

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ABRAHAM BEST,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 2:20-cv-2062
)	
VISIBLE MUSIC COLLEGE,)	
)	
Defendant.)	

DEFENDANT VISIBLE MUSIC COLLEGE’S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1338, and 1454, Defendant VISIBLE MUSIC COLLEGE (“VMC”) hereby removes this civil action from the Circuit Court of Shelby County, where it is currently pending as Case No. CT-5494-19. In support thereof, VMC respectfully submits as follows:

1. On December 18, 2019, Plaintiff commenced an action styled *Abraham Best v. Visible Music College*, Case No. CT-5494-19, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis (the “Action”). A true and correct copy of the Complaint in the Action is attached as **Exhibit A**.

2. On December 26, 2019, VMC was served with a copy of the Complaint in the Action.

3. The Action is a civil action that is removable under 28 U.S.C. § 1454.

4. Specifically, this Court has subject matter jurisdiction under 28 U.S.C. § 1338 which confers original jurisdiction on the district courts of “any civil action arising under any Act of Congress relating to patents, plant variety protection, **copyrights**, and trademarks.” 28 U.S.C.

§ 1338(a) (emphasis added); *see also* 28 U.S.C. § 1331 (district courts have original jurisdiction “over all civil actions arising under the Constitution, laws, or treaties of the United States”).

5. Plaintiff alleges a claim for “negligence” in his Complaint on the basis that VMC “caused and assisted in Plaintiff’s work being used improperly.” *See* Complaint at ¶ 37. Plaintiff further claims that his work (consisting of his “writings”) was “exploited,” “used without his permission,” and “used improperly.” Complaint at ¶¶ 11, 37-39. This language is prototypical of a copyright claim. *See, e.g., Richlin v. MGM Pictures, Inc.*, 531 F.3d 962, 964 n.2 (9th Cir. 2008) (“In exchange for securing the exclusive right to exploit his work that federal copyright accords, the author agrees that he will enjoy this monopoly for the limited duration Congress granted in the Copyright Acts”); *Rimini St., Inc. v. Oracle Int’l Corp.* No. 2:14-CV-01699-LRH-PAL, 2015 U.S. Dist. LEXIS 89295, at *9 n.2 (D. Nev. July 9, 2015) (“The essence of the grant of a copyright is the exclusive right to exploit the work, including the rights to reproduce the work, distribute copies of the work, and prepare derivative works based upon the copyrighted material.”) (citing 17 U.S.C. § 106).

6. Although Plaintiff does not explicitly cite to the Copyright Act, “a plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint.” *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 22 (1983).

7. This Court has supplemental jurisdiction over the claims in this action that arise under the laws of the State of Tennessee pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claim that they form part of the same case or controversy and derive from a common nucleus of operative facts.

8. Accordingly, this action is properly removed to the United States District Court for the Western District of Tennessee, Western Division, which is “the district and division embracing

the place where [the] action is pending.” 28 U.S.C. § 1441(a); 28 U.S.C. § 123(c)(2) (listing Shelby County as falling within the Eastern Division of the Western District of Tennessee).

9. Pursuant to 28 U.S.C. § 1446(d), promptly after the filing of this notice of removal VMC will give written notice thereof to all adverse parties and shall file a copy of the notice with the Clerk of the Circuit Court of Shelby County, Tennessee.

Respectfully submitted,

**LEWIS, THOMASON, KING,
KRIEG & WALDROP, P.C.**

s/ Isaac S. Lew

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail through the CM/ECF system on this 27th day of January, 2020, on all counsel of record on the service list below.

s/ Isaac S. Lew

Isaac S. Lew

Service List

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