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14 Samsung Electronics America, Inc. and
15 Samsung Electronics Co., Ltd.

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 DUA LIPA,

19 Plaintiff,

20 v.

21 SAMSUNG ELECTRONICS
22 AMERICA, INC.; SAMSUNG
23 ELECTRONICS CO., LTD. and DOES
24 1-10, inclusive,

25 Defendants.
26
27
28

CASE NO. 2:26-cv-05019-CAS-MAR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(b)(6)**

Hearing Date December 14, 2026
Hearing Time: 10:00 a.m.
Courtroom: 8D
Judge: Hon. Christina A.
Snyder

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1 **I. INTRODUCTION**

2 Plaintiff's Complaint alleges Defendants made unauthorized use of a
3 photograph of Plaintiff on the packaging of certain Samsung TVs. Based on that core
4 allegation, Plaintiff asserts eight causes of action. Plaintiff, however, fails to state any
5 valid claim for relief, and the Court should dismiss the Complaint for four reasons.

6 First, Plaintiff's Complaint fails to state a claim for direct trademark
7 infringement or false endorsement under either the Lanham Act (Count III) or
8 common law (Count IV), or for contributory trademark infringement (Count V). As
9 to direct trademark infringement, Plaintiff's allegations fail as a matter of law because
10 she asserts that she "holds valid and protectable trademark rights in her brand, image,
11 and likeness" Compl. ¶ 61. But courts have consistently held that "a person's
12 image or likeness **cannot** function as a trademark[.]" *See Fifty-Six Hope Road Music,*
13 *Ltd. v. A.V.E.L.A., Inc.*, 688 F. Supp. 2d 1148, 1159 (D. Nev. 2010) (emphasis added,
14 internal quotation marks omitted). This same failure dooms Plaintiff's contributory
15 infringement claim (Count V), because it is derivative of the legally defective
16 trademark infringement theory pleaded in Counts III and IV. Plaintiff's false
17 endorsement theory fares no better. The Complaint's allegations—including the
18 image of the accused product packaging displayed in the Complaint—contradict her
19 conclusory assertion that consumers would be confused into believing she endorsed
20 Samsung's products, as a false endorsement claim requires.

21 Second, Plaintiff's vicarious copyright infringement (Count II) and vicarious
22 trademark infringement (Count VI) claims against Samsung Electronics Co., Ltd.
23 ("SEC") fail to state a claim because she does not allege facts establishing that SEC
24 controlled the alleged infringement of its subsidiary, Samsung Electronics America,
25 Inc. ("SEA"). The Complaint's conclusory vicarious liability allegations rest almost
26 entirely on facts consistent only with SEC's and SEA's ordinary parent-subsidary
27 relationship, which is legally insufficient to establish the control required for vicarious
28 infringement.

1 Third, the Complaint’s right of publicity causes of action (Counts VII and VIII)
2 fail to state a claim because choice-of-law principles dictate that English law must
3 apply, and England does not recognize a right of publicity.

4 Fourth, the entire Complaint represents an impermissible “shotgun” pleading.
5 The Complaint frequently fails to distinguish between the alleged conduct of
6 Defendants SEC and SEA, leaving each entity’s alleged conduct unidentified. And
7 the Complaint broadly incorporates every allegation into each successive cause of
8 action, making it impossible for Defendants or the Court to determine which
9 allegations are germane to each count.

10 Accordingly, Defendants respectfully request that the Court dismiss Plaintiff’s
11 Complaint in its entirety.

12 **II. FACTUAL BACKGROUND**

13 Plaintiff’s Complaint centers on a single photograph (the “DL Image”). Compl.
14 ¶¶ 7, 28. Plaintiff alleges that Defendants used the photograph without her
15 authorization on packaging for certain televisions. As excerpted below, the
16 Complaint depicts the photograph on the TV packaging within a rendering of the TV’s
17 home screen interface. The Complaint shows the DL Image as a background
18 associated with a “Samsung TV Plus” music video channel called “XITE HITS.” *Id.*
19 ¶ 6. Below the XITE HITS display with the DL Image, the home screen includes
20 other, separately labeled icons for available channels or apps, including “ABC NEWS
21 LIVE,” “FOX SPORTS,” “THE FIRST 48 BY A&E,” and “MLB.” *Id.* ¶¶ 6, 35.
22 Plaintiff alleges the use of the DL Image “induced potential consumers to buy” the
23 televisions, citing two social media comments. *Id.* ¶¶ 34–35.



Compl. ¶ 6.

The Complaint asserts eight causes of action: copyright infringement (Count I); vicarious copyright infringement against SEC (Count II); false endorsement and trademark infringement (Count III); common law trademark infringement (Count IV); contributory (Count V) and vicarious (Count VI) trademark infringement against SEC; and statutory and common law right of publicity (Counts VII–VIII). Each count incorporates every preceding paragraph and cause of action. *Id.* ¶¶ 41, 49, 60, 68, 76, 86, 96, 105. Other than in the vicarious and contributory infringement causes of action against SEC, Plaintiff’s allegations are pleaded generically against “Defendants,” without specifying which Defendant allegedly performed which acts.

III. ARGUMENT

A. Plaintiff Fails to State a Claim for Trademark Infringement or False Endorsement under the Lanham Act (Count III) or Common Law (Count IV)

Count III purports to allege both “trademark infringement” and “false endorsement” under the Lanham Act, while Count IV asserts common law trademark infringement and Count V asserts contributory trademark infringement. Neither

1 Plaintiff's trademark infringement theory nor her false endorsement theory states a
2 claim for relief. Plaintiff's direct trademark infringement theory fails as a matter of
3 law because she has not pleaded the existence of a protectable mark. Plaintiff's
4 contributory infringement claim therefore fails because the Complaint does not plead
5 a viable underlying act of direct trademark infringement. And, as to Plaintiff's false
6 endorsement claim, which requires consumer confusion as to whether Plaintiff
7 endorses Defendants' products, the Complaint's allegations taken as a whole
8 contradict the suggestion that consumers could be confused into believing she
9 endorses Samsung TVs.

10 **1. Plaintiff does not, and cannot, hold a trademark in her own**
11 **image or likeness**

12 Plaintiff alleges that she "holds valid and protectable common law trademark
13 rights in her brand, image, and likeness, which are inherently distinctive and
14 recognizable to consumers." Compl. ¶ 69; *see also id.* ¶ 30. Courts have squarely
15 rejected this theory, holding that one's image or likeness cannot constitute a
16 protectable trademark unless it has been consistently used as a trademark in
17 connection with the sale of specific goods.

18 For example, in *ETW Corp. v. Jireh Publishing, Inc.*, the Sixth Circuit held that
19 professional athlete Tiger Woods did not hold trademark rights in his own image or
20 likeness. 332 F.3d 915, 922 (6th Cir. 2003). In that case, the defendant sold limited
21 edition prints of a painting depicting golfer Tiger Woods winning the 1997 Masters
22 Tournament. *Id.* at 919-20. The plaintiff, Tiger Woods' licensing agent, claimed the
23 defendant's prints constituted unauthorized use of Tiger Woods' image and likeness
24 in violation of Section 43(a) of the Lanham Act. Rejecting that theory, the court held
25 that it is "untenable" that a person could claim Lanham Act protection for any and all
26 images of himself, which would "in effect . . . constitute Woods himself as a walking,
27 talking trademark." *Id.* at 922. Instead, the court held that, "as a general rule, a
28

1 person's image or likeness cannot function as a trademark," because it identifies the
2 person, not the source of any particular goods or services. *Id.* at 922–23.

3 The Second Circuit reached the same conclusion for another professional
4 athlete in *Pirone v. MacMillan, Inc.*, 894 F.2d 579, 583 (2d Cir. 1990). There, Babe
5 Ruth's estate alleged trademark infringement based on the defendant's use of three
6 photographs of Ruth in a baseball-themed weekly calendar. *Id.* at 581. Similar to
7 Plaintiff, Ruth's estate alleged that it owned "valid, protectible trademark rights in the
8 image and name of Babe Ruth." *Id.* at 582. The court found that Ruth's estate's
9 "position finds support in neither precedent nor common sense." *Id.* "[A] photograph
10 of a human being, unlike a portrait of a fanciful cartoon character, is not inherently
11 'distinctive' in the trademark sense of tending to indicate origin," because "an
12 individual's likeness is not a consistently represented fixed image." *Id.* at 583.

13 A district court within this Circuit reached the identical conclusion for a
14 recording artist. In *Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, Bob Marley's
15 estate accused the defendant of trademark infringement in connection with the
16 licensing of t-shirts and other products depicting images of Bob Marley's face. *Fifty-*
17 *Six Hope Road*, 688 F. Supp. 2d at 1152-54; *Fifty-Six Hope Road Music, Ltd. v.*
18 *A.V.E.L.A., Inc.*, 778 F.3d 1059 (9th Cir. 2015) (affirming judgment as to other claims
19 and describing accused products). Marley's estate argued that its registered word
20 mark "BOB MARLEY" extended to any visual depiction of him. *Id.* at 1158. The
21 court rejected that theory, explaining: "Every court to consider the issue has held there
22 is no cognizable trademark in every single photograph ever taken of a famous person."
23 *Id.* (citing *ETW* and *Pirone*). The court recognized a narrow exception: a specific
24 photograph may function as a trademark where it, and it alone, "consistently is used
25 as a source indicator." *Id.* at 1160. However, that exception was inapplicable because
26
27
28

1 there was no allegation that the specific image of the plaintiff had been consistently
2 used as a source indicator. *Id.* Nor does Plaintiff make such an allegation here.¹

3 Plaintiff does not, and cannot, plead the narrow circumstance these courts have
4 identified as the sole path to protection: that the one specific photograph at issue here,
5 as cropped and printed on the allegedly infringing products, has been consistently
6 used by Plaintiff herself as a source identifier for particular goods or services. The
7 Complaint alleges only generalized rights in her “brand, image, and likeness” at large,
8 Compl. ¶ 61, the same theory rejected for the professional athletes in *ETW* and *Pirone*
9 and the recording artist in *Fifty-Six Hope Road*.

10 Because Plaintiff’s trademark infringement theory rests on rights she does not
11 hold, the Court should dismiss Count III’s trademark infringement claim and the
12 entirety of Count IV. *See, e.g., Fifty-Six Hope Road*, 688 F. Supp. 2d at 1158
13 (applying the same “cognizable trademark” analysis to both statutory and common
14 law theories).

15 **2. Because the Court should dismiss Plaintiff’s direct**
16 **trademark infringement claims (Counts III and IV), it must**
17 **also dismiss the contributory trademark infringement claim**
18 **against SEC (Count V)**

19 Contributory trademark infringement requires an underlying act of direct
20 trademark infringement. Absent a viable direct infringement claim, there is nothing
21 to which secondary liability can attach. *Cf. Perfect 10, Inc. v. Amazon.com, Inc.*, 508
22 F.3d 1146, 1169 (9th Cir. 2007) (secondary liability cannot exist in the absence of
23 direct infringement by a third party). Courts accordingly dismiss secondary liability

24
25 ¹ Some courts have described celebrities as having a 'trademark-like interest' in their
26 identity sufficient to confer standing for a false endorsement claim under §43(a). *See,*
27 *e.g., Parks v. LaFace Records*, 329 F.3d 437, 459 (6th Cir. 2003); *Bondar v. LASplash*
28 *Cosmetics*, 2012 WL 6150859, at *5 (S.D.N.Y. 2012); *Jackson v. Odenat*, 9 F. Supp.
3d 342, 355 (S.D.N.Y. 2014). That principle is distinct from, and does not disturb, the
settled rule that a photograph or likeness does not itself constitute a protectable
trademark absent consistent use as a source indicator for particular goods or services.

claims when the predicate direct-infringement claim is dismissed. *E.g., Johnson v. Maraj*, No. 23-cv-05061-PA-AFMx, 2023 WL 8883316, at *3 (C.D. Cal. Dec. 15, 2023) (dismissing contributory and vicarious copyright infringement claims where the plaintiff failed to plead the predicate direct infringement).

Count V is predicated on the direct **trademark** infringement theories pleaded in Counts III and IV: Plaintiff alleges that “Defendants have directly and willfully infringed Plaintiff’s trademark rights in her name, image, and likeness” (Compl. ¶ 77), and that SEC’s conduct “constitutes contributory trademark infringement” as to that direct infringement (*id.* ¶ 82). As explained above, Plaintiff cannot state a claim for direct trademark infringement, because “[e]very court to consider the issue has held there is no cognizable trademark in every single photograph ever taken of a famous person”, *Fifty-Six Hope Road*, 688 F. Supp. 2d at 1158 (dismissing trademark infringement claims based on use of Bob Marley’s photograph on t-shirts). Therefore, Count V fails for the same reasons.

3. The Complaint as a whole does not plead facts establishing false endorsement

The Court should dismiss Count III’s Lanham Act false endorsement claim, because Plaintiff’s Complaint, taken as a whole and including the images therein, does not plausibly allege facts suggesting false endorsement. The Lanham Act “prohibits only false endorsement, not mere use of an image or name.” *Cairns v. Franklin Mint Co.*, 107 F. Supp. 2d 1212, 1214 (C.D. Cal. 2000). “Only uses which suggest sponsorship or approval are prohibited.” *Id.* To establish a false endorsement claim, “likelihood of customer confusion is the determinative issue.” *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1149 (9th Cir. 2002). As explained below, the packaging photograph depicted in the Complaint does not create that inference.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550

1 U.S. 544, 570 (2007)). A claim is facially plausible when factual allegations permit
2 “the court to draw the reasonable inference that the defendant is liable for the
3 misconduct alleged.” *Id.* Critically, in evaluating whether a complaint states a
4 plausible claim for relief, a court need not accept conclusory allegations that are
5 contradicted by other material within the complaint. *Spewell v. Golden State*
6 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (affirming dismissal where document
7 attached to complaint contradicted plaintiff’s allegations); *Steckman v. Hart Brewing*
8 *Inc.*, 143 F.3d 1293, 1295–96 (9th Cir. 1998) (“[W]e are not required to accept as true
9 conclusory allegations which are contradicted by documents referred to in the
10 complaint.”).

11 Although Plaintiff’s Complaint alleges in conclusory fashion that Defendants’
12 use of the DL Image is likely to cause confusion (*see* Compl. ¶ 63), the Complaint
13 itself elsewhere contradicts any suggestion that consumers could be confused into
14 believing Plaintiff endorses Samsung televisions. The Complaint includes
15 photographs of the complained-of use on Samsung TV packaging. Those
16 photographs reveal that the DL Image appears only as part of a TV on-screen interface
17 for a “Samsung TV Plus” music video channel called “XITE HITS.”



Compl. ¶¶ 6, 35 (red box annotations added). The image appears adjacent to other interface options, including icons for other channels or content such as “ABC NEWS LIVE,” “FOX SPORTS,” “THE FIRST 48 BY A&E,” and “MLB.” *Id.* An interface depicting a music-video channel among several unrelated content icons conveys nothing suggesting Plaintiff endorses the televisions. The images merely depict the televisions’ on-screen interface, illustrating the applications and content available on the device. Considered in its full context, the Complaint does not plausibly allege consumer confusion as to whether Plaintiff endorses the products. *See Knievel v. ESPN*, 393 F.3d 1068, 1077–78 (9th Cir. 2005) (a communication must be considered together with “all parts . . . that are ordinarily heard or read with it”). The packaging merely demonstrates an example of content available on the TV.

Courts have held that the mere use of a person’s image in connection with a product does not plausibly suggest that consumers would be confused into believing that the person endorsed the product. For example, in *Miller v. Easy Day Studios Pty Ltd.*, the court dismissed a false endorsement claim brought by a prominent skateboarder who alleged the inclusion of a character based on his likeness in a video game and promotional materials for the game. No. 20CV02187-LAB-DEB, 2021 WL 4209205, at *8 (S.D. Cal. Sept. 16, 2021). Even though the plaintiff argued actual

1 confusion “because at least two individuals contacted [the plaintiff] after recognizing
2 his character in the video game,” the court concluded it failed to state a claim for false
3 endorsement: “The issue here isn’t whether other consumers could simply recognize
4 [plaintiff’s] likeness in the game, but rather whether they would be misled into
5 believing his association with the game means he is somehow endorsing it.” *Id.*; see
6 also *Brown v. Elec. Arts, Inc.*, No. 2:09-CV-01598-FMC, 2009 WL 8763151, at *5
7 (C.D. Cal. Sept. 23, 2009) (dismissing false endorsement claim based on use of former
8 NFL player’s likeness in video game “where there are no explicit representations of
9 endorsement to cause consumer confusion”), *aff’d*, 724 F.3d 1235 (9th Cir. 2013). So
10 too here. The Complaint’s allegation that Samsung’s TV packaging included
11 Plaintiff’s image within an example of an on-screen interface does not plausibly
12 suggest that consumers would believe Plaintiff endorses the TV.

13 Nor do the social media comments Plaintiff reproduces at paragraphs 34 and
14 35 make Plaintiff’s allegation of confusion plausible. Neither comment says anything
15 about endorsement, sponsorship, or affiliation. Rather, both comments read as
16 familiar, tongue-in-cheek social media hyperbole (“I wasn’t even planning on buying
17 a tv but I saw the box so I decided to get it”; “if you need anything selling just put a
18 picture of Dua Lipa on it”), not sincere assertions that anyone believed Ms. Lipa had
19 approved of, or partnered with, Samsung. Nor can two anecdotal, informally worded
20 comments support any broader inference about how consumers generally understood
21 the DL Image’s inclusion within the interface depicted. This Court is not bound to
22 accept Plaintiff’s own characterization of the very material she has chosen to include
23 in her own pleading. *Sprewell*, 266 F.3d at 988 (“we are not required to accept as true
24 conclusory allegations which are contradicted by documents referred to in the
25 complaint”).

**B. Plaintiff Fails to State a Claim Against SEC for Vicarious
Copyright Infringement (Count II) or Vicarious Trademark
Infringement (Count VI)**

The Court should dismiss Plaintiff’s vicarious copyright and trademark infringement claims against SEC (Counts II and VI) because the Complaint fails to include factual allegations establishing a required element for vicarious liability: that SEC controlled SEA’s alleged infringement. Although the Complaint includes conclusory allegations that SEC exercises the ordinary incidents of corporate parent-subsidary relationships (e.g., SEC “directly participates in and influences key business decisions of SEA” (Compl. ¶ 19)), the mere existence of a parent-subsidary relationship is insufficient to establish vicarious infringement liability. *In re Google Generative AI Copyright Litig.*, 809 F. Supp. 3d 903, 918 (N.D. Cal. 2025).

**1. Vicarious liability requires that SEC controlled the allegedly
infringing activity**

Both vicarious copyright and trademark infringement require that one party controls the alleged infringement of another. To state a claim for vicarious copyright infringement, “a plaintiff must establish that the defendant exercises the requisite control over the direct infringer” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d at 1173. The control element requires “both a legal right to stop or limit the directly infringing conduct, as well as the practical ability to do so.” *Id.*; *see also Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005) (“One . . . infringes vicariously by profiting from direct infringement while declining to exercise a right to stop or limit it.” (citations omitted)). “The tests for secondary trademark infringement are even more difficult to satisfy than those required to find secondary copyright infringement.” *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*, 494 F.3d 788, 806 (9th Cir. 2007). Vicarious trademark liability requires that “the defendant and the infringer have an apparent or actual partnership, have authority to bind one another in transactions with third parties or exercise joint ownership or control over the

1 infringing product.” *Id.* at 807 (quoting *Hard Rock Cafe Licensing Corp. v.*
2 *Concession Servs., Inc.*, 955 F.2d 1143, 1150 (7th Cir. 1992)).

3 The mere existence of a parent-subsidary relationship is insufficient as a matter
4 of law to establish the “control” required for vicarious copyright or trademark
5 infringement. *In re Google Generative AI Copyright Litig.*, 809 F. Supp. 3d at 918
6 (“[A] parent company may not be held vicariously liable for direct infringement by
7 its subsidiary solely by virtue of the ordinary control that any parent company may
8 exercise over its subsidiary.”). Thus, to state a claim for vicarious copyright or
9 trademark infringement, Plaintiff must plead facts showing that SEC possessed—and
10 had the practical ability to exercise—control over the alleged direct infringement. *Id.*
11 at 917 n.5 (“Plaintiffs also conflate the control that any parent company may exercise
12 over its subsidiary with the right and practical ability to supervise infringing
13 conduct.”).

14 A complaint offering only “labels and conclusions” or “a formulaic recitation
15 of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. The
16 Court is not “required to accept as true allegations that are merely conclusory,
17 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec.*
18 *Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). The Court does not have to ““assume the
19 truth of legal conclusions merely because they are cast in the form of factual
20 allegations.”” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (quoting *W.*
21 *Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Measured against these
22 standards, the Complaint’s control allegations are precisely the “formulaic recitation”
23 *Twombly* forecloses.

24 **2. Plaintiff fails to allege facts establishing SEC’s control of the**
25 **alleged infringement**

26 Plaintiff’s allegations of control to support vicarious liability fall into three
27 categories, none of which suffices to state a claim for relief: (1) reciting the legal
28 element without any factual content (e.g., alleging SEC “had the right, authority and

1 ability to control the infringing activities” (Compl. ¶ 53)); (2) describing an ordinary
2 parent-subsidary relationship (e.g., alleging SEC “exercises substantial control over
3 the operations and policies of SEA, Inc. and directly participates in and influences
4 key business decisions” (*id.* ¶ 19)); and (3) non-specific speculation “on information
5 and belief” (*id.* ¶¶ 19, 51, 78, 90).

6 Plaintiff’s recitation of the required legal element—that SEC exercised control
7 over SEA’s allegedly infringing conduct—does not suffice to state a claim for relief.
8 For example, as to vicarious copyright infringement, Plaintiff states her assumption
9 that SEC, as the parent corporation, can be presumed to have exercised “substantial
10 control over and direct participation and influence over key business decisions of its
11 subsidiary SEA, Inc.” Compl. ¶ 51. Similarly, the Complaint asserts that SEC must
12 also have exercised such control “with respect to the creation, approval, licensing, and
13 distribution of the Infringing Products” (*id.*) and further concludes, without any
14 factual allegations in support, that SEC “had the right, authority and ability to control
15 the infringing activities” (*id.* at ¶ 53). For her vicarious trademark infringement claim,
16 Plaintiff alleges—again without any factual allegations in support—that SEC and
17 SEA “exercise joint ownership and control over the Infringing Products” (*id.* at ¶ 88)
18 because SEC, again by definition as the parent entity, has “substantial control over
19 and direct participation and influence over key business decisions of its subsidiary
20 and agent SEA, Inc.” (*id.* at ¶ 89). Because these allegations do nothing more than
21 parrot the required control element for vicarious liability, without pleading any facts
22 in support, they do not state a plausible claim for relief. *Iqbal*, 556 U.S. at 678
23 (“Threadbare recitals of the elements of a cause of action, supported by mere
24 conclusory statements, do not suffice.”).

25 Where the Complaint ventures beyond repeating the bare legal control element,
26 it alleges only the unremarkable features of corporate ownership, which is insufficient
27 to establish vicarious liability. For example, Plaintiff alleges that SEC is “the parent
28 company of SEA, Inc.” and “exercises substantial control over the operations and

1 policies of SEA, Inc. and directly participates in and influences key business
2 decisions.” Compl. ¶¶ 18–19. But “a parent company may not be held vicariously
3 liable for direct infringement by its subsidiary solely by virtue of the ordinary control
4 that any parent company may exercise over its subsidiary.” *In re Google Generative*
5 *AI Copyright Litig.*, 809 F. Supp. 3d at 918.

6 A court in this Circuit recently rejected a materially more detailed set of
7 vicarious infringement allegations for the same reasons in *In re Google Generative*
8 *AI Copyright Litigation*. *Id.* at 915-20. In that case, the plaintiffs sought to hold
9 Alphabet vicariously liable for the alleged infringement of its subsidiary, Google. *Id.*
10 The plaintiffs alleged that Alphabet “exercises direct oversight and control over
11 Google’s [allegedly infringing] AI business and development activities.” *Id.* at 919
12 (citing Compl. ¶ 104). The plaintiffs also alleged that Alphabet maintained “both the
13 legal right and practical ability to supervise Google’s infringing activities” through a
14 shared CEO who “directs both entities’ strategic operations,” and exercised “direct
15 operational control over Google’s AI initiatives,” including orchestrating the merger
16 of the two units responsible for building the accused models. *In re Google Generative*
17 *AI Copyright Litig.*, No. 23-cv-03440-EKL, Dkt. No. 91 (Consolidated Class Action
18 Compl.), ¶ 184. The court held all of this insufficient because the “allegations do not
19 establish that Alphabet exercised greater control over Google than any parent
20 company may exercise over its subsidiary.” 809 F. Supp. 3d at 918. Plaintiff’s
21 allegations against SEC are far thinner than those found wanting in *In re Google*, and
22 fail for the same reason. Although *In re Google* addressed only vicarious copyright
23 infringement, the same logic applies *a fortiori* to vicarious trademark, which imposes
24 an even more demanding standard. *Perfect 10 v. Visa*, 494 F.3d at 806.

25 The closest Plaintiff’s Complaint comes to a factual allegation of control
26 beyond an ordinary parent-subsidiary relationship is its speculation “on information
27 and belief” that unidentified “officers of SEC, Ltd. have instructed SEA, Inc. to
28 continue the sale of the Infringing Products.” Compl. ¶¶ 19, 51, 78, 90. *See Rubke v.*

1 *Capitol Bancorp Ltd.*, 551 F.3d 1156, 1162 (9th Cir. 2009) (a plaintiff may not rely
2 on bare allegations pleaded "[b]ased on information and belief" without indicating
3 "on what facts this belief is formed"). That allegation does not suffice for at least two
4 reasons. First, like the balance of Plaintiff's control allegations, this assertion is
5 pleaded "on information and belief" without any specificity. Plaintiff does not plead
6 any facts identifying the officers, the instruction, or the surrounding circumstances.
7 Plaintiff merely speculates, presumably based on SEC and SEA's parent-subsidary
8 relationship, that unnamed SEC "officers" told SEA to continue the alleged
9 infringement. Pleading on information and belief is permissible where the facts are
10 peculiarly within the defendant's possession, or where the belief rests on factual
11 content that makes the inference plausible; it does not license a plaintiff to assert a
12 claim with no factual basis. *In re Google Generative AI Copyright Litig.*, 809 F. Supp.
13 3d at 921 n.10 (explaining case law permitting pleading "on information and belief"
14 does "not hold that a claim may be sustained absent any supporting factual
15 allegations"); *Sims v. Opportunity Fin., LLC*, No. 20-CV-04730-PJH, 2021 WL
16 1391565, at *8 (N.D. Cal. Apr. 13, 2021) (explaining pleading "on information and
17 belief" may be sufficient where the allegations are plausible based on "the entire
18 factual context" described in the complaint). Here, beyond SEC and SEA's parent-
19 subsidiary relationship, Plaintiff pleads no factual context rendering the Complaint's
20 "on information and belief" speculation about instructions from SEC to SEA
21 plausible.

22 Second, Plaintiff's speculation that unnamed SEC officers instructed SEA to
23 continue the alleged infringement does nothing to satisfy the higher required showing
24 for a vicarious trademark infringement claim. That cause of action requires that the
25 defendants have an "apparent or actual partnership," "authority to bind one another,"
26 or "joint ownership or control over the infringing product." *Perfect 10 v. Visa*, 494
27 F.3d at 807.

1 Thus, the Court should dismiss Plaintiff's vicarious liability claims (Counts II
2 and VI) because the only factual allegations in the Complaint establish an ordinary
3 parent-subsidiary relationship, which is insufficient to support vicarious liability.

4 **C. The Right of Publicity Claims (Counts VII and VIII) Fail to State a**
5 **Claim Because England Does Not Recognize a Right of Publicity**

6 The Complaint's right of publicity causes of action fail to state a claim because
7 choice-of-law principles dictate that English law must apply, and England does not
8 recognize a right of publicity.

9 California has not settled on a single choice-of-law framework for right of
10 publicity claims: some courts treat the right as a form of property, governed by
11 California's default choice-of-law rule for personal property; others apply
12 California's general governmental interest test, the default framework for tort and
13 statutory claims. The Court need not resolve which framework governs, because both
14 independently require the same result.

15 Under the personal property rule, Cal. Civ. Code § 946, the right of publicity,
16 as "a form of intellectual property," follows the domicile of its owner regardless of
17 where the challenged conduct occurred. *See* Section C.1, *infra*. Under the
18 governmental interest test, a three-step inquiry into whether the relevant laws differ,
19 whether a true conflict exists, and which jurisdiction's interest would be more
20 impaired, *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 107–08 (2006), the
21 same result follows because California has no interest in applying its law to conduct
22 involving a foreign domiciliary. *See* Section C.2, *infra*. Either doctrine, standing
23 alone, requires dismissal of Counts VII and VIII, which assert the same underlying
24 right and therefore rise or fall together on the choice-of-law inquiry.

25 Because Defendants contend foreign law governs, Defendants bear the burden
26 of identifying that law, showing it materially differs from California law, and showing
27 it furthers a foreign interest. *Frontier Oil Corp. v. RLI Ins. Co.*, 153 Cal. App. 4th
28 1436, 1465 (2007). Defendants meet that burden below.

1 **1. California’s default choice-of-law rule for personal property**
2 **independently requires application of English law**

3 Because the right of publicity is “a form of intellectual property,” California’s
4 default personal property choice-of-law rule governs which jurisdiction’s law applies:
5 “personal property is deemed to follow the person of its owner, and is governed by
6 the law of his domicile.” Cal. Civ. Code § 946. The Ninth Circuit has applied this
7 rule to hold that a foreign domiciliary’s right of publicity claim is governed by the
8 law of her domicile, not California’s, because the right is a property right that follows
9 its owner. In *Cairns v. Franklin Mint Co.*, Princess Diana’s estate brought right of
10 publicity claims against a U.S. supplier of commemorative memorabilia (e.g.,
11 jewelry, plates, and dolls) bearing the late Princess’s likeness. 292 F.3d 1139, 1147–
12 48 (9th Cir. 2002). The district court dismissed the case—and the Ninth Circuit
13 affirmed—holding that Princess Diana’s estate could not establish a right of publicity
14 claim under California law because Diana was domiciled in England, notwithstanding
15 that the challenged conduct occurred in California. *Id.* Although *Cairns* addressed
16 California’s post-mortem right of publicity statute, its reasoning rests on the property
17 character of the right, not on any feature unique to death or descent, and courts have
18 since applied the identical rule to a living person’s statutory right of publicity claim
19 under Cal. Civ. Code § 3344. *Lightbourne v. Printroom Inc.*, 307 F.R.D. 593, 599–
20 600 (C.D. Cal. 2015); accord *Davis v. Elec. Arts Inc.*, 775 F.3d 1172, 1179 (9th Cir.
21 2015).

22 Under this rule, the outcome does not depend on where Defendants distributed
23 or sold the allegedly infringing products, or on any weighing of California’s and
24 England’s respective interests; it depends only on Plaintiff’s domicile. As set forth in
25 Section C.3, *infra*, the Complaint’s own allegations establish that Plaintiff is
26 domiciled in the United Kingdom. England does not recognize a right of publicity,
27 whether statutory or at common law. *Love v. Associated Newspapers, Ltd.*, 611 F.3d
28 601, 610–11 (9th Cir. 2010). Accordingly, under § 946 alone, Plaintiff’s right of

1 publicity claims fail, without regard to the governmental interest analysis set forth in
2 Section C.2, *infra*.

3 **2. California’s governmental interest test independently**
4 **requires application of English law**

5 California and England’s right of publicity laws differ: California recognizes
6 both a statutory and common law right of publicity, and England recognizes neither.
7 *Love*, 611 F.3d at 610–11. That difference does not, however, create a true conflict,
8 which exists only when “both [jurisdictions] have a legitimate but conflicting interest
9 in applying its own law.” *Id.* at 610 (internal quotation marks omitted). California
10 has “no interest in applying its law to the conduct in question” where “[n]one of the
11 parties remaining in [the] suit is a citizen of California.” *Id.* California’s interest in
12 applying its right of publicity law extraterritorially rests on “safeguarding its citizens
13 from the diminution in value of their names and likenesses,” and attaches only where
14 the relevant injury is suffered “at the domicile of the celebrity or the location where
15 the image is exploited.” *Id.* at 610–11.

16 California is neither the Plaintiff’s domicile, nor the location of Defendants’
17 alleged unauthorized use of her likeness. Plaintiff is not, and does not allege she is, a
18 California citizen or a citizen of the United States, and as discussed in Section C.3,
19 *infra*, the Complaint’s factual allegations most plausibly support the conclusion that
20 she is domiciled in the United Kingdom specifically. Nor does the Complaint allege
21 that California is where Defendants’ actions were concentrated, as explained in
22 Section C.3, *infra*. Courts have accordingly recognized that California’s interest in
23 applying its right of publicity law to a claim by an out-of-state or foreign plaintiff is,
24 “at least, attenuated,” because a plaintiff’s own domicile has the more direct interest
25 in regulating conduct affecting its residents. *Lightbourne*, 307 F.R.D. at 599–600
26 (C.D. Cal. 2015); *cf. Page v. Something Weird Video*, 908 F. Supp. 714, 716–17 (C.D.
27 Cal. 1995) (applying California law where the plaintiff was herself a California
28 domiciliary, because “the state of plaintiff’s domicile usually has the most significant

1 relationship to the action”). Because Plaintiff satisfies neither basis on which
2 California has recognized an interest sufficient to create a true conflict, none exists
3 here.

4 Even if a true conflict existed, the same result would follow. England’s non-
5 recognition of the right of publicity is not a legislative void but a deliberate policy
6 choice: unlike Hawaii, which at the time relevant in *Downing v. Abercrombie & Fitch*,
7 265 F.3d 994, 1007 (9th Cir. 2001), had simply never enacted a right of publicity
8 statute, England has affirmatively declined to recognize one, reflecting a “policy
9 choice favoring unrestricted competition in the area of commercial exploitation of
10 names and likenesses.” *Love*, 611 F.3d at 611 (quoting *Bi-Rite Enters., Inc. v. Bruce*
11 *Miner Co.*, 757 F.2d 440, 445 (1st Cir. 1985)). England, accordingly, has a direct and
12 substantial interest in defining the scope of protection, if any, available to its own
13 citizens against exactly this kind of claim, an interest that would be far more impaired
14 by applying California law than California's interest would be by declining to do so.
15 *Cf. id.* (“Even if [plaintiff's] commercial interests in California did create a true
16 conflict, England's interests would be much more greatly impaired by a failure to
17 apply English law.”).

18 **3. The Complaint’s own allegations establish that Plaintiff is**
19 **domiciled in the United Kingdom**

20 The Complaint alleges that “Dua Lipa is an individual residing outside of the
21 United States.” Compl. ¶ 16. While this allegation does not identify a specific
22 country, the Complaint’s own factual allegations elsewhere resolve any ambiguity.
23 Paragraph 2 alleges that Plaintiff’s 2020 album “was the number one album in the
24 UK,” that her 2024 album “debuted at number one on the UK Albums Chart,” that
25 she has won “seven Brit Awards,” conferred exclusively by the British Phonographic
26 Industry, and that she has been “prominently featured on the cover of” publications
27 including “British GQ.” Compl. ¶ 2. These are the specific national and cultural
28 touchstones Plaintiff chose to plead to establish the value of the identity she alleges

1 Defendants misappropriated. Read together with paragraph 16's allegation of
2 residence outside the United States, the only plausible conclusion the Court can draw
3 from the Complaint's own well-pled allegations is that Plaintiff is domiciled in the
4 United Kingdom.

5 By contrast, the Complaint alleges no comparable connection between Plaintiff
6 and California. It does not allege that Plaintiff is domiciled in California, resides in
7 California, or conducts business in California. While the Complaint alleges, for
8 jurisdictional purposes, that Defendants distribute and sell the allegedly infringing
9 products "throughout California, including in this judicial district," Compl. ¶ 17, that
10 allegation describes Defendants' general nationwide business operations, not any
11 connection specific to Plaintiff. It does not purport to allege that California was a
12 distinctive or disproportionate market for the allegedly infringing products as opposed
13 to any other state in which Defendants also do business.

14 **D. The entire Complaint must be dismissed as an impermissible**
15 **shotgun pleading**

16 The Court should dismiss the entirety of Plaintiff's Complaint because it fails
17 to provide fair notice of the allegations that apply to each Defendant and that apply to
18 each cause of action. Instead, the Complaint attributes the alleged conduct
19 indiscriminately to multiple defendants and incorporates every preceding allegation
20 and cause of action into each successive count. This "shotgun" pleading style violates
21 the Federal Rules of Civil Procedure, as confirmed by the Ninth Circuit. *See Gibson*
22 *v. City of Portland*, 165 F.4th 1265, 1288 (9th Cir. 2026) (cataloguing varieties of
23 "shotgun pleading") (citing Fed. R. Civ. P. 8(a)(2), 10(b)-(c)). The Federal Rules
24 require a complaint to set forth "a short and plain statement of the claim showing that
25 the pleader is entitled to relief" as well as a "demand for the relief sought." Fed. R.
26 Civ. P. 8(a)(2). Rule 10 requires that "[i]f doing so would promote clarity, each claim
27 founded on a separate transaction or occurrence . . . be stated in a separate count."
28 Fed. R. Civ. P. 10.

1 Based on these rules, the Ninth Circuit recently catalogued various forms of
2 impermissible shotgun pleading, including two that apply here: (i) a complaint that
3 “asserts multiple claims against multiple defendants without specifying which of the
4 defendants are responsible for which acts or omissions” and (ii) “a complaint
5 containing multiple counts where each count adopts the allegations of all preceding
6 counts.” *Gibson*, 165 F.4th at 1288 (stating that shotgun pleadings not only make it
7 “difficult, if not impossible,” for the defendant to respond, but also “waste scarce
8 judicial resources, inexorably broaden the scope of discovery, wreak havoc on
9 appellate court dockets, and undermine the public’s respect for the courts”) (citation
10 omitted). Although incorporation by reference is permitted, indiscriminate
11 incorporation violates Rule 8. *Id.* The question is whether the pleading gives the
12 parties and the Court sufficient notice, and “[f]actual allegations, however detailed,
13 must be tied to corresponding causes of action.” *Id.* at 1290, 1293. Plaintiff’s
14 Complaint falls within both of these categories of shotgun pleading from *Gibson*.

15 **1. The Complaint fails to specify which defendant allegedly did**
16 **what**

17 First, the Complaint impermissibly commingles allegations against multiple
18 defendants without specifying which allegedly did what. Counts I, III, IV, VII, and
19 VIII assert direct liability against “All Defendants” but do not distinguish their
20 conduct. Throughout the Complaint, Plaintiff attributes the allegedly wrongful
21 conduct to “Samsung” or “Defendants” collectively, rather than separately identifying
22 the acts of SEA, SEC, and the unnamed “Doe Defendants” (as to whom the Complaint
23 fails to identify or attribute any particular action). *See, e.g.*, Compl. ¶¶ 5–15, 31–37,
24 43–48, 62–67, 70–75, 98–104, 107–112. In particular, the core liability allegations
25 in Counts I, III, IV, VII, and VIII assert that “Defendants” committed the relevant acts
26 without identifying which Defendant did what. *Id.* ¶¶ 43, 62, 70, 98, 107.

27 Those omissions are significant because the Complaint assigns SEA and SEC
28 different roles: SEA is the U.S. sales and marketing subsidiary, while SEC is the

1 Korean parent allegedly acting through subsidiaries and exercising control over SEA.
2 *Id.* ¶¶ 17–19. Collective allegations may suffice when defendants allegedly engaged
3 in “precisely the same conduct,” *United States v. United Healthcare Ins. Co.*, 848
4 F.3d 1161, 1184 (9th Cir. 2016), but the Complaint’s rare entity-specific allegations
5 do not say that SEA and SEC did so here. Its blanket assertion that each Defendant
6 acted in concert and was every other Defendant’s agent, affiliate, alter ego, and
7 employee supplies no facts identifying who did what. Compl. ¶ 21.

8 This case thus closely resembles *Khachatryan v. 1 Hotel West Hollywood LLC*,
9 where the court granted a motion to dismiss because the complaint alleged that three
10 related entities used a photograph in advertising but repeatedly attributed the conduct
11 to “Defendants” without identifying which entity committed each act. No. 2:23-cv-
12 10829-ODW (Ex), 2024 WL 3015504, at *9 (C.D. Cal. June 14, 2024). Similarly, in
13 *Modern Floor Specialists, Inc. v. City of Los Angeles*, the court applied *Gibson* to
14 dismiss a complaint asserting eleven claims against multiple defendants that did not
15 identify which defendant misappropriated trade secrets, participated in the alleged
16 conspiracy, or was subject to each particular claim. No. 2:25-cv-04765-ODW (JPRx),
17 2026 WL 915292, at *3–4 (C.D. Cal. Apr. 3, 2026). The same notice problem exists
18 here: the Court and Defendants must infer an entity-by-entity theory from allegations
19 directed to a collective term.

20 For each of these counts, and Count I in particular, this defect is independently
21 fatal to a required element: direct copyright infringement requires “volitional
22 conduct” that “can reasonably be described as the **direct cause** of the infringement.”
23 *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017) (emphasis
24 added). The Complaint’s failure to identify which entity did what leaves that element
25 unpled as to both SEA and SEC. Compl. ¶ 43.

1 **2. The Complaint indiscriminately incorporates allegations by**
2 **reference**

3 Second, Plaintiff's Complaint constitutes impermissible shotgun pleading
4 because each of its eight counts incorporates every preceding paragraph, including
5 every prior cause of action. *See* Compl. ¶¶ 41, 49, 60, 68, 76, 86, 96, 105; *see also*
6 *Gibson*, 165 F.4th at 1288 (describing one variant of "shotgun pleading" as "a
7 complaint containing multiple counts where each count adopts the allegations of all
8 preceding counts, causing each successive count to be a combination of the entire
9 complaint"). As a result, each successive count contains allegations and legal
10 conclusions irrelevant to the claim asserted, obscuring which allegations are material
11 to it. By Count VIII, for example, Plaintiff has swept in all 104 preceding paragraphs,
12 including unrelated allegations supporting her copyright and trademark theories in
13 Counts I through VI, none of which bear on her right of publicity claim. Compl. ¶
14 105. Likewise, Count VII incorporates the previous allegations of vicarious copyright
15 and trademark infringement (Counts II and VI) and contributory trademark
16 infringement (Count V) against SEC, none of which are germane to the right of
17 publicity counts. *See Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*,
18 305 F.3d 1293, 1295 (11th Cir. 2002) (successive incorporation causes later counts to
19 contain "irrelevant factual allegations and legal conclusions"); *Magluta v. Samples*,
20 256 F.3d 1282, 1284–85 (11th Cir. 2001) (condemning incorporation of preceding
21 counts where allegations material to a particular claim were buried among allegations
22 that could not be material to that claim).

23 The Court should therefore dismiss the Complaint in its entirety under Rules 8
24 and 10.

25 **IV. CONCLUSION**

26 For the foregoing reasons, Defendants respectfully request that the Court
27 dismiss the Complaint in its entirety.

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Dated: September 10, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd. (collectively, “Defendants”), certifies that this brief contains 6,994 words, which complies with the word limit of L.R. 11-6.1.

/s/ Thad C. Kodish
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