yes | Chris Cornell/Matt Cameron | 4:10 |
| Orphans | Yes | Chris Cornell/Matt Cameron | 3:18 |
| At Ophians Door | Yes | Chris Cornell/Matt Cameron | 5:05 |
| Cancer | Yes | Chris Cornell | 4:00 |
| Ahead of the Dog | Yes | Chris Cornell/Kim Thayil | 3:47 |
| Merrmas | Yes | Chris Cornell/Ben Shepherd | 4:32 |
| Stone Age Mind ⁶ | Yes | Chris Cornell | 4:22 |

² <https://www.rollingstone.com/music/music-news/chris-cornell-on-new-solo-album-scream-hate-and-future-of-soundgarden-73305/>

³ <https://web.archive.org/web/20160724014200/http://radio.com/2016/07/11/soundgardens-matt-cameron-and-ben-shepherd-look-back-at-hater/>

⁴ <https://www.musicradar.com/news/chris-cornell-on-ultramega-oks-essential-reissue-new-soundgarden-album-and-audioslave-reunion>

⁵ See Cameron Decl. ¶20; Thayil Decl. ¶10; Shepherd Decl. ¶10.

⁶ The song “Stone Age Mind” was brought to the Band by Cornell shortly before his death, but was intended by Cornell to be a Band track for the planned new album. This intent is provable by, amongst other evidence, an email

The Band interrupted its April 2017 studio session in Seattle to begin a national tour starting on April 28, 2017. (Cameron Decl. ¶21.) On May 14, 2017, the Band played in Kansas City, Missouri. After the show Cornell flew home to New York City. On May 17, he flew to Detroit, Michigan to join other Band Members for a Soundgarden concert that night at the Fox Theatre. Following the concert—as was customary—Thayil, Cameron, and Shepherd (the “Surviving Band Members” or “Remaining Partners”) made the late night trip in the Band’s tour buses to their next concert destination in Columbus, Ohio, where the Band had a concert on May 19. Cornell stayed behind at a Detroit hotel with the plan to fly on to Columbus, as was his normal practice because Cornell was unable to sleep on buses. As their buses were headed to Columbus in the early morning of May 18, the Surviving Band Members learned that Cornell had been found dead in his hotel room in Detroit after midnight (tragically, Cameron first saw a “RIP: Chris Cornell” item on his Facebook page, called Thayil who was on the other bus, who then woke Shepherd, and they and their crew frantically searched news, social media and called friends and family, until they received the awful confirmation from their tour manager).⁷

Thayil, Cameron and Shepherd were utterly devastated to lose their beloved friend, brother, and comrade, and were in a state of shock. As they pulled their buses to the roadside, embraced each other, and struggled with what to do next, their tour manager advised them not to go back to Detroit as it would be swimming with police, press, and other media, and there was nothing positive that could be achieved. They also had a throng of highly-distraught crew and tour team members already in or headed to Columbus who needed support. So they organized a vigil in a

from Cornell to the Band dated March 3, 2017, in which Cornell states of the song: “Needs you guys for it to sound right....I think it needs work with all of us in a room. Once I sang on the chorus I wasn't sure what to do with it, so all three are different....Anyway, we will improve it when we get in a room.” On that basis, it is believed that audio files of this song would have instrumental parts, as well as vocals, possibly performed solely by Cornell, but would still be Band property. (Thayil Decl. ¶11)

⁷ See Cameron Decl. ¶22; Thayil Decl. ¶12; Shepherd Decl. ¶11.

conference room at their Columbus hotel, where they were accompanied by their crew, assistants and friends who hugged, wept and attempted to console each other for many hours.⁸

Following Cornell's death, the Surviving Band Members canceled the remainder of the Band's U.S. tour. They all attended Chris Cornell's memorial service in Los Angeles where Cameron and Thayil found the strength to give eulogies.⁹ Since then, the Surviving Band Members have offered consistent support to Cornell's widow, Vicky Cornell (then Vicky Karayiannis), and Cornell's three children. This included, by way of example, accompanying Vicky Cornell on November 1, 2017, to a fundraising dinner for the Los Angeles Committee of Human Rights Watch where Cornell received a posthumous "The Promise" award; and appearing and supporting Vicky Cornell on October 7, 2018, for the unveiling of the Chris Cornell statue at Seattle's Museum of Pop Culture. Since Cornell's death, the Surviving Band Members have not played together as Soundgarden, except for one performance on January 16, 2019, at a concert entitled "I Am the Highway: A Tribute to *Chris Cornell*" at the Forum in Los Angeles. The concert—which was performed without compensation by the Surviving Band Members, and many other musicians and celebrities—was intended to benefit The Chris and Vicky Cornell Foundation ("Cornell Foundation"), a California nonprofit corporation,¹⁰ and is believed to have raised many millions of dollars. (Cameron Decl. ¶¶24-25; Declaration of Kim Thayil ("Thayil Decl.") ¶¶14-15; Declaration of Ben Shepherd ("Shepherd Decl.") ¶13-14.)

⁸ See Cameron Decl. ¶24; Thayil Decl. ¶13; Shepherd Decl. ¶12.

⁹ Soundgarden ultimately covered flights and hotel costs for Vicky Cornell, her children, and extended family members, during and after the 2017 memorial for Chris Cornell in Los Angeles. The flights originated from Teterboro, NJ via private jet and ultimately returned to New York City via different commercial flights. Declaration of Rit Venerus in support of concurrent-filed Venerus Motions to Dismiss ("Venerus Decl.") ¶16.

¹⁰ It is unclear the fate of this revenue intended by the band, and promised by Vicky Cornell, to be used for charitable purposes. The Cornell Foundation appears not to have publicly released a Form 990 detailing its financial position since 2017. <https://www2.guidestar.org/profile/46-1543070>. Further, as of the date of this filing, the Cornell Foundation's website appears not to have been updated since 2017. <https://chrisandvickycornellfoundation.org/>

When he died, Cornell possessed digital multi-track recordings of the seven Unreleased Sound Recordings as well as many other Band-recorded audio files intended for the new Soundgarden studio album (collectively the “Album Files”). The Album Files were stored on at least one (and perhaps more) of Cornell’s laptops, and perhaps on other of Cornell’s computers or devices, because he had been working on his vocal and instrumental parts for the new tracks while on tour (using the method of “overdubbing”).¹¹ Out of respect for Cornell’s family, the Surviving Band Members and the Band’s team promptly arranged delivery of all of Cornell’s personal effects, including his laptop(s), to Vicky Cornell. Unfortunately, the Surviving Band Members subsequently realized that Cornell had the *only* existing multi-track versions of the seven Unreleased Sound Recordings that include Cornell’s vocal and instrumental overdubs, along with other unique Album Files. (Cameron Decl. ¶26.)¹²

Following a period of grief and mourning, the Surviving Band Members reached out to Vicky Cornell to recover the Album Files including from Cornell’s laptop(s). In part, they wanted to confirm their belief that there is sufficient recorded material in the Album Files for a last Soundgarden studio album – a project that the Surviving Band Members believe they owe to Cornell, the Band’s legacy and fans. (Cameron Decl. ¶27.) Despite admitting that the Album Files were Band material, Vicky Cornell has refused to return them to the Surviving Band Members for well over two years.

In August 2017, Vicky Cornell revealed in a telephone call with one of the Band’s audio engineers that Cornell’s laptop(s)/computers were stored in Cornell’s recording studio along with

¹¹ “Overdubbing” is the addition of vocal or instrumental tracks to other instrumental tracks to create a full band recording. “Multi-track” recordings are the audio building blocks of a fully mixed and produced album product.

¹² The Band understands that additional copies of the Album Files have been made since Cornell’s death, including by Tom Syrowski, assistant to Brendan O’Brien, the “Trusted Producer” named in the Complaint. (Cameron Decl. ¶28.)

other important equipment at her home in New York City which had suffered flooding. The audio engineer immediately offered to travel to New York, along with another audio engineer, to assist with recovery efforts and to help review, catalog, and make safety back-ups of all the audio recording files on the laptops/computers. This offer was ultimately not accepted. (Declaration of Nathan Yaccino (“Yaccino Decl.”) ¶¶3-5.) In late January and early February 2019, Vicky Cornell exchanged text messages with Cameron confirming her custody of “SG files” and stating that “I will have to sort a time to have the hard drive sent back to Tom so he can extract the SG files to send to you.” But no delivery was made. In late July 2019, Vicky Cornell stated to Cameron that she “will not release anything without proper set up and without say in the management...” (Cameron Decl. ¶¶28-29.) On November 14, 2019, counsel for the Remaining Partners delivered a letter requesting return of the Album Files, adding that “[w]e are hopeful that this issue can be resolved easily and voluntarily,”¹³ but neither the Remaining Partners nor their counsel received a substantive response until learning from the media on December 9, 2019, that Vicky Cornell filed this federal action in Miami, Florida.¹⁴

In her Complaint, Vicky Cornell claims that “[in] 2017, while at his home in Florida, [Cornell] recorded a number of unreleased sound recordings.” (Compl. (D.I. 1) ¶¶42.) She claims that these recordings, including the Unreleased Sound Recordings, were “solely created by Chris on his laptop at his personal recording studio, known as TNC Studios,” that “[Cornell] was the sole and exclusive owner and copyright holder”, and that Vicky Cornell now “is the sole and exclusive owner[]” of these files. (*id.* ¶¶42-44.) These claims are all false. All of the Album Files, including the Unreleased Sound Recordings, are Band and Partnership material. This is easily

¹³ Cameron Decl. ¶30. A true and correct copy of this November 14, 2019 letter is attached to the Complaint in this action as Exhibit A.

¹⁴ See, e.g., <https://www.rollingstone.com/music/music-news/chris-cornell-vicky-cornell-soundgarden-lawsuit-royalties-924015/> (“Chris Cornell’s Widow Sues Soundgarden Over Unreleased Recordings”).

provable by abundant evidence, including emails between the Band Members (including Cornell) exchanging audio files and lyrics, file metadata through Dropbox, and other tangible evidence such as full “live” audio recordings of the Band working on and performing the songs at its Seattle studios. (Cameron Decl. ¶31; Yaccino Decl. ¶10.) Defendants even have evidence directly from Vicky Cornell, including an email from March 2017 in which she states that Chris is traveling for the “SG record.” (Venerus Decl. ¶18) The Album Files were not exclusively “recorded” by Cornell in Florida in 2017, nor were they “solely recorded” by him. Many of the Album Files significantly predate 2017: for example, the instrumental recording of “Ahead of the Dog” (originally titled “Summer Tiger”) had been performed by Soundgarden during their *King Animal* recording sessions in early 2011. (Yaccino Decl. ¶11; Cameron Decl. ¶32) Cornell’s work on vocal and instrumental overdubs for the Album Files did not just take place in Florida (if at all), but in various other locations including Seattle and on the road during tours; and Chris often worked from his personal recording studio at his home in New York City. (Cameron Decl. ¶32.) Finally, besides its contradiction with Vicky Cornell’s previous statements acknowledging possession of “SG files,” Vicky’s Cornell’s new position that the Album Files were Cornell’s sole work and property conflicts with her own concession that she “long ago offered to share the sound recordings with the band” (Compl. ¶4.)

The Complaint alleges that the Partnership and its business manager, Rit Venerus and his company Cal Financial Group, Inc., failed to pay Cornell’s share of Partnership distribution. However the Partnership has explained that it has not made distributions to any Partners, and will not legally be required to make distributions to Vicky Cornell (as the heir to Cornell’s share) until the Partnership, by vote of the Remaining Partners, formally elects to make such a distribution. When a Partnership distribution is made, Vicky Cornell will be entitled to her appropriate payment

based on Cornell's share. (Cameron Decl. ¶¶33; Venerus Decl. ¶14). The Complaint also alleges that the Remaining Partners have failed to return certain of Cornell's personal property (Compl. ¶¶95-100), although it disregards that the Remaining Partners have already done so. (Cameron Decl., Ex. A; Yaccino Decl. ¶¶12-13).

All of the Remaining Partners (Thayil, Cameron and Shepherd) still live in Washington. Each of the Remaining Partners individually has only sporadic and incidental connections to Florida, entirely relating to their work as touring musicians. (Cameron Decl. ¶¶2-9; Thayil Decl. ¶¶2-9; Shepherd Decl. ¶¶2-9.) Attached to this Motion as Exhibit A is a table detailing the overwhelming number of connections between this action and Washington, and the near-absence of any such connections to Florida.

ii. Facts Relating to Plaintiff Vicky Cornell

Vicky Cornell claims that she "resides" in and is a "citizen" of Florida. (Compl. ¶¶8, 18). But she does not claim to be "domiciled" in Florida, which is required under the Federal rules to properly claim "residence" or "citizenship." *See* 28 U.S.C. § 1391(c); *Am.'s Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992) (*citing* *Gilbert v. David*, 235 U.S. 561 (1915) ("In federal law citizenship means domicile, not residence.")). "Pleading residency is not the equivalent of pleading domicile." *Performance Brokerage Servs., Inc. v. Pomeroy*, 2018 WL 4207917, at *1 (M.D. Fla. Sep. 3, 2018). "A person's domicile is the place of his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom." *Id.*

Furthermore, Vicky Cornell's "residence" and "citizenship" allegations are questionable because strong evidence suggests that Vicky Cornell's "domicile" is actually in New York City, New York, not Miami, Florida. Vicky Cornell appears to periodically stay at a condominium in South Beach, Florida. The address of Vicky Cornell's South Beach condo is known to defendants.

(Venerus Decl. ¶17.). However, review of public records, including deed records, reveals that (1) it is at least unclear whether Vicky Cornell owns or rents the condo (available deed history is unclear but the condo appears to be owned by an LLC, itself owned by another family); and (2) the condo appears to be the principal place of residence of Vicky Cornell's mother, Toni Vasil, and brother, Nicholas Karayiannis.¹⁵ While Cornell and Vicky Cornell owned or rented several properties during the relevant period (including in Seattle and Rome), since 2013 (when they moved from Los Angeles) evidence strongly suggests that the Cornell family's principal place of residence is New York City. In particular, Defendants understand that both of Vicky Cornell's minor children currently attend school in New York City. (Cameron Decl. ¶35.). Apart from domicile questions, it appears dubious that Vicky Cornell resides in Florida a sufficient number of days to claim tax residency to the exclusion of New York, or to satisfy Florida's own tax residency requirements.¹⁶ Defendants plan to conduct discovery to further clarify and confirm such information.

iii. Facts Relating to Planned Counterclaims

The Remaining Partners are investigating various counterclaims ("Counterclaims") that they will likely assert against Vicky Cornell in this action at the appropriate time, including the following claims based on the following indicated facts:

- By improperly denying the Remaining Partners access to the Album Files, and by copying those Album Files without approval, Vicky Cornell has engaged in conversion, copyright infringement, and is subject to other related Counterclaims such as for unjust enrichment and declaratory relief.

¹⁵ Out of confidentiality concerns in this public forum, Defendants will not file deed and other records revealing the address of the condo and other private information. Defendants may file such evidence, as necessary, under seal in support of their reply papers.

¹⁶ https://www.tax.ny.gov/pit/file/pit_definitions.htm; see also *Ramos v. Motamed*, Case No. 502015CA012820XXXXMB, Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida—Civil Division (June 20, 2017); *affirmed* 245 So.3d 735 (2018).

- Vicky Cornell improperly refuses to return control of the Band’s official website and social media accounts.
 - Through improper means, Vicky Cornell has seized control over the official website and various social media accounts.
 - Despite multiple requests, Vicky Cornell has refused to return control of any such accounts or the Band website to the Remaining Partners, their rightful owners and managers, thus constituting conversion.
 - Such improper use of the Band’s official website and social media accounts includes Vicky Cornell’s posting or arranging of statements contrary to the Band or Partnership’s interests purportedly, but falsely, made on behalf of the Band.
 - Besides fraud, such misuse may constitute trademark misappropriation, false passing-off, and/or breach of right to publicity/unfair competition.
- Vicky Cornell appears to have improperly retained overpayments made by mistake to Chris Cornell relating, at least, to the Soundgarden album *Badmotorfinger*.

III. ARGUMENT

A. The Court Lacks Personal Jurisdiction Over the Surviving Band Members

Plaintiff fails to allege facts under which this Court could assert personal jurisdiction over the Surviving Band Members (defendants Thayil, Cameron and Shepherd) who all reside over 3,000 miles away from this district in Seattle, Washington. The court analyzes whether it has personal jurisdiction over a nonresident defendant under a two-part test. *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626 (11th Cir. 1996). *First*, the court examines Florida’s long-arm statute. *Id.* *Second*, the court must determine whether sufficient minimum contacts exist between the defendant and Florida such that jurisdiction over the defendant comports with “traditional notions of fair play and substantial justice” under the Due Process Clause. *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Minimum contacts only exist when: (1) the contacts arise from or relate to the cause of action; (2) defendants purposefully avail themselves of the privilege of conducting activities within the forum, thus invoking the benefits and protections of its laws; and (3) the defendants’ contacts within the forum demonstrate that they reasonably anticipated being haled into court there. *Id.* at 631.

The plaintiff bears the initial burden. If the plaintiff establishes a *prima facie* case of personal jurisdiction through the allegations of the Complaint, defendants may challenge those allegations through affidavits, shifting the burden back to the plaintiff to prove jurisdiction. *Sculptchair*, 94 F.3d at 627. If defendants sustain their burden, plaintiff must substantiate the jurisdictional allegations by affidavits or other competent proof, not merely repeat allegations in the Complaint.

Following are the full jurisdictional allegations asserted in the Complaint against the Surviving Band Members (as distinct from the Partnership):

[T]he Partnership and Surviving Band Members have: (i) granted the rights to distribute musical works in Florida in exchange for royalty payments; (ii) entered into license agreements for the exploitation of musical works, a film, and related merchandise in Florida; (iii) marketed and promoted musical works, a film and live performances in Florida; (iv) received royalties and payments generated from transactions with Florida residents; (v) offered merchandise for sale to Florida residents; and (vi) performed concert and live stage events throughout the State.

(Compl. ¶19; *id.* ¶71 (alleging, while effectively denying, that the Surviving Band Members “purportedly” provided musical “materials” to Cornell in Florida).)

Some of these allegations are simply false. (Cameron Decl. ¶8; Thayil Decl. ¶8; Shepherd Decl. ¶8). The allegations are also factually and legally deficient. First, as noted, the connections to the jurisdiction must relate to the allegations of the Complaint. Such “suit-related conduct” must have a “substantial connection” to the forum – “random, fortuitous, or attenuated contacts” with “persons affiliated with the State” are not sufficient, and plaintiff’s own contacts with the forum “cannot be decisive.” *Walden v. Fiore*, 134 S. Ct. 1115, 1122-23 (2014). None of the Florida contacts alleged against the Surviving Band Members have anything to do with the essential claims of the Complaint: (1) Plaintiff’s claim of ownership over “Unreleased” audio files (which cannot have thus far generated any disputed revenue, since they have not been publicly performed,

marketed, sold, or licensed); and (2) Plaintiff's claim that Defendants failed to make partnership distributions to her (*see* page 10 *infra*). Second, Plaintiff's jurisdictional allegations against the Surviving Band Members solely arise out of their connections to Florida as Band Members—or more correctly as the Remaining Partners in the Partnership—apparently on the belief that jurisdiction over a partnership automatically confers jurisdiction over its partners. This is wrong. “Regardless of their joint liability, jurisdiction over each defendant must be established individually.” *Guy v. Layman*, 932 F. Supp. 180, 182 (E.D. Ky 1996) (granting dismissal of individual general partner, but not partnership, because jurisdictional allegations related solely to partnership's business activities). The contacts that a general partnership has with a forum state are not imputed to the individual partners; rather, the specific contacts of each partner must be assessed individually and without attributing the partnership's contacts to the partners. *See Layman* at 182; *accord Rush v. Savchuk*, 444 S. Ct. 571 (1980) (jurisdictional contacts of insurance company with forum state not imputed to insured); *Fraser v. Smith*, 594 F.3d 842, 852 (11th Cir., 2010) (“[W]e may not ascribe the forum contacts of one codefendant to another in determining the existence of personal jurisdiction.”).

For at least these reasons, this Court should dismiss the action as to the Surviving Band Members for lack of personal jurisdiction in Florida. Alternatively, the Court should transfer this action as to all defendants to the U.S. District Court for the Western District of Washington so the action may proceed in one court with jurisdiction over all parties.

B. The Court Should Dismiss or Transfer for Improper Venue.

If the Court does not dismiss or transfer this action for lack of personal jurisdiction over the Surviving Band Members, it should nonetheless do so because venue in this District is “improper.” 28 U.S.C. § 1406(a); Fed. Civ. P. 12(b)(3). “When a defendant objects to venue under Rule 12(b)(3), plaintiff bears the burden of showing that the venue selected is proper.” *Hemispherx*

Biopharma, Inc. v. MidSouth Capital, Inc., 669 F. Supp. 2d 1353, 1356 (S.D. Fla. 2009). The court need not accept plaintiff's allegations in the complaint as true if they are "contradicted by the defendants' affidavits." *Wai v. Rainbow Holdings*, 315 F. Supp. 2d 1261, 1268 (S.D. Fla. 2004). "When an allegation is challenged, the court may then examine facts outside of the complaint to determine whether venue is proper." *Hemispherx Biopharma*, 669 F. Supp. 2d at 1356.

"[W]hether venue is 'wrong' or 'improper' is generally governed by 28 U.S.C. § 1391." *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 134 S. Ct. 568, 577 (2013). Venue is proper in the following districts, with the indicated circumstances:

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . ; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b). "When venue is challenged, the court must determine whether the case falls within one of the three categories enumerated in § 1391(b)." *Atl. Marine Constr.*, 134 S. Ct. at 577. "[I]f it does not, venue is improper, and the case must be dismissed or transferred under § 1406(a)." *Id.*

In this action, Plaintiff alleges proper venue on three bases presented in two sentences. (Compl. ¶23.) Plaintiff alleges that venue is proper "pursuant to 28 U.S.C. § 1391(b)(1) and 1400(a) because the Defendants are subject to personal jurisdiction in this district and therefore 'reside' in this district, within the meaning of 28 U.S.C. § 1391(c)" and that venue is proper "pursuant to 28 U.S.C. §1391(b)(2) as the payments due to Plaintiffs should have been paid in this district." None of these three bases for venue is valid.

First, there is no venue pursuant to Section 1391(b)(1) because that subsection additionally requires that "all defendants are residents of the State in which the district is located." The

Surviving Band Members (individual natural persons) “reside” in Washington, which is the state in which they are “domiciled.” 28 U.S.C. § 1391(c)(1). Certainly, the Complaint does not allege any Florida “domicile,” but conversely alleges (in support of diversity jurisdiction) that *all* defendants are “citizens of different states.” (Compl. ¶18.) Thus, even if the Partnership (an entity) could be deemed a “resident” of Florida under Section 1391(c)(2), the conditions of Section 1391(b)(1) are not met.

Second, there also is no venue pursuant to Section 1400(a), which provides that “[c]ivil actions...arising under any Act of Congress relating to copyrights...may be instituted in the district in which the defendant or his agent resides or may be found.” Plaintiff includes no copyright infringement count in her Complaint, but only a count for “*Declaratory Relief – Copyright Ownership*.” While Defendants have been unable to locate a case specifically analyzing whether declaratory relief/judgment actions relating to *copyrights* (subsection a) are governed by Section 1400 rather than Section 1391(c), courts have repeatedly held that declaratory judgment actions relating to *patents* (subsection b) are *not* so governed, and the reasoning would appear identical. *See e.g., Medtronic, Inc. v. Am. Optical Corp.*, 337 F. Supp.490, 493 (D.C.Minn., 1971) (“It has been clearly held in a number of cases that a declaratory judgment action alleging invalidity and noninfringement of a patent is not an action for patent infringement and that, in such a case, venue jurisdiction is controlled by § 1391(c) and not by § 1400(b).”). Additionally, Section 1400(a) states only that a copyright action “may be instituted in the district in which the defendant or his agent resides” and, again, at least the Surviving Band Members “reside” in Washington as discussed above.

Third, there is no venue pursuant to Section 1391(b)(2) because Plaintiff does not, and could not credibly, allege that Florida is the venue where “a substantial part of the events or

omissions giving rise to the claim occurred.” Indeed, Plaintiff alleges only that “the payments due to Plaintiffs should have been paid in this district,” which is far from a “substantial part” giving rise to the claim. *See Performance Brokerage Servs., Inc. v. Pomeroy*, 2018 WL 4207917, at *2 (M.D. Fla. Sept. 3, 2018) (“[V]enue is not clearly established...[t]he Complaint states that ‘some of the events’ occurred in the Middle District, but a *substantial part* of the events must have occurred in the Middle District to establish venue pursuant to § 1391(b)(2).”). Plaintiff’s insufficient allegation that she “should have been paid” in Florida as the sole basis for venue is further undermined by the instructions of representatives of Cornell (and subsequently his estate) to wire funds to the Chris Cornell and the Cornell Family Trust accounts which are located at City National Bank in Los Angeles, California, *not* in Florida. (Venerus Decl. ¶13.)¹⁷

C. The Court Should Transfer Venue to Washington Under 28 U.S.C. § 1404(a)

Even if the Court does not dismiss or transfer this case for lack of personal jurisdiction over the Surviving Band Members or improper venue, it should still transfer the action “[f]or the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). The purpose of transfer under § 1404(a) “is to prevent waste “of time, energy and money” and “to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). Transfer is within “the broad discretion of the trial court.” *Meterlogic, Inc. v. Copier Solutions, Inc.*, 185 F. Supp. 2d 1292, 1299 (S.D. Fla. 2002). In assessing motions to transfer venue under § 1404(a), courts generally apply a two-part test: “(1) whether the action ‘might have been brought’ in the proposed transferee court and (2) whether

¹⁷ Plaintiff also cannot invoke “fallback venue” under § 1391(b)(3), because the action “may otherwise be brought” in Washington. *Algodonera De Las Cabezas S.A. v. Am. Suisse Capital, Inc.*, 432 F.3d 1343, 1345 (11th Cir. 2005) (“[V]enue may be predicated on § 1391([b])(3) only when neither § 1391([b])(1) or (2) are satisfied.”). Venue in Florida is improper, so this Court should dismiss or transfer venue to Washington where venue is proper.

various factors are satisfied so as to determine if a transfer to a more convenient forum is justified.” *Id.* at 1299.

First, venue is proper in the Western District of Washington, which includes Seattle. (*See* n.18 *supra*.) As detailed in the fact section, *supra*, Seattle is the Band’s, and the Surviving Band Members’, physical, professional, and creative home, and forcing this action to proceed in Miami would work a genuine injustice. Indeed, it appears likely that Plaintiff deliberately chose to file in Florida *because* it is an inconvenient forum for Defendants. Second, as explained below, other interests of justice and the convenience of witnesses and parties strongly support transfer. *Meterlogic*, 185 F. Supp. 2d at 1300 (listing factors); *see also Cellularvision Tech. & Telecomm., L.P. v. Alltel Corp.*, 508 F. Supp. 2d 1186, 1189 (S.D. Fla. 2007). Indeed, none of the crucial third-party witnesses can be forced to attend trial in this district.

Convenience of the Parties. The convenience of the parties weighs strongly in favor of transferring this action to Washington. Defendants, all located in Washington, will be inconvenienced by being forced to litigate this case in Florida. Defendant Venerus, and his company Cal Financial, is based in Virginia, but willing to submit to Washington jurisdiction. (Venerus Decl. ¶19.) In contrast, while Plaintiff claims to be a resident of Florida, this is doubtful, which considerably weakens any deference to her choice of an inconvenient forum for the other parties and witnesses. (*See* section II(a)(ii) *supra*). Where “a plaintiff has chosen a forum that is not its home forum, only minimal deference is required, and it is considerably easier to satisfy the burden of showing that other considerations make transfer proper.” *Cellularvision*, 508 F. Supp. 2d at 1189 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56 (1981)); *Windemere Corp. v. Remington Prods., Inc.*, 617 F. Supp.8, 10 (S.D. Fla. 1985) (Where facts underlying cause of action

did not occur within the forum chosen by the plaintiff, the choice of forum is entitled to less consideration).

Convenience of Witnesses, Access to Proof. “Important considerations under this factor are whether these witnesses have actual knowledge about the issues in the case, where they are located, and whether it will be more convenient for them if the action is in [the transferor state] or [the transferee state].” *Cellularvision*, 508 F. Supp. 2d at 1190. In particular, “[t]he convenience of non-party witnesses is an important factor in determining whether a transfer should be granted.” *Mason v. Smithkline Beecham Clinical Labs.*, 146 F. Supp. 2d 1355, 1361 (S.D. Fla. 2001).

Here, as set forth in the table attached as Exhibit A, this action (the Complaint and Defendants’ planned Counterclaims) will involve a great number of material, non-Party witnesses who have “actual knowledge about the issues.” Most of these witnesses reside in Washington, and most of the remainder reside in California. Such persons could not be compelled to travel to Miami for trial. “The possibility that a case may be tried where certain crucial witnesses could not be compelled to attend is an important consideration.” *Poncy v. Johnson & Johnson*, 414 F. Supp. 551, 556 (S.D. Fla. 1976). In contrast, the parties could compel many of the third-party witnesses to testify in Seattle because they are located within a 100-mile radius of the District Court for the Western District of Washington. (Cameron Decl. at ¶36.)

The Public Interest. Finally, the public interest also militates in favor of transfer to Washington. Florida substantive law is not likely to apply to any legal issue, a key factor in assessing the convenience of the forum. *See Poncy*, 414 F. Supp. at 556. Rather, under standard choice of law analysis, Washington law is likely to apply to key issues in this case including ownership of the Album Files, ownership of Partnership property, the existence of the challenged

Partnership, the obligation to make Partnership distributions, and other legal issues raised by the Complaint and planned Counterclaims.

IV. CONCLUSION

For the foregoing reasons, Defendants Soundgarden, Cameron, Thayil and Shepherd respectfully request that the Court grant their motions: (1) to dismiss or transfer for lack of personal jurisdiction over the Surviving Band Members; (2) dismiss or transfer for improper venue; or (3) transfer for convenience and justice.

REQUEST FOR HEARING

Defendants request a hearing due to the number of motions and number of issues involved.

CERTIFICATE OF GOOD-FAITH CONFERENCE; CONFERRED BUT UNABLE TO RESOLVE THE ISSUES PRESENTED IN THE MOTION

In accordance with Local Rule 7.1(a)(3)(A), the undersigned certifies that on January 31, 2020, counsel for Defendants Soundgarden and the Surviving Band Members, conferred in good faith with all parties or non-parties who may be affected by the relief sought in the above motions in an effort to resolve the issues but was unable to win agreement on the issues.

Dated: February 3, 2018

Respectfully submitted,

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