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**IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

SONY MUSIC ENTERTAINMENT,
ALAMO RECORDS LLC, ARISTA MUSIC,
ARISTA RECORDS LLC, LAFACE
RECORDS LLC, PROVIDENT LABEL
GROUP LLC, RECORDS LABEL LLC,
SONY MUSIC ENTERTAINMENT US
LATIN LLC, ULTRA RECORDS LLC, and
ZOMBA RECORDING LLC.

Plaintiffs,

v.

THE KROGER CO., 84.51° LLC, DILLON
COMPANIES, LLC, RALPHS GROCERY
COMPANY, FRED MEYER STORES,
INC., FRED MEYER JEWELERS, INC.,
SMITH'S FOOD & DRUG CENTERS,
INC., ROUNDY'S, INC., ROUNDY'S
ILLINOIS, LLC, MEGA MARTS, LLC,
ULTRA MART FOODS, LLC, ULTIMATE
MART, LLC, SHOP-RITE LLC, HARRIS
TEETER, LLC, MURRAY'S CHEESE LLC,
MURRAY'S LIC LLC, RELISH LABS LLC,
KROGER LIMITED PARTNERSHIP I,
VITACOST.COM, INC., AND DOES 1-50,

Defendants.

C.A. No. 2:26-cv-09358

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1
2 1. This action is to stop the Kroger Parties’ rampant infringement of Sony
3 Music’s sound recording copyrights in advertisements posted to the Kroger Parties’
4 social media accounts and through “influencers” whom the Kroger Parties pay to
5 promote their products and brands, and to recover damages.¹

6 2. The Kroger Co. is one of America’s largest grocery and retail
7 conglomerates.

8 3. It operates a portfolio of brands and stores—including Kroger, Mariano’s,
9 Murray’s Cheese, Fred Meyer Jewelers, Ralphs, Ruler Foods, Harris Teeter, and
10 more—with thousands of retail locations nationwide.²

11 4. Social media contributes materially to the Kroger Parties’ marketing
12 strategy.

13 5. The Kroger Co. is responsible for its corporate social media accounts—
14 @kroger, @krogerco, @krogerdfw, and @privateselection (“Kroger Co. Social Media
15 Pages”).

16 6. Each of the Kroger Subsidiaries (as defined herein) maintains and is
17 responsible for its own social media accounts (the “Subsidiary Social Media Pages”
18 and, together with the Kroger Co. Social Media Pages, the “Social Media Pages”).

19 7. The Social Media Pages are populated with videos advertising the Kroger
20 Parties’ products and brands, showcasing their latest sales and promotions, and
21 featuring their stores and branded products.

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26 ¹ Except where otherwise noted, “Kroger Parties” refers collectively to all Defendants, and “Sony Music” refers to Plaintiffs.

27 ² See <https://www.thekrogerco.com/about/our-business/>; <https://www.thekrogerco.com/ir-feed-item/kroger-reports-first-quarter-2026-results/>; https://www.statista.com/topics/4404/kroger-company/#google_vignette; <https://www.foodindustry.com/articles/brands-and-banners-owned-by-kroger/>

1 8. The Kroger Parties amplified the appeal and reach of this social media
2 marketing through willful and repeated infringement of popular and valuable sound
3 recordings owned or controlled by Sony Music.

4 9. Sony Music owns and/or controls the copyrights to, or otherwise possesses
5 the exclusive rights to enforce copyrights in, a vast catalog of sound recordings
6 spanning genres, artists, and decades, including many of the most iconic, popular, and
7 commercially successful recordings in the world (collectively, and without regard to
8 whether any particular recording is referenced in or is the subject of this Complaint, the
9 “Sony Music Recordings”).

10 10. As of the date of this Complaint, Sony Music has identified at least 392
11 unique unauthorized uses of Sony Music Recordings on the Social Media Pages and
12 the pages of the Kroger Parties’ third-party influencers and other third parties affiliated
13 with or engaged by the Kroger Parties (the “Videos”), listed in **Exhibit 1**.

14 11. The Sony Music Recordings the Kroger Parties infringed include some of
15 the biggest hits by household names, as well as tracks featuring up-and-coming artists.

16 12. The Videos are advertisements.

17 13. The Videos promote the various Kroger Parties’ brands, stores, products,
18 and latest sales.

19 14. The Sony Music Recordings are central to the effectiveness and appeal of
20 the Videos.

21 15. The Videos capitalize on the popularity, artistry, and entertainment value
22 of the Sony Music Recordings.

23 16. The Videos often include the catchiest and most familiar parts of the Sony
24 Music Recordings.

25 17. By using Sony Music Recordings, the Kroger Parties entice social media
26 users interested in the artist and/or the Sony Music Recording exploited.

1 18. This enables the Kroger Parties to take advantage of the social media
2 platforms' algorithms and reach users who do not necessarily follow the Social Media
3 Pages.

4 19. The Kroger Parties' infringement is willful.

5 20. The Kroger Parties know licenses are required for this use of Sony Music
6 Recordings.

7 21. Indeed, Kroger Co. has previously entered into numerous licenses with
8 Sony Music to include Sony Music Recordings within its advertisements, and the
9 advertisements of its subsidiaries, explicitly including terms for use on the internet and
10 social media.

11 22. Despite this, the Kroger Parties chose not to obtain permission or pay for
12 the use of Sony Music's copyrighted recordings.

13 23. Sony Music first put the Kroger Parties on notice of their infringement as
14 early as June 30, 2025, and continued to give the Kroger Parties notice as Sony Music's
15 investigation identified additional infringements.

16 24. Yet the Kroger Parties have made no effort to stop their infringing
17 activities.

18 25. In fact, the Kroger Parties have continued to post new infringing content,
19 including as recently as August 12, 2026.

20 26. The majority of the Videos Sony Music identified remained available at
21 least as of May 28, 2026, on the Social Media Pages, with some still available as of the
22 filing of this Complaint, and the Kroger Parties' continued hosting and dissemination
23 of those Videos constitutes ongoing copying, distribution, and/or transmission of the
24 Sony Music Recordings embodied in them.

25 27. Since notifying the Kroger Parties of their infringements, Sony Music
26 repeatedly requested that the Kroger Co. enter into a tolling agreement on its behalf and
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1 on behalf of its subsidiaries so that the parties could pursue settlement discussions
2 without prejudicing either side's rights. The Kroger Co. refused.

3 28. The Kroger Parties' continued infringing conduct, combined with their
4 persistent refusal to agree to a tolling arrangement, left Sony Music with no choice but
5 to file this action to protect its rights.

6 29. Sony Music's investigation is ongoing, and there are undoubtedly
7 additional infringing videos Sony Music has yet to discover, including content made
8 available for only a limited time on features such as Instagram Stories, Snapchat,
9 TikTok Stories, and the like – platforms and features the Kroger Parties use for social
10 media marketing.³

11 30. To the extent any Video was posted more than three years before the filing
12 of this Complaint, Sony Music's claims with respect to that Video are timely because
13 this action was commenced within three years of the date Sony Music discovered, or
14 reasonably should have discovered, that Video, and the Kroger Parties have continued
15 to disseminate those Videos, in certain instances as recently as of the filing of this
16 Complaint.

17 31. The Kroger Parties' conduct has caused, and continues to cause,
18 substantial and irreparable harm to Sony Music, while enriching the Kroger Parties at
19 the expense of Sony Music and its artists.

20 **JURISDICTION AND VENUE**

21 32. This Court has original subject matter jurisdiction over this action pursuant
22 to 17 U.S.C. §§ 101 *et seq.*, 28 U.S.C. §§ 1331 and 1338(a).

23 33. This Court has personal jurisdiction over each Defendant based on that
24 Defendant's conduct directed at, and contacts with, California.

25 _____
26 ³ For example, the Kroger Parties posted ephemeral Instagram Stories exploiting Beyoncé's "CUFF
27 IT" on the @marianosmarket account on May 21, 2025; Miley Cyrus' "Flowers" on the
28 @harristeeter account on May 7, 2025; Outkast's "Hey Ya!" on the @marianosmarket account on
June 2, 2026; Britney Spears' "(You Drive Me) Crazy" on the @realhomechef account on May 20,
2026; and Bruce Springsteen's "Born in the U.S.A." on the @krogerdfw account on May 25, 2026.

1 34. Each Defendant purposefully directed its infringing conduct at California
2 and the California market through content posted to its own social media pages, content
3 disseminated by its influencers and other third parties, and content created or distributed
4 by the agencies it retained. The infringing Videos advertised each of the Defendants'
5 stores and products and were disseminated to California consumers as part of the
6 nationwide social media marketing strategy giving rise to Sony Music's claims, thereby
7 causing harm in California. Moreover, Defendants the Kroger Co., Ralphs Grocery
8 Company, Relish Labs LLC, Fred Meyer Jewelers, Inc., and Murray's Cheese LLC
9 maintain substantial operations in California, including retail stores, distribution and
10 fulfillment facilities, and Defendants the Kroger Co., Ralphs Grocery Company, Fred
11 Meyer Jewelers, Inc., Fred Meyer Stores, Inc., Roundy's, Inc., Roundy's Illinois, LLC,
12 Mega Marts, LLC, Shop-Rite, LLC, Ultra Mart Foods, LLC, Ultimate Mart, LLC,
13 Murray's Cheese LLC, Relish Labs LLC, and Vitacost.com, Inc. conduct e-commerce
14 operations, online consumer services, and nationwide delivery partnerships through
15 which California consumers can purchase products, obtain services, or arrange for
16 delivery within the state.

17 35. A material amount of harm from each Defendant's infringing conduct was
18 suffered in California, including the unauthorized reproduction, distribution, and/or
19 public performance via digital audio transmission of the Sony Music Recordings, and
20 the creation of unauthorized derivative works, occurring within California as a result of
21 California consumers' access to, and viewing of, the infringing Videos.

22 36. Venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C.
23 § 1400(a) because each Defendant resides in and/or may be found in this District, in
24 that each Defendant would be amenable to personal jurisdiction in this District for the
25 reasons set forth herein and in the Parties section below, and because a substantial part
26 of the events giving rise to Sony Music's claims occurred in this District.

THE PARTIES

A. *The Plaintiffs*

37. Plaintiff Sony Music Entertainment (“SME”) is a Delaware general partnership, engaged in the business of recorded music and headquartered in New York City. SME’s principal place of business is 25 Madison Avenue, New York, New York 10010. SME also maintains an office within this District, located at 10202 W. Washington Blvd., Akio Morita Building, 5th Floor, Culver City, Los Angeles, California 90232.

38. Plaintiff Alamo Records, LLC (“Alamo”) is a Delaware Limited Liability Company with its principal place of business at 25 Madison Avenue, New York, New York 10010.

39. Plaintiff Arista Music (“Arista Music”) is a New York partnership with its principal place of business at 25 Madison Avenue, New York, New York 10010.

40. Plaintiff Arista Records, LLC (“Arista Records”) is a Delaware Limited Liability Company with its principal place of business at 25 Madison Avenue, New York, New York 10010.

41. Plaintiff LaFace Records LLC (“LaFace”) is a Delaware Limited Liability Company with its principal place of business at 25 Madison Avenue, New York, New York 10010.

42. Plaintiff Provident Label Group, LLC (“Provident”) is a Delaware Limited Liability Company with its principal place of business at 741 Cool Springs Blvd in Franklin, Tennessee.

43. Plaintiff Records Label, LLC (“Records Label”) is a Delaware Limited Liability Company with its principal place of business at 25 Madison Avenue, New York, New York 10010.

44. Plaintiff Sony Music Entertainment US Latin LLC (“Sony Latin”) is a Delaware Limited Liability Company with its principal place of business at 545 NW 26th St. Suite 100, Miami FL 33127.

45. Plaintiff Ultra Records, LLC (“Ultra”) is a Delaware Limited Liability Company with its principal place of business at 25 Madison Avenue, New York, New York 10010.

46. Plaintiff Zomba Recording LLC (“Zomba”) is a Delaware Limited Liability Company with its principal place of business at 25 Madison Avenue, New York, New York 10010.

47. Alamo, Arista Music, Arista Records, LaFace, Provident, Records Label, Sony Latin, Ultra, and Zomba (the “SME Affiliates”) are companies owned by or affiliated with Sony Music Entertainment.

B. *The Defendants*

48. **Defendant The Kroger Co.** is incorporated in Ohio and headquartered in Cincinnati, Ohio, with its principal place of business at 1014 Vine Street, Cincinnati, Ohio 45202. The Kroger Co. is the ultimate parent of the Kroger enterprise and of each of the other named corporate Defendants in this action, among others, including 84.51° LLC, Dillon Companies, LLC, Ralphs Grocery Company, Fred Meyer Stores, Inc., Fred Meyer Jewelers, Inc., Smith’s Food & Drug Centers, Inc., Roundy’s, Inc., Roundy’s Illinois, LLC, Mega Marts, LLC, Shop-Rite, LLC, Ultra Mart Foods, LLC, Ultimate Mart, LLC, Murray’s Cheese LLC, Murray’s LIC LLC, Harris Teeter, LLC, Relish Labs LLC, Kroger Limited Partnership I, and Vitacost.com, Inc. (each a “Kroger Subsidiary” and collectively, the “Kroger Subsidiaries”).⁴

⁴ Kroger acquired Vitacost.com, Inc. in August 2014, after which Vitacost operated as a Kroger subsidiary. Kroger announced the sale of Vitacost.com, Inc. to iHerb on January 8, 2026. Each of the infringements by Vitacost.com, Inc. included in Exhibit 1 occurred when Vitacost.com, Inc. was a wholly owned subsidiary of The Kroger Co.

49. The Kroger Co. is one of the world's largest retailers and the largest supermarket chain in the United States operating—directly and through wholly-owned subsidiaries—more than 2,700 stores nationwide, including hundreds of stores in California under dozens of retail banners. It is registered to do business and maintains a registered agent in California. The Kroger Co. owns or leases hundreds of California retail locations, distribution centers, and support facilities, and employs tens of thousands of California residents. The Kroger Co. employs California residents who specifically oversee its marketing operations, including social media advertisements.⁵ The Kroger Co. has voluntarily and repeatedly used California courts, including this Court, to litigate matters arising from and related to its California business operations, its California advertising, and its California consumer-facing conduct. This includes a lawsuit filed by the Kroger Co. and its subsidiary Ralphs (as defined herein) to enforce and protect their intellectual property rights.⁶

50. The corporate social media accounts @kroger, @krogerco, @krogerdfw, and @privateselection—bearing the Kroger Co.'s trademarks and promoting products sold under the Kroger Co.'s brands—are, on information and belief, operated by the Kroger Co. or by its agents acting at its direction and for its benefit. From these accounts, at least 76 unauthorized Videos featuring Sony Music Recordings have been posted. Each of these Videos was, and in most cases as recently as May 28, 2026, remained viewable on demand by any consumer in California with an internet connected device. On information and belief, a substantial share of the audience for

⁵ <https://www.linkedin.com/in/victoria-smith-52724036/> - Marketing Manager (job description includes, "Identify the insight and customer opportunity for cross-channel content...");
<https://www.linkedin.com/in/sarah-heisler-31474818a/> - SVP Marketing;
<https://www.linkedin.com/in/joe-stevens-734392149/> -Marketing Manager;
<https://www.linkedin.com/in/avivah-lamarque-823021201/> - Marketing Specialist.

⁶ *Ralphs Grocery Co. v. Indio Furniture 4 Less Inc.*, No. 5:18-cv-02190 (C.D. Cal., 2018).

1 each Video was located in California – the state that the Kroger Co. has the most retail
2 stores – and which represents approximately 12% of the population of the United States.

3 51. In addition to content posted directly to the Kroger Co. Social Media
4 Pages, the Kroger Co. engages influencers to promote the Kroger Co.’s brands, stores,
5 and products to consumers across the United States, including California consumers.
6 On February 27, 2026, Instagram user @dineinfoodies posted a commercial Instagram
7 Video in collaboration with @krogerdfw promoting products sold at Kroger stores,
8 including chicken purchased from a local Kroger grocery store, exploiting Ricky
9 Martin’s “Livin’ La Vida Loca” without authorization. The caption described the Video
10 as a “Dineinfoodies recipe development video,” promoted “Chicken from our local
11 Kroger grocery store,” and included promotional food-related hashtags.

12 52. The Kroger Co. runs the Kroger enterprise’s marketing function, including
13 its social media advertising and influencer marketing operations.⁷ Kroger Precision
14 Marketing (“KPM”)—a division of the Kroger Co.’s wholly-owned subsidiary 84.51°
15 LLC that Kroger describes as a core component of Kroger’s “Alternative Profit
16 Businesses”—designs, executes, and monetizes targeted digital advertising campaigns
17 on behalf of every Kroger banner, including its California-based banners Ralphs, Food
18 4 Less, and Foods Co., its California-incorporated jewelry subsidiary Fred Meyer
19 Jewelers, Inc., and its nationwide meal-kit subsidiary Relish Labs LLC (Home Chef),
20 which fulfills orders to California consumers from Relish Labs’ California facility.

21 53. The Kroger Co. directly markets and sells its Private Selection, Simple
22 Truth, Kroger Brand, and other private-label product lines advertised in the Videos to
23 California consumers through California retail stores operated by its wholly-owned
24 subsidiaries—including Ralphs Grocery Company and Food 4 Less of California, Inc.

25
26 ⁷ See <https://www.linkedin.com/feed/update/urn:li:activity:7491486764214173696/> (“The best ads
27 don’t feel like ads. That’s why creator content resonates during one of the noisiest times of the year.
28 Influencers give brands a voice that shoppers already trust as they look for holiday inspiration and
product recommendations. Hear KPM experts share how brands can use creator partnerships to
shape purchase decisions, and explore more ways to win during this holiday season.”)

1 Each of Kroger’s private-label brands is owned by the Kroger Co., and each is expressly
2 promoted in the infringing Videos posted from Kroger-controlled social media
3 accounts.

4 **54. Defendant 84.51° LLC** is wholly owned by the Kroger Co., organized as
5 an Ohio limited liability company, with its principal place of business in Cincinnati,
6 Ohio. 84.51° LLC (“84.51°”) is a retail data science, insights, and media company that,
7 among other things, manages KPM, Kroger’s advertising and media platform, through
8 which Kroger runs social media advertising campaigns nationwide, including
9 campaigns directed at California consumers. 84.51° operates and controls the @84.51
10 Instagram account. From that account, 84.51° has posted at least three unauthorized
11 Videos featuring Sony Music Recordings. Each of these Videos was, and as recently as
12 May 27, 2026, remained viewable on demand by any consumer with an internet
13 connected device in California.

14 **55.** 84.51° operates KPM, a retail media network that sells targeted digital
15 advertising to consumer-packaged goods companies, advertising agencies, and
16 publishers using 84.51°’s first-party retail data. Through KPM, 84.51° markets and sells
17 advertising services directed at California consumers, including through partnerships
18 with Pinterest, Roku, The Trade Desk, Google, and—on information and belief—
19 TikTok, each of which reaches California residents. 84.51° functions as the media and
20 advertising engine for Kroger’s California-facing banners, including Ralphs, Food 4
21 Less, and Foods Co.

22 **56. Defendant Fred Meyer Stores, Inc.** (“Fred Meyer Stores”) is a
23 corporation organized under the laws of Ohio and a wholly owned subsidiary of the
24 Kroger Co., with its principal place of business in Portland, Oregon. Fred Meyer Stores
25 operates retail stores under the Fred Meyer banner. Upon information and belief, Fred
26 Meyer Stores operates and controls the @fredmeyerstores Instagram account, bearing
27 the “Fred Meyer” banner mark. From that account, Fred Meyer Stores has posted at
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1 least one unauthorized Video featuring a Sony Music Recording. Specifically, on May
2 6, 2025, @fredmeyerstores collaborated with @krogerco and @ralphsgrocery on an
3 Instagram post using RUN-DMC’s “Peter Piper” without authorization. That Video
4 was, and as recently as May 28, 2026, remained, viewable on demand by any consumer
5 with an internet-connected device in California. Fred Meyer Stores maintains a website
6 that includes California Privacy Rights and a Notice for California Dietitian Patients
7 and, upon information and belief, offers virtual nutrition counseling and telemedicine
8 services to California residents subject to California-specific consent requirements.
9 This Court has personal jurisdiction over Fred Meyer Stores because, among other
10 things, it purposefully avails itself of and targets the California market by directing its
11 social media advertising and other digital marketing to consumers nationwide,
12 including California; maintaining California-specific privacy notices and healthcare
13 disclosures and consent procedures for California residents; collaborating with the
14 Kroger Co. and Ralphs Grocery Company to disseminate the infringing Video as part
15 of the Kroger enterprise’s coordinated nationwide social media marketing strategy; and
16 making that Video available for viewing by California consumers, from which Sony
17 Music’s claims arise.

18 **57. Defendant Fred Meyer Jewelers, Inc.** is a corporation organized under
19 the laws of California and a subsidiary of Fred Meyer Stores, Inc., which is in turn a
20 wholly owned subsidiary of the Kroger Co. Its principal place of business is in
21 Portland, Oregon. Fred Meyer Jewelers, Inc. (“Fred Meyer Jewelers”) advertises and
22 sells jewelry products to consumers nationwide, including in California, through its
23 interactive website and social media. Fred Meyer Jewelers operates and controls the
24 corporate social media accounts @fredmeyerjewelers, @fredmeyersjewelers, and
25 @fmj_fredmeyerjewelers on Instagram, TikTok, and Facebook. From these accounts,
26 Fred Meyer Jewelers has posted at least 21 unauthorized Videos featuring Sony Music
27 Recordings. Each of these Videos was, and as recently as May 28, 2026, remained,
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1 viewable on demand by any consumer with an internet-connected device in California.
2 Each Video is commercial content promoting Fred Meyer Jewelers' products and Fred
3 Meyer Jewelers' e-commerce website, and each was directed to consumers across the
4 United States, including California residents. Fred Meyer Jewelers operates the
5 fredmeyerjewelers.com and littmanjewelers.com e-commerce websites, which are
6 accessible to and used by California consumers to purchase Fred Meyer Jewelers
7 products for delivery in California. Fred Meyer Jewelers has a California customer
8 service address at 1000 W. 190th Street, Dept. R, Torrance, California 90502, as
9 identified in its customer service page.

10 58. **Defendant Roundy's, Inc.** is a Delaware corporation headquartered in
11 Milwaukee, Wisconsin, and a wholly-owned subsidiary of the Kroger Co. Roundy's,
12 Inc. is the operating company responsible for the operations, merchandising, branding,
13 and promotional marketing of Mariano's, Metro Market, and Pick 'n Save banners. The
14 Kroger Co. combined the Mariano's banner with its Wisconsin banners to form the
15 "Roundy's Division," based in Milwaukee and led by a single President overseeing all
16 three banners, and Roundy's, Inc. has invested in cross-banner initiatives, including
17 merchandising and joint promotional marketing campaigns. On information and belief,
18 Roundy's, Inc. directs, controls, and has the right and ability to supervise the operations,
19 merchandising, branding, and social media marketing activities for Mariano's, Pick n'
20 Save and Metro Market. Through its operational and merchandising oversight of the
21 Mariano's banner, upon information and belief, Roundy's, Inc. participates in the
22 operation of the marianos.com e-commerce website, which is accessible to and used by
23 California consumers, which, in express recognition of its ongoing business with
24 California residents, includes, a "Privacy Notice for California residents" that expressly
25 complies with the California Consumer Privacy Act. Products sold under the Metro
26 Market and Pick 'n Save banners are likewise available for delivery to California
27 consumers through Kroger's nationwide partnerships with DoorDash and Instacart.

59. Upon information and belief, Roundy's, Inc. has the right and ability to direct, control, and supervise influencer collaborations conducted through the @marianosmarket, @mymetromarket, and @picknsavestores social media accounts to promote Mariano's, Metro Market, and Pick 'n Save products and marketing campaigns. These influencer collaborations include commercial social media posts exploiting Sony Music Recordings without authorization. For example, on April 11, 2025, @mybizzykitchen collaborated with @marianosmarket and @mymetromarket on an Instagram post exploiting Florian Christl's "Natural" without authorization while promoting Private Selection Brand Uncured Deli Pepperoni. On May 7, 2025, @mentionables_eats collaborated with @picknsavestores, @mymetromarket, and @marianosmarket on an Instagram post exploiting KAYTRANADA's "Spit It Out" without authorization. The caption expressly described the post as a "partnership and collaboration" with those Kroger-affiliated brands, stated that it was "the first of many more to come," and included the Kroger-affiliated hashtags #picknsavestores, #metromarket, and #marianosmarket. Similarly, on February 18, 2024, @flos_favorites collaborated with @marianosmarket on an Instagram post exploiting McFadden & Whitehead's "Ain't No Stoppin' Us Now" without authorization while directing consumers to purchase promoted products at Mariano's. Likewise, on January 23, 2025, and February 9, 2026, @ouu.whatscooking collaborated with @mymetromarket, @marianosmarket, and @picknsavestores on Instagram posts exploiting SZA's "Chill Baby" and another Sony Music Recording. On June 29, 2026, @lafundidora collaborated with @marianosmarket on an Instagram post exploiting Shakira and Burna Boy's "Dai Dai" without authorization while promoting La Fundidora products then on sale at Mariano's. On July 17, 2026, @flos_favorites collaborated with @marianosmarket on an Instagram post exploiting Justin Timberlake's "Summer

1 Love” without authorization while promoting Local Style Potato Chips and directing
2 consumers to purchase those products at Mariano’s.⁸

3 60. This Court has personal jurisdiction over Roundy’s, Inc. because, among
4 other things, it purposefully avails itself of and targets the California market by
5 directing the operations, merchandising, branding, and marketing strategy (including
6 the social media advertising containing the infringing Videos) for banners that advertise
7 and sell products to California consumers through interactive websites, e-commerce,
8 social media, and nationwide delivery partnerships, and because the infringing Videos
9 disseminated through the banners it operates and controls were viewed by California
10 consumers as part of Kroger’s nationwide marketing strategy from which Sony Music’s
11 claims arise.

12 61. **Defendant Roundy’s Illinois, LLC** (which does business as Mariano’s)
13 is a Wisconsin limited liability company and a wholly-owned subsidiary of Roundy’s,
14 Inc., which is in turn a wholly-owned subsidiary of the Kroger Co. and is headquartered
15 in Milwaukee, Wisconsin. Roundy’s Illinois, LLC (“Roundy’s”) operates retail grocery
16 stores under the Mariano’s banner in Illinois. Roundy’s operates and controls the
17 corporate social-media accounts @marianosmarket, @officialmarianos, and
18 @marianos on Instagram, TikTok, and Facebook. From these accounts, Roundy’s has
19 posted at least 99 unauthorized Videos featuring Sony Music Recordings. Each of
20

21 ⁸ See Instagram post by @mybizzykitchen with @marianosmarket and @mymetromarket exploiting
22 Florian Christl’s “Natural” without authorization, Apr. 11,
23 2025, <https://www.instagram.com/p/DIUwtzcPxsU>; see also Instagram post by @mentionables with
24 @picknsavestores, @mymetromarket, and @marianosmarket exploiting KAYTRANADA’s “Spit It
25 Out,” May 7, 2025, <https://www.instagram.com/p/DJXmh4ZuAwr>; Instagram post by
26 @flos_favorites with @marianosmarket exploiting McFadden & Whitehead’s “Ain’t No Stoppin’
27 Us Now,” Feb. 18, 2024, <https://www.instagram.com/p/C3fwxGFLdvr>; Instagram post by
28 @ouu.whatscooking with @mymetromarket, @marianosmarket, and @picknsavestores exploiting
SZA’s “Chill Baby,” Jan. 23, 2025, <https://www.instagram.com/p/DFK-WbhOF33>; Instagram post
by @lafundidora with @marianosmarket exploiting Shakira and Burna Boy’s “Dai Dai,” June 29,
2026, <https://www.instagram.com/p/DaLfUPUBmSZ/>; Instagram post by @flos_favorites with
@marianosmarket exploiting Justin Timberlake’s “Summer Love,” July 17,
2026, <https://www.instagram.com/p/Da5wRsBOTVN/>.

1 these Videos was, and as of May 28, 2026, a vast majority remained, viewable on
2 demand by any consumer with an internet-connected device in California, with some
3 remaining viewable as of the filing of this Complaint. Roundy's operates the
4 marianos.com e-commerce website, which is accessible to and used by California
5 consumers. In express recognition of its ongoing business with California residents,
6 Roundy's publishes a "Privacy Notice for California residents" on marianos.com that
7 expressly complies with the California Consumer Privacy Act.

8 62. In addition to its own social media posts, Roundy's Illinois, LLC, engages
9 and collaborates with influencers and other third parties to promote Mariano's products
10 and marketing campaigns to consumers across the United States, including California
11 consumers. For example, on April 11, 2025, Instagram user @mybizzzykitchen posted
12 a commercial Instagram Video in collaboration with @marianosmarket and another
13 Kroger Party exploiting Florian Christl's "Natural" without authorization while
14 promoting Private Selection Brand Uncured Deli Pepperoni and directing consumers to
15 purchase the product at Mariano's. On May 7, 2025, Instagram user
16 @mentionables_eats—upon information and belief, a paid influencer of Roundy's
17 Illinois, LLC—posted a commercial Instagram Video in collaboration with
18 @marianosmarket and other Kroger Parties exploiting KAYTRANADA's "Spit It Out"
19 without authorization. The caption expressly described the post as a "partnership and
20 collaboration" with @marianosmarket and other Kroger-affiliated brands, stated that it
21 was "the first of many more to come," and promoted products sold at Mariano's.
22 Similarly, on February 18, 2024, Instagram user @flos_favorites posted a commercial
23 Instagram Video in collaboration with @marianosmarket exploiting McFadden &
24 Whitehead's "Ain't No Stoppin' Us Now"—without authorization while directing
25 consumers to purchase promoted products at Mariano's. Likewise, on January 23, 2025,
26 Instagram user @ouu.whatscooking posted a commercial Instagram Video in
27 collaboration with @marianosmarket and other Kroger Parties exploiting SZA's "Chill
28

1 Baby” without authorization. On June 29, 2026, Instagram user @lafundidora posted a
 2 commercial Instagram Video in collaboration with @marianosmarket exploiting
 3 Shakira and Burna Boy’s “Dai Dai” without authorization while promoting La
 4 Fundidora products on sale at Mariano’s. On July 17, 2026, Instagram user
 5 @flos_favorites posted a commercial Instagram Video in collaboration with
 6 @marianosmarket exploiting Justin Timberlake’s “Summer Love” without
 7 authorization while promoting Local Style Potato Chips and directing consumers to
 8 purchase those products at Mariano’s. On that same post, @marianosmarket
 9 commented, “I CANT WAIT TO FALL IN LOVE,” echoing lyrics from “Summer
 10 Love” and further demonstrating Roundy’s Illinois, LLC’s knowledge of, approval of,
 11 and affirmative participation in the infringing promotional content.⁹

12 63. This Court has personal jurisdiction over Roundy’s Illinois, LLC because,
 13 among other things, it purposefully avails itself of the California market by advertising
 14 and selling products to California consumers through its interactive website, e-
 15 commerce, social media, and delivery partnerships, and because the infringing Videos
 16 it posted were disseminated to and viewed by California consumers as part of Kroger’s
 17 nationwide marketing strategy, from which Sony Music’s claims arise. The infringing
 18 Videos posted under the Mariano’s brand are part of its substantial marketing strategy
 19 that drives traffic to its website and social media where California residents can
 20

21 ⁹ See Instagram post by @mybizzykitchen with @marianosmarket and @mymetromarket exploiting
 22 Florian Christl’s “Natural” without authorization, Apr. 11,
 23 2025, <https://www.instagram.com/p/DIUwtzcPxsU>; see also Instagram post by @flos_favorites with
 24 @marianosmarket exploiting McFadden & Whitehead’s “Ain’t No Stoppin’ Us Now,” Feb. 18,
 25 2024, <https://www.instagram.com/p/C3fwxGFLdvr>; Instagram post by @ouu.whatscooking with
 26 @mymetromarket, @marianosmarket, and @picknsavestores exploiting SZA’s “Chill Baby,” Jan.
 27 23, 2025, <https://www.instagram.com/p/DFK-WbhOF33>; Instagram post by @mentionables_eats
 28 with @picknsavestores, @mymetromarket, and @marianosmarket exploiting KAYTRANADA’s
 “Spit It Out,” May 7, 2025, <https://www.instagram.com/p/DJXmh4ZuAwrr>; Instagram post by
 @lafundidora with @marianosmarket exploiting Shakira and Burna Boy’s “Dai Dai,” June 29,
 2026, <https://www.instagram.com/p/DaLfUPUBmSZ/>; Instagram post by @flos_favorites with
 @marianosmarket exploiting Justin Timberlake’s “Summer Love,” July 17,
 2026, <https://www.instagram.com/p/Da5wRsBOTVN/>.

1 purchase its products.¹⁰ Roundy's created and/or posted many of the infringing Videos
2 listed in Exhibit 1.

3 64. **Defendants Mega Marts, LLC, Shop-Rite, LLC, Ultra Mart Foods,**
4 **LLC, and Ultimate Mart, LLC** are Wisconsin limited liability companies and wholly-
5 owned subsidiaries of the Kroger Co., Mega Marts, LLC, Shop-Rite, LLC, Ultra Mart
6 Foods, LLC, and Ultimate Mart, LLC are operating entities that run retail grocery stores
7 in Wisconsin under the Metro Market and Pick 'n Save banners. On information and
8 belief, they jointly or individually operate and control the corporate social media
9 accounts @mymetromarket, @metromarket, @picknsavestores, and @picknsave on
10 Instagram, TikTok, and Facebook. From these accounts, these Defendants have
11 collectively posted at least 16 unauthorized Videos featuring Sony Music Recordings.
12 Each of these Videos was, and as of the filing of this Complaint some remain, viewable
13 on demand by any consumer with an internet-connected device in California, and the
14 infringing Videos they posted were disseminated to and viewed by California
15 consumers as part of Kroger's nationwide marketing strategy. Indeed, products sold
16 under the Metro Market and Pick 'n Save banners are available for delivery to
17 California consumers through Kroger's nationwide partnerships with DoorDash and
18 Instacart.

19 65. Among these Videos, on November 27, 2020, a Video featuring The
20 Lovin' Spoonful's "Do You Believe in Magic?" was posted to the @picknsavestores
21 Facebook account as part of the same Kroger enterprise-wide holiday campaign posted
22 across various Kroger Parties' accounts. That Video was initially covered by a limited
23 7-week license with Sony Music, authorizing use only during the license term, which
24 commenced on November 13, 2020, and expired on December 31, 2020. The Video
25 was confirmed viewable on demand by any consumer with an internet-connected
26

27 ¹⁰ [https://ir.kroger.com/news/news-details/2025/Kroger-and-DoorDash-to-Bring-Fast-Convenient-](https://ir.kroger.com/news/news-details/2025/Kroger-and-DoorDash-to-Bring-Fast-Convenient-Grocery-Delivery-to-Millions-Nationwide/default.aspx)
28 [Grocery-Delivery-to-Millions-Nationwide/default.aspx](https://ir.kroger.com/news/news-details/2025/Kroger-and-DoorDash-to-Bring-Fast-Convenient-Grocery-Delivery-to-Millions-Nationwide/default.aspx).

1 device in California at least as of February 2026. By keeping the Video available and
 2 viewable on demand after December 31, 2020, one or more of these Defendants
 3 exceeded the scope of such license and continued to reproduce, distribute, and publicly
 4 perform the Sony Music Recording without authorization.

5 66. In addition to posts made directly to the Metro Market and Pick ‘n Save
 6 Social Media Pages, upon information and belief, Mega Marts, LLC, Shop-Rite, LLC,
 7 Ultra Mart Foods, LLC, and Ultimate Mart, LLC, jointly or individually, engage and
 8 collaborate with influencers to promote Metro Market and Pick ‘n Save products and
 9 marketing campaigns to consumers across the United States, including California
 10 consumers. For example, on April 11, 2025, Instagram user @mybizzykitchen posted
 11 a commercial Instagram Video in collaboration with @mymetromarket exploiting
 12 Florian Christl’s “Natural” without authorization while promoting Private Selection
 13 Brand Uncured Deli Pepperoni and directing consumers to purchase the product at
 14 Metro Market. On May 7, 2025, Instagram user @mentionables_eats—upon
 15 information and belief, a paid influencer of one or more of these Defendants—posted a
 16 commercial Instagram Video in collaboration with @picknsavestores and
 17 @mymetromarket exploiting KAYTRANADA’s “Spit It Out” without authorization.
 18 The caption expressly described the post as a “partnership and collaboration” with
 19 @picknsavestores and @mymetromarket, stated that it was “the first of many more to
 20 come,” and included the hashtags #picknsavestores, #marianosmarket, and
 21 #metromarket. Likewise, on January 23, 2025, Instagram user @ouu.whatscooking
 22 posted a commercial Instagram Video in collaboration with @mymetromarket and
 23 @picknsavestores exploiting SZA’s “Chill Baby” without authorization.¹¹ As recently
 24

25
 26 ¹¹ See Instagram post by @mybizzykitchen with @mymetromarket and @marianosmarket
 27 exploiting Florian Christl’s “Natural” without authorization, Apr. 11,
 28 2025, <https://www.instagram.com/p/DIUwtzcPxsU>; see also Instagram post by @mentionables_eats
 with @picknsavestores, @mymetromarket, and @marianosmarket exploiting KAYTRANADA’s
 “Spit It Out,” May 7, 2025, <https://www.instagram.com/p/DJXmh4ZuAwr>; Instagram post by

as June 11, 2025, @mymetromarket reposted to Facebook a Video originally posted by @pick'nsave on June 12, 2025, exploiting Outkast's "Hey Ya!" without authorization.

67. **Defendants Murray's Cheese LLC and Murray's LIC LLC** (collectively, "Murray's Cheese") are limited liability companies organized under the laws of Ohio and New York, respectively, and are wholly-owned subsidiaries of the Kroger Co., Murray's Cheese LLC operates specialty cheese shops inside over one thousand Kroger and Kroger-owned brick and mortar storefronts nationwide, including in Kroger's California stores, and sells products to consumers nationwide, including California residents, through its e-commerce website, murrayscheese.com, with nationwide shipping. Murray's Cheese LLC operates and controls the @murrayscheese social media accounts on Instagram, TikTok, and Facebook and the @murraysmac social media account on Instagram. From these accounts, Murray's Cheese LLC has posted at least 70 unauthorized Videos featuring Sony Music Recordings. Murray's LIC LLC owns and operates the Murray's Cheese Bar restaurant in Long Island City ("LIC"), New York and operates and controls the @murrayscheesebar Instagram account. From that account, Murray's LIC LLC has posted at least 9 unauthorized Videos featuring Sony Music Recordings. Each of the Videos was, and as of May 28, 2026, the vast majority remained viewable on demand by any consumer with an internet-connected device in California, with some still viewable as of the filing of this Complaint. Each Video promotes Murray's Cheese branded products that are sold to California consumers through: (i) the online store at murrayscheese.com, which accepts orders from and ships specialty cheese products to California residents; and (ii) Murray's Cheese-branded shop-in-store counters located inside Ralphs, Food 4 Less, and other Kroger-affiliated California grocery stores. On April 10, 2023, Murray's Cheese LLC posted a collaboration Instagram Video to both the @murrayscheese and

@ouu.whatscooking with @mymetromarket, @marianosmarket, and @picknsavestores exploiting SZA's "Chill Baby," Jan. 23, 2025, <https://www.instagram.com/p/DFK-WbhOF33>;

1 @murraysmac accounts exploiting Bill Withers’ “Lovely Day” without authorization.
2 On July 20, 2026, Murray’s Cheese posted to its @murrayscheese Instagram account a
3 Video exploiting Harry Belafonte’s “Jump in the Line” without authorization. That
4 Video was, and as recently as August 13, 2026, remained, viewable on demand by any
5 consumer with an internet-connected device in California. More recently, on July 28,
6 2026, Murray’s Cheese posted to its @murrayscheese Instagram Story a Video
7 exploiting KAYTRANADA’s “Taste” without authorization.

8 68. Defendant **Harris Teeter, LLC** (“Harris Teeter”) is a North Carolina
9 limited liability company and a wholly owned subsidiary of the Kroger Co., with its
10 principal place of business in Matthews, North Carolina. Harris Teeter operates retail
11 grocery stores under the Harris Teeter banner and is part of the Kroger Co.’s family of
12 grocery and retail brands. Upon information and belief, Harris Teeter operates and
13 controls the @harristeeter social media accounts on Instagram and other social media
14 platforms, each bearing the “Harris Teeter” banner mark. From those accounts, Harris
15 Teeter has posted at least one unauthorized Video featuring a Sony Music Recording.
16 On May 7, 2025, the @harristeeter Instagram account reposted the Instagram Story of
17 Instagram user and influencer @homeswithhalicia, exploiting Miley Cyrus’s “Flowers”
18 without authorization. That Instagram Story appeared on both the @harristeeter and
19 @homeswithhalicia accounts and was available to users for twenty-four hours, including
20 consumers in California with an internet-connected device. Harris Teeter maintains a
21 website that includes a Privacy Notice for California Residents and provides California
22 residents with rights regarding the collection, use, sale, sharing, and disclosure of their
23 personal information under the California Consumer Privacy Act. This Court has
24 personal jurisdiction over Harris Teeter because, among other things, it purposefully
25 avails itself of and targets the California market by directing its social media advertising
26 and other digital marketing to consumers nationwide, including California; maintaining
27 a website and privacy practices that expressly recognize and provide rights to California
28

1 residents under California law; and disseminating the infringing Instagram Story under
2 the Harris Teeter brand to and for viewing by California consumers as part of the Kroger
3 enterprise's nationwide marketing strategy, from which Sony Music's claims arise.

4 **69. Defendant Dillon Companies, LLC** (which does business as Baker's,
5 Dillon's, and King Soopers) is organized under the laws of Kansas and is a wholly
6 owned subsidiary of the Kroger Co., Dillon Companies, LLC ("Dillon") operates retail
7 grocery stores under the Baker's, Dillon's, and King Soopers banners. Dillon, on
8 information and belief, operates and controls the @dillons, @kingsoopers,
9 @citymarket and @bakers social media accounts bearing its City Market and Baker's,
10 Dillon's and King Soopers' banner marks, respectively. From these accounts, Dillon
11 has posted at least four Videos featuring the same Sony Music Recording—Lovin'
12 Spoonful's "Do You Believe in Magic?"—promoting the same Kroger enterprise-wide
13 holiday campaign posted across various Kroger Parties' accounts. These Videos were
14 initially covered by a limited 7-week license with Sony Music, authorizing use of that
15 recording in the holiday campaign on television, radio, the internet, and social media
16 only during the license term, which commenced on November 13, 2020 and expired on
17 December 31, 2020. These Videos were viewable on demand by any consumer with
18 an internet-connected device in California after the license expiration date—with one
19 of the Videos remaining viewable as recently as May 28, 2026. By keeping the Videos
20 available and viewable on demand after December 31, 2020, Dillon exceeded the scope
21 of such license and continued to reproduce, distribute, and publicly perform the Sony
22 Music Recording without authorization. This Court has personal jurisdiction over
23 Dillon because, among other things, it purposefully avails itself of and targets the
24 California market by directing its social media advertising to consumers nationwide,
25 including California, and because the infringing Videos posted under the Baker's and
26 City Market brands were disseminated to and viewed by California consumers as part

1 of the Kroger enterprise's nationwide marketing strategy, from which Sony Music's
2 claims arise.

3 70. **Defendant Smith's Food & Drug Centers, Inc.** (which does business as
4 Fry's Food Stores) is a corporation organized under the laws of Ohio and a wholly-
5 owned subsidiary of the Kroger Co., Smith's Food & Drug Centers, Inc. (d/b/a "Fry's
6 Food Stores") operates retail grocery stores under the Fry's Food Stores banner. Fry's
7 Food Stores was founded in 1954 by Donald Fry in California.¹² This Court has
8 personal jurisdiction over Fry's Food Stores because, among other things, it
9 purposefully directs its social media advertising at consumers nationwide, including in
10 California, maintains a website that expressly acknowledges and complies with
11 California privacy law and provides California-specific privacy tools for California
12 consumers, and the infringing Videos it posted under the Fry's Food Stores banner were
13 disseminated to and viewed by California consumers. Fry's Food Stores, on
14 information and belief, operates and controls the @frysfoodstores Facebook channel
15 bearing its Fry's Food Stores mark. From that channel, Fry's Food Stores posted at least
16 one unauthorized Video featuring a Sony Music Recording. Specifically, on November
17 27, 2020, Fry's Food Stores posted to its @frysfoodstores Facebook account a Video
18 featuring The Lovin' Spoonful's "Do You Believe in Magic?" as part of the same
19 Kroger enterprise-wide holiday campaign. That Video was initially covered by a
20 limited 7-week license with Sony Music, authorizing use only during the license term,
21 which commenced on November 13, 2020 and expired on December 31, 2020. The
22 Video was confirmed viewable on demand by any consumer with an internet-connected
23 device in California at least as of February 3, 2026. By keeping the Video available and
24 viewable on demand after December 31, 2020, Fry's Food Stores exceeded the scope
25 of such license and continued to reproduce, distribute, and publicly perform the Sony
26 Music Recording without authorization.

27
28 ¹² See <https://www.linkedin.com/company/fry's-food-and-drug>.

1 71. **Defendant Ralphs Grocery Company** is wholly owned by the Kroger
2 Co., and is a corporation organized under the laws of Ohio with its principal place of
3 business in Compton, California. Ralphs Grocery Company (“Ralphs”) operates
4 approximately 182 retail grocery stores across California under the Ralphs banner, also
5 does business as Food 4 Less, and maintains major California distribution,
6 warehousing, and manufacturing facilities, including the Compton Central Facilities
7 Complex and a bakery facility in La Habra, California. Ralphs also advertises and sells
8 its products to California consumers through its stores, website, e-commerce, and social
9 media, including through Videos posted to the @ralphs Facebook account and
10 @ralphsgrocery Instagram account, and upon information and belief, either directly or
11 jointly with its co-operator, Food 4 Less California, the @myfood4less TikTok account.
12 On November 27, 2020, a Video was posted to the Ralphs Facebook account featuring
13 The Lovin’ Spoonful’s “Do You Believe in Magic?” as part of the same Kroger
14 enterprise-wide holiday campaign posted across various Kroger Parties’ accounts. That
15 Video was initially covered by a limited 7-week license with Sony Music, authorizing
16 use only during the license term, which commenced on November 13, 2020 and expired
17 on December 31, 2020. That Video was, and as recently as August 17, 2026, remained,
18 viewable on demand by any consumer with an internet-connected device in California.
19 By keeping the Video available and viewable on demand after December 31, 2020,
20 Ralphs exceeded the scope of such license and continued to reproduce, distribute, and
21 publicly perform the Sony Music Recording without authorization. On May 6, 2025,
22 @ralphsgrocery, in a collaboration with @krogerco and @fredmeyerstores, posted an
23 Instagram Video, using RUN-DMC’s “Peter Piper” without authorization. Each of
24 these Videos was, and as recently as May 28, 2026, remained, viewable on demand by
25 any consumer with an internet-connected device in California. Each Video was
26 directed at California consumers, because the Ralphs banner promoted in the Videos
27 posted to the @ralphsgrocery and @ralphs social media accounts consists
28

1 overwhelmingly of California retail stores that Ralphs Grocery Company itself
2 operates.

3 72. **Defendant Relish Labs LLC** (which does business as Home Chef) is a
4 limited liability company organized under the laws of Delaware and a wholly owned
5 subsidiary of the Kroger Co., Relish Labs LLC (d/b/a “Home Chef”) is a nationwide
6 direct-to-consumer meal-kit and prepared-meal delivery service, which ships meal kits
7 to consumers in 98% of the continental United States, including California. Home Chef
8 operates a production and distribution facility in San Bernardino, California, which
9 serves as Home Chef’s West Coast production hub—a 200,000+ square-foot facility
10 that includes 107,134 square feet of warehouse space, 79,642 square feet of food
11 preparation space, and 17,907 square feet of office space. Home Chef operates the
12 homechef.com e-commerce website, through which California consumers order and
13 receive weekly Home Chef meal-kit deliveries. Home Chef ships meal kits directly to
14 California consumers from its San Bernardino, California facility and from its other
15 production and distribution centers.

16 73. Home Chef operates and controls the @realhomechef social media
17 accounts on Instagram, TikTok, and Facebook, each bearing its “Home Chef” trade
18 name. From these accounts, Home Chef has posted at least 11 unauthorized Videos
19 featuring Sony Music Recordings. Each of these Videos was viewable on demand by
20 any consumer with an internet-connected device in California, with almost half
21 remaining viewable as recently as April 29, 2026. Each Video promoted Home Chef’s
22 meal-kit delivery service, which is available to and used by California consumers. In
23 addition to its own social media posts, Home Chef engages paid influencers to promote
24 Home Chef to consumers across the United States, including California consumers. On
25 April 8, 2022, an Instagram user posting under the handle @kymjacksonsmith—on
26 information and belief a paid influencer of Home Chef—posted a commercial TikTok
27 Video promoting Home Chef and directing viewers to “Use Kym100 for \$100 off your
28

1 order,” using a Sony Music Recording without license. That Video was tagged “#ad”—
2 the Federal Trade Commission’s required disclosure of paid influencer content.

3 74. **Defendant Kroger Limited Partnership I** (which does business as Ruler
4 Foods) is a limited partnership organized under the laws of Ohio and a subsidiary of
5 the Kroger Co., Kroger Limited Partnership I (d/b/a “Ruler Foods”) operates retail
6 grocery stores under the Ruler Foods banner. Ruler Foods operates and controls the
7 corporate social media accounts @rulerfoods and @rulerfoodsofficial on Instagram,
8 TikTok, and Facebook, each bearing its Ruler Foods banner mark. From these
9 accounts, Ruler Foods has posted at least 30 unauthorized Videos featuring Sony Music
10 Recordings. These Videos were, and as recently as May 28, 2026, remained viewable
11 on demand by any consumer with an internet-connected device in California. This
12 Court has personal jurisdiction over Ruler Foods because, among other things, it
13 purposefully avails itself of and targets the California market by directing its social
14 media advertising to consumers nationwide, including California, and because the
15 infringing Videos posted under the Ruler Foods brand were disseminated to and viewed
16 by California consumers as part of the Kroger enterprise’s nationwide marketing
17 strategy, from which Sony Music’s claims arise.

18 75. **Defendant Vitacost.com, Inc.** is a corporation organized under the laws
19 of Delaware with its principal place of business formerly located in Boca Raton,
20 Florida. Vitacost.com, Inc. (“Vitacost”) sells health and wellness products to
21 consumers in all 50 states, including California, through its e-commerce website.
22 Kroger acquired Vitacost in August 2014, and it was a wholly owned subsidiary of the
23 Kroger Co. during the period in which the infringing Videos were created and posted.
24 At the very least, between 2020 and January 2026, Vitacost operated the @vitacost and
25 @vitacost.com social media accounts on Instagram, TikTok, and YouTube, bearing its
26 “Vitacost” and “Vitacost.com” trade names. From these accounts, Vitacost posted at
27 least 18 unauthorized Videos featuring Sony Music Recordings. These Videos were,
28

1 and as of May 26, 2026, a vast majority remained, viewable on demand by any
 2 consumer with an internet-connected device in California, with some still viewable as
 3 of the filing of this Complaint. Each Video promoted Vitacost’s e-commerce business,
 4 which, at least during the relevant time period, sold and shipped products directly to
 5 California consumers from Vitacost.com.

6 76. The Kroger Co. directs, controls, and has the right and ability to supervise
 7 the social media marketing activities of each of these affiliated entities, including the
 8 posting of the infringing Videos.

9 77. The Kroger Co. exercises this control through its centralized marketing
 10 function, KPM, a division of its wholly-owned subsidiary 84.51° LLC, which designs,
 11 executes, and approves digital advertising campaigns on behalf of all Kroger banners.
 12 KPM’s published Guidelines and Spec Sheets require that KPM’s Campaign
 13 Operations specialists “review creative and provide feedback to request revisions until
 14 final creative passes guidelines and has formally been granted creative approval” before
 15 an advertisement may run. Through this centralized approval process, the Kroger Co.
 16 has actual authority to review, reject, or require modification of all social media content
 17 posted by its subsidiaries, including the Kroger Subsidiaries, including content
 18 containing unlicensed sound recordings.

19 78. On information and belief, Kroger’s social media advertising strategy is
 20 managed in significant part through 84.51° LLC and KPM¹³ which runs targeted
 21 advertising campaigns across social media platforms—including Instagram, TikTok,
 22 Facebook, and YouTube—directed at consumers nationwide, including in California
 23 and employs individuals located in California responsible for social media marketing.¹⁴
 24

25
 26 ¹³ <https://www.8451.com/solutions/kroger-precision-marketing/>;
<https://www.krogerprecisionmarketing.com/>.

27 ¹⁴ Indeed, its Senior Media Risk Manager is located in California, and one of his job responsibilities
 28 is “social media marketing.” See <https://www.linkedin.com/in/jake-eisenman/>.

79. Through KPM, The Kroger Co. centrally directs, coordinates, and controls the creative content, technical specifications, branding, and distribution of advertising across its owned subsidiary banners. KPM's website displays the logos of The Kroger Co.'s subsidiary banners—including Baker's, Dillons, Food 4 Less, Fred Meyer, Fry's, Harris Teeter, King Soopers, Mariano's, Metro Market, Pay Less, Pick 'n Save, and Fry's Food Stores—confirming that KPM provides centralized advertising services to each of these entities.¹⁵

80. Upon information and belief, multiple of the Kroger Parties' Facebook pages identify the same advertising agency (and subsidiary of the Kroger Co.)—CB&S Advertising Agency, Inc.—as the entity “responsible for” those pages.¹⁶ The use of the same advertising agency across multiple Kroger-affiliated brands is consistent with, and further evidences, the centralized direction, coordination, and control of the Kroger Parties' enterprise-wide social media marketing.

81. As part of the Kroger Parties' centralized advertising efforts, Defendants have, on numerous occasions, coordinated the dissemination of the same infringing Video across the Social Media Pages of two or more Kroger-affiliated brands by either (i) publishing a video collaboration post through Instagram's collaboration feature, causing the Video to appear simultaneously on the official social media accounts of multiple Kroger-affiliated brands and, in various instances, an influencer, or (ii) posting an identical Video across the Social Media Pages of multiple Kroger-affiliated brands.

¹⁵ See *id.*; see also <https://www.krogerprecisionmarketing.com/client-resources/creative-specs-guidelines/> (displaying Kroger Family of Stores banner logos in site footer, including Baker's, Dillons, Food 4 Less, Fred Meyer, Fry's, Harris Teeter, King Soopers, Mariano's, Metro Market, Pay Less, Pick 'n Save, and Fry's Food Stores).

¹⁶ See https://www.facebook.com/myfood4less/about_profile_transparency (identifying that “CB&S ADVERTISING AGENCY, INC. is responsible for this Page.”); https://www.facebook.com/Dillons/about_profile_transparency (same); https://www.facebook.com/Kroger/about_profile_transparency (same); https://www.facebook.com/Ralphs/about_profile_transparency (same)

82. For example, on May 7, 2025 @picknsavestores, @marianosmarket, and @mymetromarket collaborated with influencer @mentionables_eats on an Instagram post exploiting KAYTRANADA’s “Spit It Out” to promote those Kroger Parties’ products.¹⁷ The caption also tags and #hashtags each of the Kroger Parties involved in the collaboration and identifies the post as a “partnership” and “collaboration” between the influencer and the identified Kroger Parties.

83. Similarly, on May 6, 2025 @krogerco, @fredmeyerstores, and @ralphsgrocery collaborated on a post exploiting Run DMC’s “Peter Piper” without permission.

84. KPM personnel review and formally approve advertising on the Social Media Pages before it may run.¹⁸

85. On information and belief, Does 1 through 50 are the Kroger Parties’ affiliated entities, ad agencies, marketing agencies, employees of the Kroger Parties and/or their affiliated entities, and/or are otherwise responsible for and proximately caused or are causing the harm and damages alleged in this Complaint.¹⁹

86. Plaintiffs are presently unaware of the true names and/or the involvement of the defendants sued as Does 1 through 50. Plaintiffs will seek leave to amend this

¹⁷ <https://www.instagram.com/p/DJXmh4ZuAwr>

¹⁸ Kroger Precision Marketing, Guidelines & Spec Sheet: Display Ads, Version 6.0 (https://www.krogerprecisionmarketing.com/wp-content/uploads/2026/01/KPM_Display_Creative_Guidelines_and_Spec_Sheet_June_2025.pdf), at p. 5 (2025) (“The Guidelines direct that KPM’s Campaign Operations (“CO”) specialist “will review creative and provide feedback to request revisions until final creative passes guidelines and has formally been granted creative approval.”)

¹⁹ https://openaccess-api.cms-conferences.org/articles/download/978-1-964867-32-8_5; <https://juniperpublishers.com/pbsij/PBSIJ.MS.ID.556081.php>; <https://www.forbes.com/councils/forbesagencycouncil/2023/09/08/boosting-the-creative-journey-how-brands-and-creators-can-use-instagram-latest-updates/?streamIndex=0>; <https://newsroom.tiktok.com/helping-brands-unlock-the-power-of-music-and-sound-on-tiktok>; <https://houseofmarketers.com/viral-tiktok-songs-brand-marketing/>

1 pleading to identify those defendants when their true names and involvement in the
2 infringements and other wrongful conduct hereinafter described become known.

3 **SONY MUSIC'S BUSINESS**

4 87. Sony Music is home to some of the world's most distinguished record
5 labels, including Columbia Records, RCA Records, Sony Music Nashville, Arista
6 Records, Ultra Records, and Epic Records, through which Sony Music contracts with
7 world-class recording artists.

8 88. Through substantial investments of money, time, and creative effort, Sony
9 Music and its recording artists have produced some of the most iconic sound recordings
10 of all time, as well as many of today's biggest hits.

11 89. Sony Music's investments in recorded music are protected by copyright,
12 which grants Sony Music the exclusive rights to, among other things, reproduce,
13 distribute, transmit, and create derivative works of its sound recordings.

14 90. Sony Music owns copyrights and/or exclusive rights in and to many of the
15 most popular sound recordings in the world, including those identified in Exhibit 1.

16 91. Each Sony Music Recording is either: a) covered by a valid copyright
17 registration; b) the subject of an application for registration submitted to the Copyright
18 Office in accordance with 17 U.S.C. § 411(a); c) one for which Sony Music has the
19 rights to pursue these claims for sound recordings originating outside of the United
20 States under the Berne Convention; or d) a sound recording fixed before February 15,
21 1972, and included on a schedule filed with the Copyright Office pursuant to the Orrin
22 G. Hatch-Bob Goodlatte Music Modernization Act.

23 92. Sony Music regularly licenses its recordings for commercial use, including
24 in social media advertisements.

25 93. Companies pay substantial sums for such licenses, particularly for digital
26 advertising on YouTube, Instagram, Facebook, TikTok and other similar platforms.

1 94. Yet with respect to hundreds of advertisements containing Sony Music's
2 Recordings, the Kroger Parties sought neither permission nor license.

3 **THE KROGER PARTIES' SYSTEMIC INFRINGEMENT ON SOCIAL**
4 **MEDIA**

5 ***A. The Kroger Parties' Direct Infringement***

6 95. The Kroger Parties recognize the importance of social media advertising.²⁰

7 96. The Kroger Parties employ numerous personnel whose titles and
8 responsibilities are dedicated specifically to social media.²¹

9 97. The Kroger Parties also recognize the power of music to enhance the
10 effectiveness of their social media marketing campaigns.²²

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13 ²⁰ Kroger, through its own marketing division, emphasizes that companies must “pivot [their] social
14 advertising” and meet consumers on social media platforms where they spend their time,
15 underscoring its recognition of social media as a critical advertising channel. *See Social Media*
16 *Shakeup: Pivot to Kroger's Winning Ad Strategies | Marketing Services & Advertising Solutions -*
Kroger; Kroger integrates social media into its broader omnichannel marketing strategy, using social
platforms alongside other digital channels to drive measurable consumer engagement and sales. *See*
Case Study: Kroger Precision Marketing – Proving the Power of Retail Media at Scale –
Advertising Week.

17 ²¹ By way of example only, and among many others, these include: Emily H., Head of Paid and
18 Organic Social Media, Influencer and Affiliate, Kroger, [https://www.linkedin.com/in/emily-h-](https://www.linkedin.com/in/emily-h-b2a38b124/)
19 [b2a38b124/](https://www.linkedin.com/in/emily-h-b2a38b124/); Emmalee Smith, Senior Manager, Paid & Organic Social Media, Affiliate Marketing,
20 Kroger, <https://www.linkedin.com/in/emmaleeereiser/>; Claire Fitzgerald, Paid & Organic Social
21 Media Manager, Kroger, <https://www.linkedin.com/in/claire-martin11/>; Sarah Berkov, Social Media
22 Manager, Kroger, <https://www.linkedin.com/in/sarah-berkov-b1897251/>; Lauren Hecker, Social
23 Media Specialist, Kroger, <https://www.linkedin.com/in/laurenhecker/>; Layla K., Paid and Organic
24 Social Media Manager, Kroger, <https://www.linkedin.com/in/layla-k-50a7b886/>; and Kim Clark,
25 Social Media Manager | Designer, Fred Meyer Jewelers, [https://www.linkedin.com/in/kim-clark-](https://www.linkedin.com/in/kim-clark-social-specialist/)
[social-specialist/](https://www.linkedin.com/in/kim-clark-social-specialist/); Amari Walls, Social Media Specialist, Mariano's,
<https://www.linkedin.com/in/amari-walls-333064b3/>; Gabriela V, Digital Marketing,
Communications, Brand Strategy & Content Creation, Harris Teeter,
<https://www.linkedin.com/in/gabriela-vazquez26/>. These individuals are only a select few of the
numerous employees Kroger dedicates to operating and managing its social media presence.

26 ²² <https://slipstreammusic.com/case-studies/kroger> (Kroger music-licensing partner stating that the
27 Kroger Parties” effectively leverage[] music in their advertising and social media campaigns,”
28 noting that carefully selected tracks aligned with brand values “enhance the storytelling of their
commercials and posts” and make content “more memorable and engaging for viewers across
platforms.”).

1 98. Individuals viewing advertisements including music in the background
2 have “higher emotional arousal and attention level” than those who watch the
3 commercial without music.²³

4 99. Music makes campaigns more memorable and effective and “keep[s]
5 viewers interested and wanting more.”²⁴

6 100. According to a TikTok study, “67% of TikTok users would prefer to see
7 videos from brands featuring popular or trending songs on TikTok.”²⁵

8 101. Indeed, TikTok advises brands that “[u]sing a trending song in your
9 brands’ TikTok content is a great way to capture [users’] attention.”

10 102. When TikTok limited the amount of popular music available to users in
11 Australia, it saw a marked decrease in users and user engagement.

12 103. As TikTok states, “music is at the heart of the TikTok experience” and is
13 “the glue that connects TikTok’s disparate threads.”²⁶

14 104. It is no accident that the Videos use some of the most popular sound
15 recordings in Sony Music’s catalog, including chart-topping hits such as “Hey Ya!” by
16 Outkast (exploited at least twelve times), “Golden” by Harry Styles (exploited at least
17 four times), “Lovely Day” by Bill Withers (exploited at least seven times), and “All I
18 Want For Christmas Is You” by Mariah Carey (exploited at least twelve times).

22 ²³ <https://today.tamu.edu/2021/08/16/how-background-music-in-ads-affects-consumers/>

23 ²⁴ [https://www.forbes.com/sites/forbesagencycouncil/2023/09/08/boosting-the-creative-journey-how-](https://www.forbes.com/sites/forbesagencycouncil/2023/09/08/boosting-the-creative-journey-how-brands-and-creators-can-use-instagrams-latest-updates/?sh=3332f93444e8)
24 [brands-and-creators-can-use-instagrams-latest-updates/?sh=3332f93444e8](https://www.forbes.com/sites/forbesagencycouncil/2023/09/08/boosting-the-creative-journey-how-brands-and-creators-can-use-instagrams-latest-updates/?sh=3332f93444e8)

25 ²⁵ [https://newsroom.tiktok.com/en-us/new-studies-quantify-tiktoks-growing-impact-on-culture-and-](https://newsroom.tiktok.com/en-us/new-studies-quantify-tiktoks-growing-impact-on-culture-and-music)
26 [music](https://newsroom.tiktok.com/en-us/new-studies-quantify-tiktoks-growing-impact-on-culture-and-music) (although this statement and the following specifically discuss TikTok the principles and
concepts equally apply to other social media platforms)

27 ²⁶ *Id.*; [https://www.bloomberg.com/news/articles/2023-03-22/tiktok-lost-customers-when-it-took-](https://www.bloomberg.com/news/articles/2023-03-22/tiktok-lost-customers-when-it-took-away-music-in-australia?sref=Adr3lZQP)
28 [away-music-in-australia?sref=Adr3lZQP](https://www.bloomberg.com/news/articles/2023-03-22/tiktok-lost-customers-when-it-took-away-music-in-australia?sref=Adr3lZQP); [https://Newsroom.tiktok.com/en-us/year-on-tiktok-music-](https://Newsroom.tiktok.com/en-us/year-on-tiktok-music-report-2021)
[report-2021](https://Newsroom.tiktok.com/en-us/year-on-tiktok-music-report-2021)

1 105. But there is a problem with the Kroger Parties' approach: they regularly
2 post advertisements on the Social Media Pages containing unlicensed sound recordings
3 owned or controlled by Sony Music and others.

4 106. The use of popular and trending music in the Videos is critical to the
5 Kroger Parties' social media advertising's reach and penetration, in part because
6 algorithm-driven platforms like Instagram and TikTok amplify posts that incorporate
7 popular sound recordings and music-related tags and hashtags.²⁷

8 107. Adding popular sound recordings to a post also causes Videos to appear in
9 the feeds of users who are interested in the *music* and might not otherwise come across
10 the Videos.²⁸

11 108. Including popular sound recordings in Videos leads users to discover posts
12 when searching on the platform for content relating to certain artists, songs, or music-
13 related tags.

14 109. The Kroger Parties are fully aware that the Videos contain popular sound
15 recordings that it did not license.

16 110. The Kroger Parties are also aware that a license is required to exploit
17 copyrighted sound recordings on social media.

18 111. Indeed, the Kroger Co. previously entered into several licensing
19 agreements with Sony Music authorizing such uses.

20 112. The Kroger Parties' selection of Sony Music Recordings for use in the
21 Videos is deliberate and meant to enhance the Videos' commercial appeal.

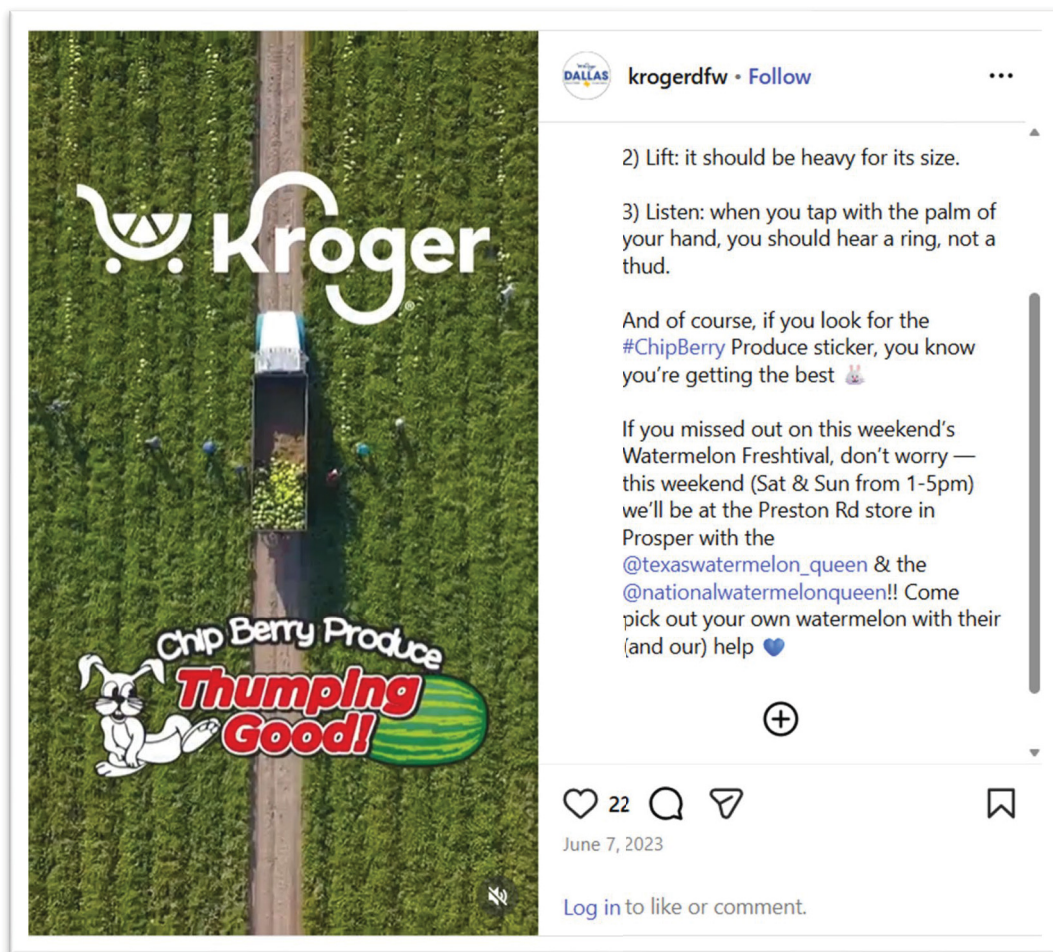
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25 ²⁷ <https://www.precisionsocial.com/blog/why-you-should-use-trending-music-in-your-posts> ("Social
26 media platforms like TikTok and Instagram prioritize content that uses trending sounds and music.
27 When you use these popular tracks, your posts are more likely to be featured on the Explore page or
For You feed, increasing your visibility to a broader audience."); *see also supra*, note 6.

28 ²⁸ *Id.*

113. The Kroger Parties actively promote Sony Music Recordings as part of the Videos, including by tagging the song and/or explicitly referencing the Sony Music Recording or artist in the Video's caption.

114. As shown in **Figure 1** below, on June 7, 2023, the @krogerdfw Instagram account posted a Video exploiting Harry Styles' "Watermelon Sugar" to promote a watermelon-themed in-store event called the "Watermelon Freshtival." The Video tags the Sony Music Recording—identifying "Watermelon Sugar" by Harry Styles as the audio accompanying the post—and pairs it with a caption promoting Kroger's watermelon products.²⁹

Figure 1



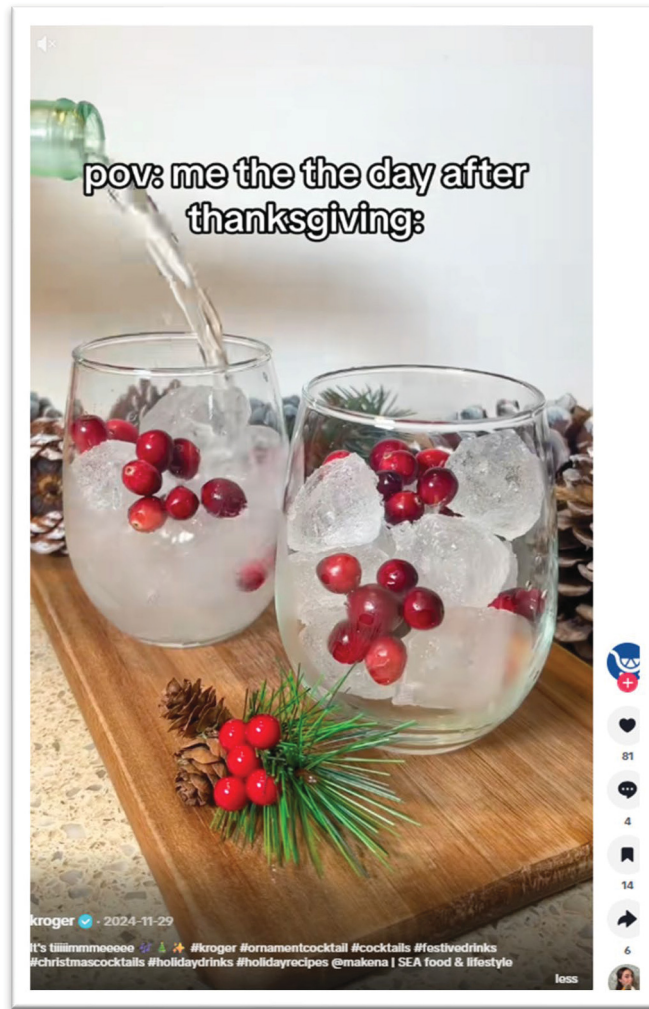
²⁹ See https://www.instagram.com/p/CtM_xN7sItu

1 115. The Kroger Parties also deliberately select sound recordings, including
2 Sony Music Recordings, that are relevant to the products, promotions, or events
3 featured in their Videos.

4 116. As shown in **Figure 2** below, on November 29, 2024, the @kroger TikTok
5 account posted a Video exploiting Mariah Carey’s “All I Want for Christmas Is You”
6 to promote holiday cocktail recipes, with a caption that references the song’s iconic
7 association with the holiday season and including lyrics from the recording in the
8 caption. In doing so, the Kroger Co. deliberately leveraged the Sony Music
9 Recording’s cultural cachet to drive engagement with its seasonal advertising.³⁰

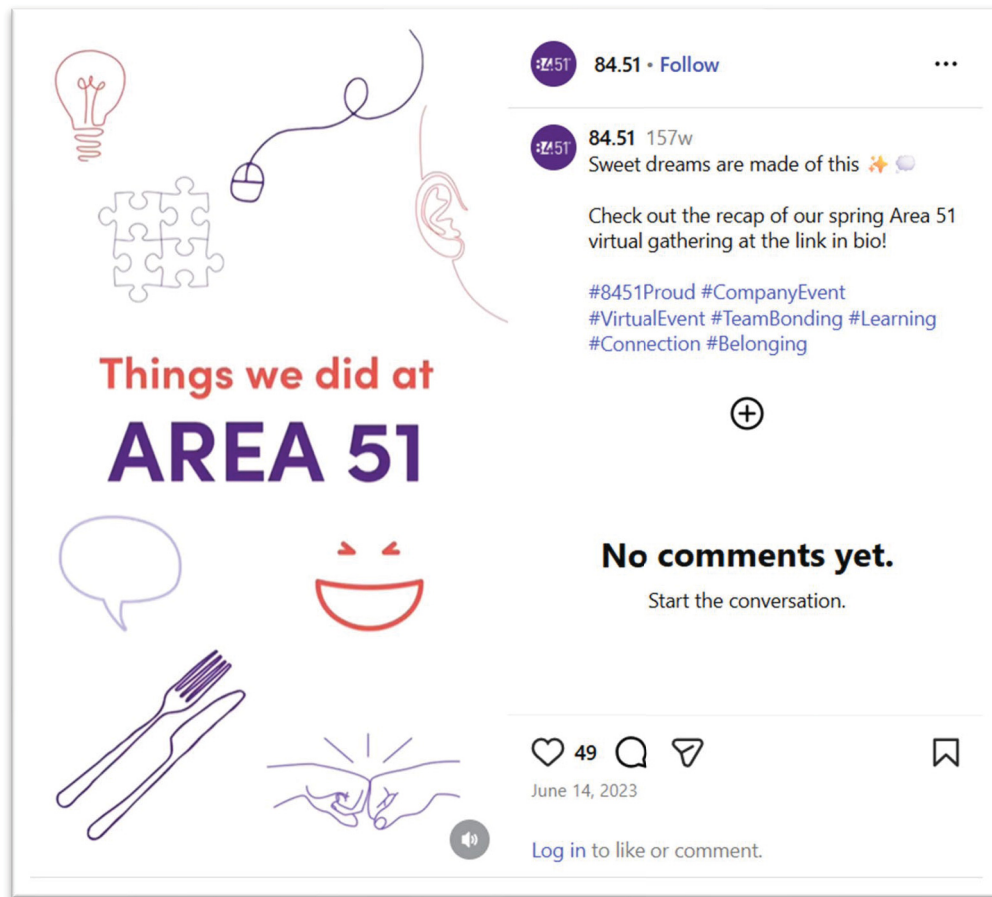
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³⁰ See <https://www.tiktok.com/@kroger/video/7442784862970449194>

Figure 2

117. As shown in **Figure 3** below, a Video posted on June 14, 2023 to the Instagram channel for one of the Kroger Co.’s brands, 84.51, exploited the famous sound recording “Sweet Dreams (Are Made of This)” by Eurythmics to promote a corporate event recap, with a caption that directly references the Sony Music Recording’s lyrics: “Sweet dreams are made of this ✨💜 Check out the recap of our spring Area 51 virtual gathering at the link in bio!”³¹

³¹ https://www.instagram.com/p/CtenR_OroS1

Figure 3

118. The Kroger Parties also strategically post advertisements incorporating Sony Music Recordings shortly after their release dates and/or when they are most popular.

119. For example, the Kroger Co. subsidiary, Mariano's posted a Video to its Instagram account (@marianosmarket) on January 21, 2023, exploiting Miley Cyrus' "Flowers" just nine days after the track was released and during the week it debuted at No. 1 on the Billboard Hot 100.

120. Similarly, on August 31, 2022, Mariano's posted a Video to the @marianosmarket Instagram account exploiting Harry Styles' "Music For a Sushi Restaurant" seven days after the single's release.

1 121. Mariano's also posted Videos exploiting Doja Cat's "Paint The Town
2 Red" to the @marianosmarket account on September 28, 2023, while the track was No.
3 1 on the Billboard Hot 100.

4 122. Likewise, on March 1, 2024, the Kroger Co. subsidiary, Murray's Cheese,
5 posted a Video to the @murrayscheesebar Instagram account exploiting Beyoncé's
6 "TEXAS HOLD 'EM" less than three weeks after the track's release and just days after
7 it hit No. 1 on Billboard's Hot 100.

8 123. Multiple Kroger Parties made at least twelve uses of "All I Want for
9 Christmas Is You" by Mariah Carey in late November or December, when the track is
10 most in-demand, across at least six different accounts including @kroger,
11 @marianosmarket, @murrayscheese, @rulerfoods, @fredmeyerjewelers, and
12 @vitacost.

13 124. The Kroger Parties similarly exploited "Underneath the Tree" by Kelly
14 Clarkson, "Sleigh Ride" by The Ronettes, and "Last Christmas" by Wham! repeatedly
15 during the holiday season.

16 125. For example, pictured in **Figure 4** below, on December 12, 2025, the
17 @murrayscheese TikTok account posted a Video exploiting Wham!'s "Last
18 Christmas" to promote Murray's Cheese's holiday gift boxes.³²

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28 ³² <https://www.tiktok.com/@murrayscheese/video/7583080626304142623>

Figure 4

126. Similarly, various Kroger Parties exploited “It’s the Most Wonderful Time of the Year” by Andy Williams at least seven times during the holiday seasons between 2022 and 2025, across accounts including @krogerdfw, @rulerfoods, @marianosmarket, @murrayscheese, and @fredmeyerjewelers—in each instance tying the iconic holiday recording to advertisements for holiday products and seasonal deals.

1 127. The Kroger Parties' selection of the Sony Music Recordings is calculated:
2 The Kroger Parties choose specific recordings because of their cultural and seasonal
3 associations and use those associations to sell products.

4 128. These are precisely the types of uses for which Sony Music charges a
5 license fee.

6 129. When posting the Videos to the Social Media Pages, the Kroger Parties
7 make an unauthorized copy of the Sony Music Recordings.

8 130. In the Videos, Sony Music Recordings are duplicated and synchronized
9 with visual content without permission, creating an unauthorized derivative work.

10 131. The Kroger Parties distribute the Videos through the Social Media Pages.

11 132. Upon publication of each post—whether as a permanent post or one
12 available for a limited time, such as Instagram Stories—the Kroger Parties distributed
13 copies of the Sony Music Recordings to members of the public by causing the platforms
14 to deliver and transmit copies of those works to users who accessed, viewed, streamed,
15 cached, downloaded, and/or shared the posts.

16 133. The Kroger Parties publicly perform the Sony Music Recordings via
17 digital audio transmission when they post the Videos on the Social Media Pages, and
18 users stream those Videos.

19 **B. *The Kroger Parties' Influencer Marketing***

20 134. The Kroger Parties' infringement extends beyond content posted to its own
21 accounts.

22 135. Upon information and belief, the Kroger Parties also engage paid
23 influencers and content creators to create and post advertisements promoting the
24 various Kroger Parties' brands and products, and those advertisements likewise
25 incorporate the Sony Music Recordings without authorization.

26 136. Upon information and belief, the influencers who created the Videos
27 utilizing the Sony Music Recordings without permission received free products, cash
28

1 payments, discounts and/or a share in the Kroger Parties' sales generated from the
2 infringing content in return for their creation of such infringing videos.

3 137. For example, as pictured in **Figure 5**, below, on April 8, 2022, the TikTok
4 account @kymjacksonsmith posted a Video exploiting Doja Cat's "Get Into It
5 (Yuh)"—a Sony Music Recording—to promote the Kroger Co.'s Home Chef meal-kit
6 brand.

7 138. The caption indicates that the Video was a paid advertisement through the
8 use of "#ad," and the branded promotional hashtag "#hookedonhomechef".

9 139. The caption also tags the Kroger Co.'s @realhomechef account and
10 provides viewers a discount code—instructing them to "Use Kym100 for \$100 off your
11 order".

12 140. The Kroger Co. received a direct commercial benefit from the post in the
13 form of orders placed using the code.

14 141. Upon information and belief, the Kroger Co. provided the products,
15 direction, and/or the discount code featured in the Video, and authorized, directed, and
16 financially benefited from its creation and publication.³³

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28 ³³ <https://www.tiktok.com/@kymjacksonsmith/video/7084262929746464043>

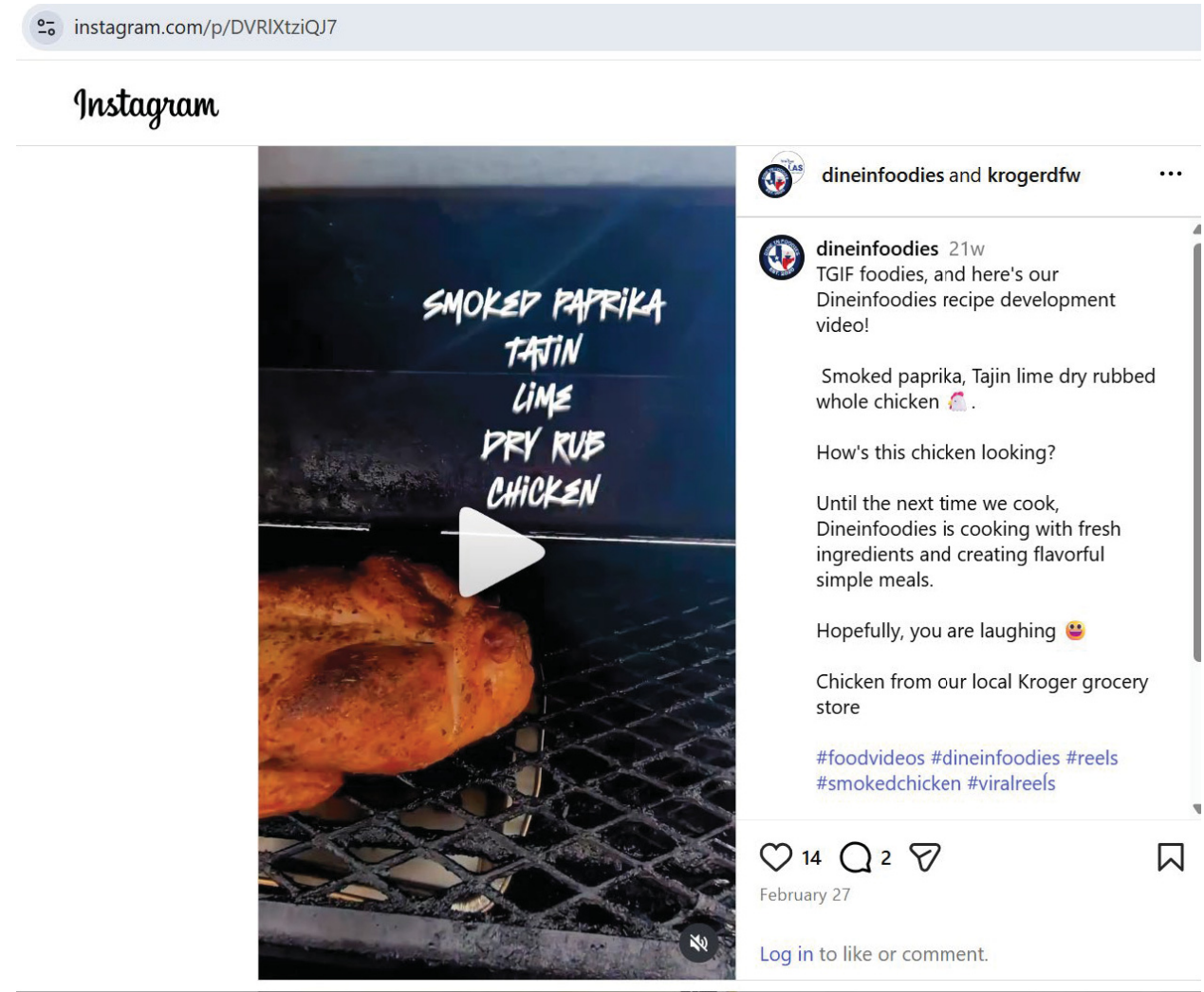
Figure 5

142. As evidenced in **Figure 6** below, the Kroger Co. regularly collaborates with influencers on Instagram, promoting the Kroger Co.'s products. This Video identifies @krogerdfw as a collaborator, demonstrating that the Kroger Co. knowingly participated in the creation and dissemination of the promotional content through Instagram's collaboration feature. As a result, the post appeared on both @krogerdfw's official Instagram page and the influencer's Instagram page, extending its reach to both audiences.

143. By collaborating on the post, the Kroger Co. affirmatively endorsed and promoted the influencer's content as part of its own social media marketing efforts further demonstrating that the Kroger Parties actively engaged influencers as part of their social media advertising strategy and knowingly participated in the creation,

publication, and dissemination of influencer-generated content promoting their stores and products.

Figure 6



144. Upon information and belief, there are many more infringing videos created by Kroger's influencers, but many of those influencers do not disclose that they are being compensated by Kroger for the advertisement, contrary to FTC guidelines.

145. Upon information and belief, the Kroger Parties and their affiliated brands maintain formal affiliate and influencer programs through which the Kroger Parties recruit influencers, approve, set content guidelines for influencer content, and supply influencers with tracking links and promotional discount codes.

1 146. For example, the Kroger Co.’s Home Chef brand operates an Affiliate
2 Program that publicly invites “partners to influence and earn attractive commissions
3 from the growth of [its] service.”³⁴

4 147. The Kroger Parties also maintain a broader affiliate program through
5 which bloggers, influencers, and content creators earn commissions by promoting their
6 products via tracked links, with published content guidelines that affiliates must
7 follow.³⁵

8 148. Upon information and belief, the Kroger Parties compensate these
9 influencers for creating and posting social media advertisements on the influencer’s
10 social media accounts promoting the Kroger Parties’ products, including
11 advertisements that incorporate the Sony Music Recordings, through direct payments,
12 free products, commissions and/or other forms of consideration.

13 149. This belief is based on, among other things, the publicly available terms of
14 the Kroger Parties’ affiliate and influencer programs described in this section, including
15 the Home Chef Affiliate Program and the Fred Meyer Jewelers Affiliate Program, both
16 of which confirm that Kroger Parties’ recruit, compensate, and impose content
17 requirements on influencers who promote the Kroger Parties’ products, including
18 through the Videos.

19 150. The Kroger Co.’s Home Chef brand confirms that its promotions are
20 distributed through “partnered influencers” and that it pays a commission “for every
21 new customer who orders.”³⁶

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24 ³⁴ See <https://www.homechef.com/affiliates>; see also <https://support.homechef.com/hc/en-us/articles/43869828583821>; (Home Chef’s own support pages confirm that its sign-up promotions are distributed through “Home Chef affiliates, partnered influencers, or promotional campaigns.”)

26 ³⁵ See <https://www.creator-hero.com/blog/kroger-affiliate-program-in-depth-review-pros-and-cons>.

27 ³⁶ See <https://support.homechef.com/hc/en-us/articles/208561916-How-does-the-Home-Chef-referral-program-work>. Chef’s Affiliate Program

1 151. Fred Meyer Jewelers also operates its own Affiliate Program, which invites
2 partners to “share the products you love” and earn commissions on sales generated
3 through affiliate links, with an average commission of \$25 per sale, and provides a
4 dedicated affiliate manager.³⁷

5 152. The Fred Meyer Jewelers Affiliate Program’s published terms require
6 affiliates to “adhere to Fred Meyer Jewelers brand guidelines” and use “only official
7 product names, taglines and brand names with proper formatting in all affiliate
8 promotional messaging,” and Fred Meyer Jewelers expressly “reserves the right to
9 require the affiliate to edit or remove promotional messaging (within 24 hours of notice)
10 if the messaging is deemed by Fred Meyer Jewelers to be misleading.”³⁸

11 153. Upon information and belief, the Kroger Parties retain the right and ability
12 to review, approve, direct, and/or require removal of the Videos posted by their
13 influencers.

14 154. There is nothing stopping the Kroger Parties from placing conditions on
15 provision of commissions or other consideration to influencers, such as compliance
16 with copyright laws, or from penalizing influencers or terminating relationships with
17 influencers who infringe.

18 155. Instagram’s collaboration feature, which the Kroger Parties regularly use
19 with influencers, requires the Kroger Party to affirmatively approve each collaboration
20 post before it appears on the Kroger Party’s official account, demonstrating that the
21 Kroger Parties actually review and approve influencer content—including its audio
22 component—before publication and dissemination.

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27 ³⁷ See <https://www.fredmeyerjewelers.com/affiliate-program>.

28 ³⁸ See https://www.fredmeyerjewelers.com/affiliate_terms.

1 156. The Kroger Parties’ social media and influencer campaigns are “managed
2 and executed by” Kroger’s “in-house team of experts”.³⁹

3 157. The Kroger Parties employ personnel dedicated to social media
4 management and social and influencer campaigns on an enterprise-wide basis.⁴⁰

5 158. These influencers also tag the Kroger Parties’ corporate social media
6 accounts in their posts, providing the Kroger Parties with notice of the content because
7 the relevant social media platform notifies an account whenever it is tagged.

8 159. And, in many instances, the Kroger Parties’ conduct goes beyond merely
9 being tagged and instead they collaborate directly with influencers through Instagram’s
10 collaboration feature, causing the posts to appear simultaneously on both the
11 influencer’s account and the Kroger Parties’ account. These collaborations further
12 demonstrate the Kroger Parties’ knowledge of, approval of, and active participation in
13 the creation, publication, and dissemination of influencer-generated promotional
14 content.

15 160. The Kroger Parties maintain the right and ability to control their
16 influencers’ infringement even aside from any formal contract, as there is nothing
17 stopping the Kroger Parties from placing conditions on provision of commissions or
18 other consideration to influencers, such as compliance with copyright laws, or from
19 penalizing influencers or terminating relationships with influencers who infringe.
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22 ³⁹ See Marketing Services and Advertising Solutions - Kroger Precision Marketing,
23 <https://www.krogerprecisionmarketing.com/>.

24 ⁴⁰ See, e.g., Emmalee Smith, Sr. Manager, Paid & Organic Social Media, Affiliate Marketing,
25 Kroger, LinkedIn (describing prior role as Social Media Manager in which she “[l]ed high-profile
26 enterprise campaigns serving as the operational lead across departments” and “[b]uilt and managed
27 cross-functional teams, strengthening collaboration between brand, merchandising, health verticals,
28 internal and external creative and media agencies”), <https://www.linkedin.com/in/emmaleereiser/>;
Casey Smith, Social Media Manager, LinkedIn (describing prior role leading “social media,
influencer marketing and publisher strategy for the Kroger Family of Stores, including 13+
divisions”); <https://www.linkedin.com/in/caseynsmith1/>.

1 161. The Kroger Parties derive a direct financial benefit from the infringing
2 content posted by its influencers, which increases brand awareness, product sales, and
3 customer engagement and enhances the visibility of the Kroger Parties' products and
4 brands, including through driving users that would not otherwise view the Kroger
5 Parties' social media content to their accounts.

6 162. Upon information and belief, the Kroger Parties also engage advertising
7 agencies and marketing agencies to create and/or post some or all of the Videos posted
8 on their own Social Media Pages.

9 163. Upon information and belief, CB&S Advertising Agency, Inc. – a
10 subsidiary of the Kroger Co. – is among one of the many advertising agencies retained
11 by one or more of the Kroger Parties to assist with the administration, operation of and
12 advertising and social media marketing on the Kroger Parties' Social Media Pages.

13 164. Publicly available Facebook Page Transparency disclosures identify
14 CB&S Advertising Agency, Inc. as the entity “responsible for this Page” for multiple
15 Kroger-affiliated Facebook pages, including the Facebook pages associated with
16 Kroger, Dillons, Ralphs, and Food 4 Less. Those disclosures further indicate that the
17 Facebook pages associated with Kroger, Dillons, and Ralphs were actively running
18 advertisements. These disclosures are consistent with CB&S Advertising Agency,
19 Inc.'s role in administering and coordinating advertising and promotional activity for
20 multiple Kroger-affiliated social media accounts.

21 165. Upon information and belief, the Kroger Parties compensate these
22 advertising and marketing agencies through direct payments and/or other forms of
23 consideration.

24 166. Upon information and belief, the Kroger Parties also collaborate with other
25 third parties to promote their products and brands and compensate these third parties
26 through direct payments and/or other forms of consideration.

1 167. The Kroger Parties have the right, ability, and authority to control and
2 supervise the creation and dissemination of the Videos, including the ability to direct
3 which content is posted to their Social Media Pages, to review content before it is
4 posted, and to take down infringing content. As evidenced by Home Chef's and Fred
5 Meyer Jewelers' published affiliate program terms and KPM's Guidelines and Spec
6 Sheets, the Kroger Parties routinely exercise this authority by requiring pre-publication
7 review, imposing brand guidelines, and reserving the contractual right to require
8 removal of non-compliant content within 24 hours of notice.

9 168. The Kroger Parties derive a direct financial benefit from the infringing
10 content created and/or posted by the advertising agencies, including the Videos, which
11 increases brand awareness, product sales, and customer engagement, and enhances the
12 visibility of the Kroger Parties' products and brands, including through driving users
13 that would not otherwise view the Kroger Parties' social media content to their
14 accounts.

15 169. The Kroger Parties encourage, induce, cause, and materially contribute to
16 third-party infringement by: (a) directing the creation of the Videos, including
17 providing detailed content guidelines, branding requirements, and creative
18 specifications that influencers and other third parties must follow; (b) incentivizing the
19 use of popular and trending music through commission-based compensation structures
20 that reward viral content and high engagement; (c) providing the products, promotional
21 codes, and subject matter featured in the Videos; (d) requiring influencers and other
22 third parties to tag and collaborate with the Kroger Parties' corporate accounts and use
23 branded hashtags, thereby associating the infringing content with the Kroger Parties
24 and their brands; and (e) causing the Videos to be posted on the Social Media Pages or
25 distributed through the Kroger Parties' influencer's and other third parties' networks.

26 170. The Kroger Parties' affiliate programs, including the Home Chef Affiliate
27 Program and the Fred Meyer Jewelers Affiliate Program, compensate influencers based
28

1 on customer conversions, creating a direct incentive for influencers to use popular
2 sound recordings that maximize engagement and drive sales.

3 171. The Kroger Parties reviewed and approved any Videos created by
4 influencers, including the use of the infringing sound recordings in the Videos.

5 172. For example, when the Kroger Parties collaborated with influencers
6 through Instagram’s collaboration feature, they necessarily reviewed and approved the
7 complete post—including the infringing sound recordings—before causing the post to
8 appear on their official accounts.

9 173. Upon information and belief, the Kroger Parties’ brand guidelines, content
10 requirements, and pre-publication approval process gave them actual knowledge of,
11 and authority over, the musical content of influencer videos.

12 174. The Fred Meyer Jewelers Affiliate Program terms confirm this supervisory
13 authority, requiring affiliates to “adhere to Fred Meyer Jewelers brand guidelines” and
14 use “only official product names, taglines and brand names with proper formatting,”
15 and providing that Fred Meyer Jewelers “reserves the right to require the affiliate to
16 edit or remove promotional messaging (within 24 hours of notice).”

17 175. Upon information and belief, the other Kroger Parties maintain similar
18 content guidelines and have similar removal rights.

19 176. Through these content guidelines and removal rights, the Kroger Parties
20 exercise actual control over influencer content and have the ability to prevent the
21 posting of Videos containing unlicensed sound recordings.

22 177. The Kroger Parties also suggest and encourage the use of popular and
23 trending sound recordings, including the Sony Music Recordings, by emphasizing
24 engagement metrics and viral reach in their influencer communications and by
25 rewarding high-engagement content through commission-based compensation.
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DAMAGE TO SONY MUSIC

178. The Kroger Parties' infringements rob Sony Music of the substantial licensing revenues it is entitled to for use of the Sony Music Recordings.

179. The Kroger Parties' infringements undermine Sony Music's investments in its artists and recordings, and deprive those artists of revenue.

180. In addition to the license fees Sony Music should have received from the Kroger Parties, other potential licensees may be less likely to use a Sony Music Recording that was used by another brand.

181. The unauthorized use of Sony Music's sound recordings substantially interferes with its and its artists' right to determine whether to license use of a particular sound recording at all, and their right to decide what brands should be able to use their music to promote its products or services.

182. The Kroger Parties' infringing conduct also induces other businesses to believe that they can use Sony Music's sound recordings in advertisements without paying for the right to do so.

183. The Kroger Parties have caused Sony Music irreparable harm, and damages in an amount to be determined at trial.

THE KROGER PARTIES' INFRINGEMENT IS WILLFUL

184. The Kroger Parties' infringement is knowing and willful.

185. At the time the Kroger Parties made and/or posted the Videos, they were aware of the requirements of the United States Copyright Act and the need to obtain licenses from Sony Music before using any of the Sony Music Recordings. The Kroger Parties are sophisticated commercial entities with in-house legal counsel and dedicated marketing personnel responsible for copyright compliance in advertising. The Kroger

1 Co. employs personnel with specific expertise in social media advertising and
2 intellectual property compliance.⁴¹

3 186. The Kroger Co. was also aware that it needed to obtain a license to utilize
4 commercial music, including the Sony Music Recordings, in its social media
5 advertising.

6 187. Indeed, the Kroger Co. previously entered into at least fourteen licenses
7 with Sony Music from as early as 2017 and as recently as 2025 for the use of Sony
8 Music Recordings in its advertisements, including for use on the internet and social
9 media.

10 188. One of those licenses was a limited 7-week license authorizing the use of
11 The Lovin' Spoonful's "Do You Believe in Magic?" in Kroger's 2020 holiday
12 campaign, including on television, radio, the internet, and social media, from November
13 13, 2020 to December 31, 2020. That license did not authorize any reproduction,
14 distribution, synchronization, public performance, or other exploitation of the recording
15 after December 31, 2020. Nevertheless, after the license expired, seven Kroger-
16 affiliated brands kept campaign Videos embodying that Sony Music Recording
17 publicly available and viewable on demand, including each posting its own brand-
18 specific version using Kroger-affiliated logos, branded content, and taglines to the
19 social media accounts for City Market, Baker's, Dillons, King Soopers, Fry's Food
20 Stores, Pick 'n Save, and Ralphs. Upon information and belief, as of the filing of this
21 Complaint, Ralphs and Dillons have continued to make such Videos available.⁴²

22 189. Because the Kroger Co. and 84.51° LLC, through KPM, centrally review
23 and approve the social media advertising content posted by each affiliated-entity
24

25 ⁴¹ See, e.g., Steve Rubin, Privacy, Data, Cybersecurity, AI, and Intellectual Property Counsel,
26 Kroger, LinkedIn, <https://www.linkedin.com/in/stevensrubin>; Nathan Brown, Senior Attorney,
Kroger, LinkedIn, <https://www.linkedin.com/in/nathan-brown-b76a9345/>. See supra nn.21, 39.

27 ⁴² <https://www.facebook.com/reel/163781475453557> and [https://www.facebook.com/reel/29061047](https://www.facebook.com/reel/2906104766291654)
28 [66291654](https://www.facebook.com/reel/2906104766291654)

1 Defendant, and because Kroger Co.'s subsidiary CB&S Advertising Agency, Inc.
2 controls several of the brands' Facebook pages, Sony Music's June 30, 2025 notice to
3 the Kroger Co. and its subsequent notices are properly imputed to each affiliated-entity
4 Defendant for purposes of establishing that Defendant's own knowledge and
5 willfulness.

6 190. The Kroger Parties' prior licensing agreements with Sony Music
7 demonstrate that they had actual knowledge that licenses are required for commercial
8 use of Sony Music Recordings on social media. Having previously negotiated and paid
9 for such licenses, the Kroger Parties cannot claim ignorance of the licensing
10 requirement. The Kroger Parties' decision to use hundreds of Sony Music Recordings
11 without obtaining licenses—despite prior licensing history and knowledge of the legal
12 requirements—constitutes willful infringement.

13 191. Kroger's own public filings further confirm that it is willing and able to
14 spend substantial sums on advertising when it chooses to do so. Kroger disclosed that
15 its advertising costs totaled approximately \$1.18 billion in 2025. Yet despite that
16 substantial advertising spend, and despite its extensive licensing history with Sony
17 Music, Kroger chose not to obtain the required licenses for hundreds of commercial
18 social media advertisements that used Sony Music Recordings. Kroger's decision to
19 devote substantial resources to advertising while refusing to pay for the sound
20 recordings that made those advertisements more engaging further confirms that the
21 Kroger Parties' infringement was knowing and willful.⁴³

22 192. Further indicating the Kroger Parties' willfulness, the terms of service of
23 each of the social media platforms used by the Kroger Parties make clear to users that
24 the use of copyrighted music on these platforms is for personal, noncommercial use
25

26
27 ⁴³ The Kroger Co., Annual Report (Form 10-K) for the fiscal year ended Jan. 31, 2026, at
28 [\[https://s202.q4cdn.com/463742399/files/doc_downloads/2026/04/7b99445c-4ee6-4439-a8b3-45165487d1e0.pdf\]](https://s202.q4cdn.com/463742399/files/doc_downloads/2026/04/7b99445c-4ee6-4439-a8b3-45165487d1e0.pdf) (filed Mar. 31, 2026).

1 only. Any use of copyrighted music for any other purpose without a license is strictly
2 prohibited.

3 193. TikTok’s Intellectual Property Policy expressly prohibits “posting,
4 sharing, or sending any content that violates or infringes someone else’s copyrights”
5 and its Terms of Service further state, in all caps: “NO RIGHTS ARE LICENSED
6 WITH RESPECT TO SOUND RECORDINGS AND THE MUSICAL WORKS
7 EMBODIED THEREIN THAT ARE MADE AVAILABLE FROM OR THROUGH
8 THE SERVICE.”⁴⁴

9 194. TikTok’s Terms of Service also direct users to the Music Terms and
10 Commercial Music Library Terms and state that “these terms apply if you are a
11 commercial entity or you want to post content on the Platform that includes music
12 sourced from the Commercial Music Library.”⁴⁵ The Music Terms make clear that
13 unlike the general music library – where SME sound recordings can be found—
14 “Commercial Sounds are made available to brands, businesses, commercial entities,
15 advertisers or other Platform users (including individuals) that may be using the
16 Platform for commercial purposes.... Music recordings selected from the Commercial
17 Music Library can be used to promote a brand or for other commercial purposes.”⁴⁶

18 195. Facebook’s Terms of Service, which also apply to Instagram, cautions
19 users that they “may not use [their] Products to do or share anything ... that infringes
20 or violates someone else’s rights, including their intellectual property rights.”⁴⁷
21
22
23
24

25 ⁴⁴ <https://www.tiktok.com/legal/page/global/copyright-policy/en>;
26 <https://www.tiktok.com/legal/page/us/terms-of-service/en>

27 ⁴⁵ <https://www.tiktok.com/legal/page/us/terms-of-service/en>

28 ⁴⁶ <https://www.tiktok.com/legal/page/global/music-terms-us/en>

⁴⁷ <https://www.facebook.com/terms/>

1 196. Facebook’s Music Guidelines, which are also incorporated into
 2 Instagram’s Terms of Use, state that “[u]se of music for commercial or non-personal
 3 purposes in particular is prohibited unless you have obtained appropriate licenses.”⁴⁸

4 197. At least as early as April 2018, Instagram’s Terms of Use incorporated
 5 Music Guidelines found on Facebook’s website which specifically prohibit the
 6 commercial use of music without an appropriate license.⁴⁹ Nonetheless, all the Videos
 7 in Exhibit 1 posted to both Instagram and Facebook were posted *after* April 2018, in
 8 disregard for the platforms’ terms of use.

9 198. Instagram expressly states that access to its licensed music library is
 10 subject to its agreements with rights holders which are “intended to protect artists,
 11 songwriters, and their works” and further states that “the music available in our library
 12 is intended for personal, non-commercial uses.”⁵⁰

13 199. For commercial uses, Instagram provides access to a separate Sound
 14 Collection through Facebook, “which are entirely royalty free and safe to use in Reels
 15 and Instagram Stories” and states that “[t]he content in Sound Collection can be used
 16 for commercial purposes like ads.”⁵¹

17 200. The Kroger Parties agreed to these social media platforms’ terms of use.
 18 On information and belief, the Kroger Parties also received direct notice from the
 19 platforms that its conduct infringed on the copyrights of third parties.

20 201. As seen in **Figures 7 and 8** below, in addition to its Terms of Service,
 21 TikTok additionally reminds business accounts that use of copyrighted music requires
 22 appropriate permissions at the time of posting. When a business account attempts to
 23 post a video on TikTok using audio outside of the Commercial Music Library, it must
 24

25 ⁴⁸ https://www.facebook.com/legal/music_guidelines

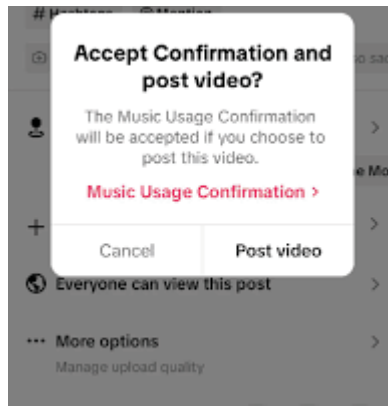
26 ⁴⁹ <https://help.instagram.com/581066165581870>

27 ⁵⁰ <https://help.instagram.com/402084904469945>

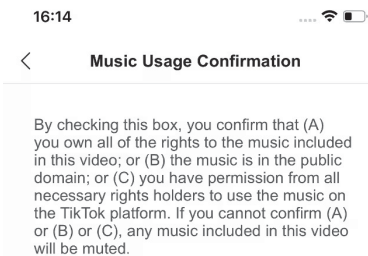
28 ⁵¹ https://m.facebook.com/help/instagram/402084904469945?dl_redirect=1&wtsid=rdr_0iILhouiviK P3oagi

1 affirmatively indicate that it “accept[s] the Music Usage Confirmation.” This is a
 2 confirmation that “(A) you own all of the rights to the music included in this video; (B)
 3 the music is in the public domain; or (C) you have permission from all necessary rights
 4 holders to use the music on the TikTok platform.” It further states, “[i]f you cannot
 5 confirm (A) or (B) or (C), any music included in this video will be muted.”⁵²

6 **Figure 7**



14 **Figure 8**



20 202. Even after learning of Sony Music’s claims, the Kroger Parties continued
 21 to engage in infringing conduct.

22 203. The Kroger Parties posted new infringing videos and continue to make
 23 infringing videos—including Videos Sony Music had specifically identified to the
 24 Kroger Co.—available on the Social Media Pages as of the date of this Complaint, over
 25 a year after Sony Music first put the Kroger Parties on notice of its claims.

26 **COUNT I: DIRECT COPYRIGHT INFRINGEMENT**

27 (as to all Defendants)

28 204. Sony Music incorporates the preceding paragraphs of this Complaint as if
 fully set forth herein.

⁵²<https://www.tiktok.com/legal/page/global/music-terms-us/en>;
<https://www.tiktok.com/legal/page/global/music-usage-confirmation/en>

1 205. Sound recordings owned and/or controlled by Sony Music, including but
2 not limited to the Sony Music Recordings in Exhibit 1, are original, creative works and
3 constitute copyrightable subject matter under the Copyright Act.

4 206. Sony Music owned and/or controlled the copyrights to each of the Sony
5 Music Recordings during the relevant times of the Kroger Parties' infringement.

6 207. Each of the Kroger Parties are responsible for the Videos posted to their
7 respective social media pages.

8 208. As discussed above, upon information and belief, the Kroger Co. is
9 responsible for the Videos posted to the @kroger, @krogerco, @krogerdfw, and
10 @privateselection social media accounts.

11 209. As discussed above, 84.51° LLC is responsible for the Videos posted to
12 the @84.51 Instagram account and, upon information and belief, participates in the
13 creation of the advertising posted to the Social Media Pages, including the Videos.

14 210. As discussed above, Fred Meyer Stores is responsible for the Videos
15 posted to the @fredmeyerstores Instagram account.

16 211. As discussed above, Fred Meyer Jewelers is responsible for the Videos
17 posted to the @fredmeyerjewelers, @fredmeyersjewelers, and
18 @fmj_fredmeyerjewelers social media accounts.

19 212. As discussed above, upon information and belief, Roundy's, Inc.
20 participates in the operation of the @marianosmarket, @officialmarianos, @marianos
21 @mymetromarket, @metromarket, @picknsavestores, and @pick'nsave social media
22 accounts.

23 213. As discussed above, Roundy's Illinois, LLC is responsible for the Videos
24 posted to the @marianosmarket, @officialmarianos, @marianos social media accounts.

25 214. As discussed above, upon information and belief, Mega Marts, LLC, Shop-
26 Rite, LLC, Ultra Mart Foods, LLC, and Ultimate Mart, LLC are jointly or individually
27
28

1 responsible for the @mymetromarket, @metromarket, @picknsavestores, and
2 @pick'nsave social media accounts and the Videos posted on those accounts.

3 215. As discussed above, Murray's Cheese LLC is responsible for the Videos
4 posted to the @murrayscheese social media accounts and the @murraysmac Instagram
5 account.

6 216. As discussed above, Murray's Cheese LIC LLC is responsible for the
7 Videos posted to the @murrayscheesebar Instagram account.

8 217. As discussed above, Harris Teeter is responsible for the Videos posted to
9 the @harristeeter Instagram account.

10 218. As discussed above, upon information and belief, Dillon Companies, LLC
11 is responsible for the Videos posted to the @dillons, @kingsoopers, @citymarket and
12 @bakers social media accounts.

13 219. As discussed above, upon information and belief, Smith's Food & Drug
14 Centers, Inc. is responsible for the Videos posted to the @fryfoodstore YouTube
15 channel.

16 220. As discussed above, Ralphs Grocery Company is responsible for the
17 Videos posted to the @ralphsgrocery Instagram account.

18 221. As discussed above, Relish Labs LLC is responsible for the Videos posted
19 to the @realhomechef social media accounts.

20 222. As discussed above, Kroger Limited Partnership I is responsible for the
21 Videos posted to the @rulerfoods and @rulerfoodsofficial social media accounts.

22 223. As discussed above, Vitacost.com, Inc. is responsible for the Videos
23 posted to the @vitacost and @vitacost.com social media accounts.

24 224. By their actions, the Kroger Parties' creation, posting, and distribution of
25 the Videos on their respective social media pages infringes Sony Music's copyrights.
26 When a Kroger Party posted each Video to social media, it reproduced the Sony Music
27 Recordings by copying them onto platform servers; prepared derivative works by
28

1 synchronizing the Sony Music Recordings with visual advertising content; distributed
2 copies of the Sony Music Recordings to members of the public who downloaded and
3 shared the Videos; and publicly performed the Sony Music Recordings via digital audio
4 transmission.

5 225. Through these unauthorized uses, the Kroger Parties have unlawfully
6 reproduced the Sony Music Recordings listed in Exhibit 1 in violation of 17 U.S.C. §
7 106(1); prepared derivative works by synchronizing the Sony Music Recordings listed
8 in Exhibit 1 with visual content in violation of 17 U.S.C. § 106(2); distributed copies
9 of the Sony Music Recordings listed in Exhibit 1 to the public in violation of 17 U.S.C.
10 § 106(3); and, to the extent applicable to the audiovisual streaming of the Videos,
11 publicly performed the Sony Music Recordings listed in Exhibit 1 via digital audio
12 transmission in violation of 17 U.S.C. § 106(6)—all without any authorization,
13 permission, license, or consent from Sony Music.

14 226. The Kroger Parties' acts of infringement are knowing, deliberate, and in
15 complete disregard for Sony Music's rights.

16 227. The Kroger Parties' conduct constitutes willful copyright infringement
17 under 17 U.S.C. § 504(c)(2).

18 228. As a direct and proximate result of the Kroger Parties' infringement of
19 Sony Music's copyrights and exclusive rights under copyright, Sony Music is entitled
20 to its actual damages, including each Kroger Party's profits attributable to the
21 infringement, in amounts to be proven at trial, pursuant to 17 U.S.C. § 504(b), or, in the
22 alternative, at Sony Music's election pursuant to 17 U.S.C. § 504(c), to statutory
23 damages up to the amount of \$150,000 per infringed work, or such other amounts as
24 may be proper under 17 U.S.C. § 504(c).

25 229. Sony Music is entitled to its costs, including reasonable attorneys' fees,
26 pursuant to 17 U.S.C. § 505.

COUNT II: VICARIOUS INFRINGEMENT

(as to The Kroger Co.)

230. Sony Music incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

231. As described above, the Kroger Subsidiaries posted infringing Videos to the Subsidiary Social Media Pages.

232. Through these unauthorized uses, the Kroger Subsidiaries have unlawfully reproduced, prepared derivative works from, publicly performed the Sony Music Recordings via digital audio transmission, and/or distributed the Sony Music Recordings listed in Exhibit 1 in violation of at least 17 U.S.C. § 106(1), (2), (3), and (6), without any authorization, permission, license, or consent from Sony Music.

233. The Kroger Co. is vicariously liable for the infringing acts of the Kroger Subsidiaries.

234. As described above, the Kroger Co. has the right, ability, and authority to control and supervise the creation, posting, and dissemination of videos, including the Videos, posted by the Kroger Subsidiaries on the Subsidiary Social Media Pages through directing the creative process, including through the approval of content before posting and ability to require removal of any infringing content.

235. This authority is further evidenced by the coordinated marketing effectuated by KPM and CB&S Advertising Agency, Inc., including KPM's mandatory creative approval process, which requires Campaign Operations specialists to review and formally approve all advertising content before publication.

236. The Kroger Co. failed to exercise its right and ability to control and supervise the infringing activity on the Subsidiary Social Media Pages.

237. As described above, the Kroger Co. failed to exercise its right and ability to require the take down of the infringing Videos, despite knowledge of the infringement.

1 238. The Kroger Co. receives a direct financial benefit from the inclusion of
2 Sony Music's recordings in the Videos, as well as from the duplication, public
3 performance via digital audio transmission, and/or distribution of Sony Music's
4 recordings contained in the Videos.

5 239. The Kroger Subsidiaries' exploitation of the Sony Music Recordings in the
6 infringing Videos increases sales, enhances the visibility of each of the Kroger
7 Subsidiaries' brands and their products, and drives users that would not otherwise view
8 the Social Media Pages to the accounts and pages that promote the Kroger Subsidiaries'
9 brands, stores, and products.

10 240. Sony Music has been damaged, and will continue to be damaged, by
11 Kroger's knowing, deliberate, and willful acts of vicarious infringement.

12 241. Sony Music is entitled to injunctive relief prohibiting the Kroger Co. from
13 further acts of vicarious infringement.

14 242. As a direct and proximate result of the Kroger Co.'s vicarious infringement
15 of Sony Music's copyrights and exclusive rights under copyright, Sony Music is
16 entitled to its actual damages, including the Kroger Co.'s profits attributable to the
17 infringement, in amounts to be proven at trial, pursuant to 17 U.S.C. § 504(b), or, in the
18 alternative, at Sony Music's election pursuant to 17 U.S.C. § 504(c), to statutory
19 damages up to the amount of \$150,000 per infringed work, or such other amounts as
20 may be proper under 17 U.S.C. § 504(c).

21 243. Sony Music is entitled to its costs, including reasonable attorneys' fees,
22 pursuant to 17 U.S.C. § 505.

23 **COUNT III: CONTRIBUTORY INFRINGEMENT**

24 (as to The Kroger Co.)

25 244. Sony Music incorporates the preceding paragraphs of this Complaint as if
26 fully set forth herein.

1 245. As described above, the Kroger Subsidiaries posted infringing Videos to
2 the Subsidiary Social Media Pages directly infringing on SME's copyrights in the Sony
3 Music Recordings.

4 246. Through these unauthorized uses, the Kroger Subsidiaries have unlawfully
5 reproduced, prepared derivative works from, publicly performed via digital audio
6 transmission, and/or distributed the Sony Music Recordings listed in Exhibit 1, in
7 violation of at least 17 U.S.C. § 106(1), (2), (3), and (6), without any authorization,
8 permission, license, or consent from Sony Music.

9 247. The Kroger Co. is contributorily liable for the infringing Videos posted
10 and/or created by the Kroger Subsidiaries on the Subsidiary Social Media Pages.

11 248. Through KPM and CB&S Advertising Agency, Inc., Kroger Co. controls
12 the marketing of its subsidiaries and directly shapes the creative choices made by its
13 subsidiaries, including the Kroger Subsidiaries. Upon information and belief, KPM and
14 CB&S Advertising Agency, Inc. coordinate social media campaigns for the Kroger
15 Co.'s subsidiaries, including the Kroger Subsidiaries, by providing campaign
16 objectives, promotional themes, and other creative direction, and the nature and focus
17 of those campaigns—which often capitalize on social media trends driven by the use of
18 trending sound recordings—inform and influence the selection and use of the
19 copyrighted sound recordings incorporated into its subsidiaries' videos, including the
20 Videos.

21 249. As described above, the Kroger Subsidiaries participate in collaborative
22 social media campaigns in which two or more Kroger Subsidiaries—and, in many
23 instances, an influencer—collaborate on a single promotional Video. Through these
24 collaborations, the same promotional Video is published simultaneously on the official
25 social media accounts of each participating Kroger Subsidiary and, where applicable,
26 the influencer's social media account. In addition, Kroger Subsidiaries post the same
27 promotional Videos across other Subsidiary Social Media Pages, further disseminating
28

1 the same infringing content across multiple Kroger-owned social media accounts.
2 These collaborative campaigns and cross-brand reposting practices further evidence the
3 centralized direction, coordination, and oversight of social media marketing across the
4 Kroger Co.'s family of brands. Also as described above, multiple Kroger Parties post
5 identical Videos to their respective social media pages.

6 250. Through the foregoing acts, among others, the Kroger Co. actively
7 encourages and induces the infringing reproduction, preparation of derivative works
8 from, distribution, and/or public performance via digital audio transmission of the Sony
9 Music Recordings contained in the Videos posted by the Kroger Subsidiaries to the
10 Subsidiary Social Media Pages.

11 251. The Kroger Co.'s conduct constitutes willful contributory copyright
12 infringement.

13 252. Plaintiffs have been damaged, and will continue to be damaged, by the
14 Kroger Co.'s acts of contributory infringement.

15 253. Plaintiffs are entitled to injunctive relief prohibiting the Kroger Co. from
16 further acts of contributory infringement.

17 254. In addition, as a direct and proximate result of the Kroger Co.'s
18 contributory infringement of Sony Music's copyrights and exclusive rights under
19 copyright, Plaintiffs are entitled to their actual damages, including the Kroger Co.'s
20 profits attributable to the infringement, in amounts to be proven at trial, pursuant to 17
21 U.S.C. § 504(b), or, in the alternative, at Plaintiffs' election pursuant to 17 U.S.C. §
22 504(c), to statutory damages up to the amount of \$150,000 per infringed work, or such
23 other amounts as may be proper under 17 U.S.C. § 504(c).

24 255. Plaintiffs are entitled to their costs, including reasonable attorneys' fees,
25 pursuant to 17 U.S.C. § 505.

1 **COUNT IV: VICARIOUS INFRINGEMENT**

2 (as to all Defendants)

3 256. In the alternative to the direct infringement claim, to the extent any of the
4 Videos were created and/or posted by advertising or marketing agencies compensated
5 by any of the Kroger Parties, including CB&S Advertising Agency, Inc., and those third
6 parties, not any of the Kroger Parties, are directly liable for the unauthorized use of the
7 Sony Music Recordings in the Videos, the Kroger Party on whose behalf, and for whose
8 benefit, the Video was created or posted is vicariously liable for those infringing acts.

9 257. The Kroger Parties are also vicariously liable for the Videos posted and/or
10 created by the third-party influencers or other third parties promoting the Kroger Party's
11 brands, social media accounts and/or products.

12 258. Through these unauthorized uses, such third parties have unlawfully
13 reproduced, prepared derivative works from, publicly performed the Sony Music
14 Recordings listed in Exhibit 1 via digital audio transmission, and/or distributed the
15 Sony Music Recordings in violation of at least 17 U.S.C. § 106(1), (2), (3), and (6),
16 without any authorization, permission, license, or consent from Sony Music.

17 259. As described above, the Kroger Parties have the right, ability, and authority
18 to control and supervise the creation, posting, and dissemination of videos, including
19 the Videos, created by advertising and marketing agencies and posted on its Social
20 Media Pages. This authority is evidenced by: (a) KPM's and CB&S Advertising Inc.'s
21 coordinated marketing and KPM's mandatory creative approval process, which
22 requires Campaign Operations specialists to review and formally approve all
23 advertising content before publication, and (b) the Kroger Parties' ability to select
24 which videos are published to its own Social Media Pages, to review content before
25 posting, and to take down any infringing content at any time.

26 260. As described above, the Kroger Parties also have the right, ability, and
27 authority to control and supervise the creation and posting of videos advertising the
28

1 Kroger Parties and/or their products, including the Videos, created or posted by its
2 influencers and other third parties, including through their ability to select which videos
3 are published, to review content before posting, withhold payment, and to require the
4 take down of any infringing content.

5 261. The Kroger Parties also collaborated directly with influencers through
6 social media platforms to create and publish promotional content advertising the Kroger
7 Parties and their products. Through these collaborations, the Kroger Parties caused the
8 promotional content to appear simultaneously on both the influencer's social media
9 account and the Kroger Party's official social media account. These collaborations
10 demonstrate that the Kroger Parties knowingly participated in, approved, and promoted
11 influencer-generated content advertising their brands, stores and products, and further
12 evidence the Kroger Parties' ability to supervise, control, and direct the publication and
13 dissemination of such content.

14 262. Upon information and belief, the Kroger Parties failed to exercise their
15 right and ability to control and supervise the infringing activity.

16 263. As described above, the Kroger Parties failed to exercise their right and
17 ability to require the take down of the infringing Videos, despite knowledge of the
18 infringement.

19 264. As described above, the Kroger Parties receive a direct financial benefit
20 from the inclusion of Sony Music's recordings in the Videos, as well as from the
21 duplication, public performance via digital audio transmission, and/or distribution of
22 Sony Music's recordings contained in the Videos.

23 265. The exploitation of the Sony Music Recordings in the infringing Videos
24 posted by third parties saves the Kroger Parties the cost of a license, increases the
25 Kroger Parties' sales, enhances the visibility of the Kroger Parties' brands and their
26 products, and drives users that would not otherwise view the Social Media Pages to its
27 accounts and pages that promote the Kroger Parties' brands, stores, and products.

1 266. Sony Music has been damaged, and will continue to be damaged, by the
2 Kroger Parties' knowing, deliberate, and willful acts of vicarious infringement.

3 267. Sony Music is entitled to injunctive relief prohibiting the Kroger Parties
4 from further acts of vicarious infringement.

5 268. As a direct and proximate result of the Kroger Parties' vicarious
6 infringement of Sony Music's copyrights and exclusive rights under copyright, Sony
7 Music is entitled to its actual damages, including each Kroger Party's profits
8 attributable to the infringement, in amounts to be proven at trial, pursuant to 17 U.S.C.
9 § 504(b), or, in the alternative, at Sony Music's election pursuant to 17 U.S.C. § 504(c),
10 to statutory damages up to the amount of \$150,000 per infringed work, or such other
11 amounts as may be proper under 17 U.S.C. § 504(c).

12 269. Sony Music is entitled to its costs, including reasonable attorneys' fees,
13 pursuant to 17 U.S.C. § 505.

14 **COUNT V: CONTRIBUTORY INFRINGEMENT**

15 (as to all Defendants)

16 270. Sony Music incorporates the preceding paragraphs of this Complaint as if
17 fully set forth herein.

18 271. In the alternative to Sony Music's claim for direct infringement, to the
19 extent any of the Videos were created and/or posted by advertising or marketing
20 agencies compensated by any of the Kroger Parties, including CB&S Advertising
21 Agency, Inc., and those third parties, not any of the Kroger Parties, are directly liable
22 for the unauthorized use of the Sony Music Recordings in the Videos, the Kroger Party
23 on whose behalf, and for whose benefit, the Video was created or posted, is
24 contributorily liable for those infringing acts.

25 272. The Kroger Parties are also contributorily liable for the Videos posted
26 and/or created by its third-party influencers and other third parties promoting that
27 Kroger Party's brands, social media accounts and/or products.

1 273. Through these unauthorized uses, such third parties have unlawfully
2 reproduced, prepared derivative works from, publicly performed via digital audio
3 transmission, and/or distributed the Sony Music Recordings listed in Exhibit 1, in
4 violation of at least 17 U.S.C. § 106(1), (2), (3), and (6), without any authorization,
5 permission, license, or consent from Sony Music.

6 274. As described above, the Kroger Parties actively cause, and thereby induce
7 third-party infringement through specific acts, including without limitation: (a)
8 directing the creation of the Videos through detailed content guidelines and branding
9 requirements; (b) participating in collaboration posts with third-party influencers thus
10 actively participating in the publication, promotion, and dissemination of the infringing
11 content; (c) incentivizing viral content through commission-based compensation that
12 rewards high engagement; (d) providing the products, promotional codes, and subject
13 matter featured in the Videos; (e) requiring influencers and other third parties to tag the
14 Kroger Parties' accounts and use branded hashtags; (f) on information and belief,
15 reviewing and approving the Videos created by its influencers and the advertising
16 agencies they engaged, including the use of infringing sound recordings in the Videos,
17 and/or otherwise suggesting or encouraging the use of popular and trending sound
18 recordings, including the Sony Music Recordings, in such Videos; and (g) causing the
19 Videos to be posted on the Social Media Pages or distributed through its influencer's
20 and other third parties' networks.

21 275. Through the foregoing acts, among others, the Kroger Parties actively
22 encourage and induce the infringing reproduction, preparation of derivative works
23 from, distribution, and/or public performance via digital audio transmission of the Sony
24 Music Recordings contained in the Videos.

25 276. The Kroger Parties' conduct constitutes willful contributory copyright
26 infringement.
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28

1 inducing, and/or participating in the infringement of, any of Plaintiffs' rights
2 protected by the Copyright Act;

3 c. An order requiring Defendants to render a full and complete accounting to
4 Plaintiffs for their profits, gains, advantages, and the value of the business
5 opportunities received from their infringing activities;

6 d. For statutory damages pursuant to 17 U.S.C. § 504(c) for Defendants' *willful*
7 infringement to the greatest extent provided by the Copyright Act, or, in the
8 alternative, at Plaintiffs' election, Plaintiffs' actual damages and Defendants'
9 profits attributable to the infringement pursuant to 17 U.S.C. § 504(b), in an
10 amount to be proven at trial;

11 e. For an award of Plaintiffs' costs in this action, including reasonable attorneys'
12 fees, pursuant to 17 U.S.C. § 505;

13 f. For pre-judgment and post-judgment interest at the applicable rate on any
14 monetary award made part of the judgment against Defendants; and

15 g. For such other and further relief as the Court deems proper.

16 **JURY TRIAL DEMAND**

17 Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby demand a trial
18 by jury of all issues that are so triable.

1
2 Dated: August 21, 2026
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Respectfully Submitted,

PROSKAUER ROSE LLP

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