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VIA ECF AND FACSIMILE

Honorable Justice Shirley W. Kornreich
New York Supreme Court, Commercial Division
60 Centre Street, Room 555
New York, NY 10007

Re: *Gottwald et al. v. Sebert et al.*, Index No. 653118/2014 (N.Y. Sup. Ct.)

Dear Justice Kornreich:

Pursuant to the Court's April 13, 2017 Order [Dkt. No. 825], I write on behalf of Kemosabe Records, LLC ("Kemosabe Records") to request that the Court enter an Order dismissing the first counterclaim against it. Kemosabe Records is wholly-owned by Sony Music Entertainment. Lukasz Gottwald is no longer the CEO of Kemosabe Records and does not have authority to act on its behalf.

Kesha has agreed to voluntarily discontinue her first counterclaim against Kemosabe Records, the only claim remaining against Kemosabe Records in this case.[1] Mr. Gottwald, Kasz Money, Inc. ("KMI"), Prescription Songs, LLC, and Kemosabe Entertainment, LLC (collectively, the "Gottwald Parties") object, claiming Kemosabe Records is a necessary party to the first counterclaim. This objection is misplaced.

There are two agreements implicated in Kesha's first counterclaim: (1) a recording agreement between Kesha and KMI, **to which Kemosabe Records is not a party** (the "Agreement"); and an Artist's Assent and Guaranty (the "Assent"), which is a separate agreement between Kesha and Kemosabe Records (assignee of RCA/Jive, a Label Group of Sony Music Entertainment), by which Kesha agrees to the furnishment of her services by KMI to RCA/Jive (now, through an assignment, Kemosabe Records). The Assent provides that: "If, during the term of the Agreement, [KMI] for any reason ceases to be entitled to [Kesha's] services or . . . fails or refuses to furnish to RCA the Artist's services . . .: (i) [Kesha] will be deemed substituted for [KMI] as party to the Agreement. Dkt. No. 336, ¶ 70. Accordingly, Kesha seeks a declaratory judgment that (1) "the agreement between [Kesha] and [KMI] has been terminated," and (2) "[Kesha] has stepped into the shoes of [KMI] in regards to the Assent agreement between [KMI] and SME." *Id.*, ¶ 73.

Pursuant to the plain language of paragraph 3 of the Assent, Kesha and Kemosabe Records agree that *if* the Court concludes that KMI loses its entitlement to Kesha's services, or fails to furnish them to Kemosabe Records, Kesha will step into the shoes of KMI. This is an outcome

[1] On April 13, 2017, this court granted Kesha leave to discontinue her first amended counterclaim against Sony Music Entertainment. Order, *Gottwald v. Sebert*, No. 653118/2014 NYSCEF No. 823. Kemosabe Records is thus the only one of the "Sony Parties" that remains in this case.

to which KMI agreed in a separate Recording Agreement between KMI and Kemosabe Records (assignee of RCA/Jive, a Label Group of Sony Music Entertainment). Importantly, the Court is not being asked to alter or change the terms of the Assent in any way. Rather, the Court is solely being asked to determine whether the Agreement between Kesha and KMI has been terminated. As it is not even a party to that Agreement, Kemosabe Records does not need to be a party to the action for the Court to make that determination.

CPLR 1001(a) mandates joinder of a party in two situations: (1) where that party is necessary "if complete relief is to be accorded between the persons who are parties to the action;" or (2) where the unnamed party "might be inequitably affected by a judgment in the action." N.Y. C.P.L.R. § 1001. Neither situation is applicable here.

1. Kemosabe Records is not necessary to afford complete relief to Kesha on her first counterclaim. Specifically, Kemosabe Records's absence from the current action would not affect the Court's ability to issue a declaration as to whether the agreement between Kesha and KMI has been terminated. Kemosabe Records is not a party to that agreement, and takes no position on whether it has been terminated. Moreover, Kesha has conceded she no longer seeks relief against Kemosabe Records by agreeing to dismiss it from the action. Because Kesha does not seek relief as against Kemosabe Records, it is not a necessary party.

2. Kemosabe Records would not be inequitably affected by its dismissal from the case. "The language of the CPLR clearly does not allow joinder of all persons who might feel some effect or impact from a judicial order or judgment; rather, the Legislature limited participation in lawsuits to those who might be affected 'inequitably.'" *Awwad v. Capital Region Otolaryngology Head & Neck Grp.*, LLP, 2007 WL 4623509 at *10 (Sup. Ct. Albany Cnty. 2007). In New York, it is not inequitable to proceed with litigation where a non-party is presented with—but rejects—the opportunity to participate in litigation that might impact its rights. *Saratoga Cty. Chamber of Commerce, Inc. v. Pataki*, 798 N.E.2d 1047, 1059 (N.Y. 2003) (excusing non-joinder where non-party had opportunity to participate); *L-3 Commc'ns Corp. v. SafeNet, Inc.*, 45 A.D.3d 1, 13 (1st Dep't 2007) (the deliberate choice not to participate in New York litigation "mitigates any prejudice that exists under the second factor [of CPLR § 1001(a)]."). Kemosabe Records represents to the Court that it will not be inequitably affected by its dismissal from the case; it is therefore not a necessary party.

Notably, "[t]he primary reason for compulsory joinder of parties is to avoid multiplicity of actions and to protect nonparties whose rights should not be jeopardized if they have a material interest in the subject matter." *Joanne S. v. Carey*, 115 A.D.2d 4, 7 (1st Dep't 1986). Neither of those purposes will be impacted by the dismissal of Kemosabe Records.

Kemosabe Records respectfully requests that this Court discontinue Kesha's first counterclaim against it.

Respectfully,

/s/ Scott A. Edelman

Scott A. Edelman

cc: All counsel of record (via ECF)