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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 IN THE MATTER OF A DOCUMENT)
23 SUBPOENA TO 1000 VAN NESS LP)
24 SERVED IN:)

25 APPLE INC.,)

26 Plaintiff,)

27 v.)

28 SAND MEDIA CORP INC, APPLE)
CINEMAS DANVILLE INC., APPLE)
CINEMAS VAN NESS INC, JAAS MEDIA)
INC., APPLE CINEMAS GREECE RIDGE)
INC, APPLE CINEMAS HARTFORD,)
INC, APPLE CINEMAS PITTSFORD INC,)
APPLE CINEMAS SIMSBURY INC,)
APPLE CINEMAS TORRINGTON INC,)
APPLE CINEMAS VII, INC, APPLE)
CINEMAS WARWICK, INC, APPLE)
CINEMAS WATERBURY INC, APPLE)
CINEMAS RIVERVIEW PLAZA INC.,)
APPLE CINEMAS WHITE PLAINS INC.)

Defendant.)

CASE NO. 3:26-MC-80021

[RELATED TO CASE NO 1:25-CV-12173
PENDING IN THE DISTRICT OF
MASSACHUSETTS]

**APPLE INC.’S NOTICE OF MOTION AND
MOTION TO COMPEL SUBPOENA
COMPLIANCE OR FOR TRANSFER
WITH SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES**

1 TO ALL PARTIES AND COUNSEL OF RECORD:

2 Please take notice that at a date and time to be determined, Petitioner Apple Inc. (“Apple”) will
3 and hereby does move the Court pursuant to Fed. R. Civ. P. 45, Fed. R. Civ. P. 37, and Civil L.R. 37-2
4 for an order:

5 (1) Compelling 1000 Van Ness LP to comply with Apple’s subpoena dated and successfully
6 served on October 17, 2025; or, in the alternative

7 (2) Transferring this motion to the District of Massachusetts pursuant to Fed. R. Civ. P. 45(f).

8 This motion is based on the present Notice of Motion, along with the concurrently filed
9 Memorandum of Points and Authorities and supporting declarations and exhibits submitted to the Court
10 and such other matters as may be considered at the hearing.

11 DATED: January 29, 2026

Respectfully submitted,

12 By: /s/ Yan-Xin Li

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1 Apple Inc. (“Apple”) respectfully moves this Court to enforce a subpoena duces tecum (the
2 “Subpoena”) to 1000 Van Ness LP (“1000 Van Ness”), the landlord of a movie theater location (the
3 “Apple Cinemas Van Ness Location”), in the underlying litigation against Defendant Sand Media Corp
4 Inc and its affiliates (collectively “Defendants” or “Sand Media”), *Apple Inc. v. Sand Media Corp Inc, et*
5 *al.*, Case No. 1:25-CV-12173 (D. Mass. 2025) (the “Underlying Action”) pending before Chief Judge
6 Denise J. Casper in the District of Massachusetts.

7 I. INTRODUCTION

8 Simply *ignoring* a valid subpoena seeking highly relevant documents is not an acceptable response
9 under Federal Rule of Civil Procedure 45. Yet that is precisely what 1000 Van Ness did here.

10 1000 Van Ness is the landlord that owns and leases a property where Defendants are operating a
11 movie theater called Apple Cinemas. This theater is of critical importance to the Underlying Action.
12 Apple asserts that Defendants engaged in widescale trademark infringement by using Apple’s world-
13 famous APPLE trademarks in connection with APPLE CINEMAS branded movie theaters. Until recently,
14 Defendants had not operated Apple Cinemas outside of a few suburbs and city outskirts in New England.
15 But Defendants have since changed tactics, rapidly expanding their movie theaters under the infringing
16 trademarks on a national scale and publicizing the expansion through the press and social media. A
17 cornerstone of Defendants’ recent expansion is the Apple Cinemas Van Ness Location, located less than
18 fifty miles from Apple’s flagship headquarters in Cupertino, California. The opening of the Apple
19 Cinemas Van Ness Location was accompanied by a media blitz. Many San Francisco publications covered
20 the opening, and San Francisco Mayor Daniel Lurie even announced the theater’s arrival in San Francisco
21 on social media. All this media attention also highlighted how using the name “Apple,” particularly in
22 connection with a San Francisco location, would inevitably cause consumer confusion. Multiple San
23 Francisco publications wrote stories describing the opening even felt the need to explain that Apple
24 Cinemas is not affiliated with Apple.

25 Central questions in the Underlying Action include the likelihood that consumers will be
26 confused about the source, sponsorship, or affiliation of Apple Cinemas, and whether Apple Cinemas
27 was able to leverage the Apple name in lease negotiations with landlords, like 1000 Van Ness.
28 Accordingly, on October 17, 2025, Apple served 1000 Van Ness with a subpoena containing narrowly

1 tailored document requests aimed at discovering this relevant information, including information related
2 to consumer confusion and the value that the APPLE brand brings to the location. 1000 Van Ness did
3 not respond to the Subpoena at all. In fact, it has refused to engage in any communications about the
4 Subpoena whatsoever. 1000 Van Ness has not served any objections in response to the Subpoena. It
5 has not produced a single document. It has not moved to quash. And it has not responded to any of
6 Apple's correspondence, ignoring a pre-litigation letter, a preservation letter, two follow-up letters and
7 emails about its failure to comply with the subpoena, and a phone call and voice mail asking for a
8 response. In short, Apple has spent multiple months attempting to contact 1000 Van Ness in a concerted
9 effort to resolve the issue out of court. Instead of responding, 1000 Van Ness has done nothing,
10 choosing to disregard the Subpoena rather than follow Federal Rule of Civil Procedure 45, all while
11 continuing to lease space to the infringing Apple Cinemas in San Francisco. As a result, Apple had no
12 choice but to seek court intervention. Apple respectfully requests that the Court compel 1000 Van Ness
13 to fully comply with the Subpoena and produce all documents responsive thereto or, in the alternative,
14 transfer this Motion to the District of Massachusetts pursuant to Federal Rule of Civil Procedure 45(f).

15 **II. STATEMENT OF RELEVANT FACTS**

16 Apple brought this trademark infringement case against the companies that operate Apple Cinemas
17 in response to an aggressive nationwide expansion of Defendants' movie theaters. The Apple Cinemas
18 Van Ness Location, a San Francisco theater located less than 50 miles from Apple, was a central part of
19 Defendants' nationwide expansion and attendant media campaign.

20 Since its founding in 1976 in Los Altos, California, Apple has offered consumers a wide range of
21 innovative goods and services under its famous APPLE house brand, logo (), and numerous
22 trademarks containing the word APPLE (collectively, the "APPLE Marks"). Movies have long been part
23 of the Apple brand. In fact, over the past two decades, Apple has become one of the world's largest
24 distributors of motion pictures and other entertainment content through its award-winning products and
25 services such as Final Cut Pro, iTunes, Apple TV, iMovie, and Apple Vision Pro. Apple has held
26 numerous events in connection with the Tribeca Film Festival and conducts film screenings at its various
27 Apple Stores. In recognition of Apple's well-known APPLE Marks, the United States Patent and
28

1 Trademark Office has issued Apple dozens of trademark registrations, including a registration for APPLE
2 CINEMA DISPLAY, among a host of other marks.

3 Defendants own and operate movie theaters under the name APPLE CINEMAS. They also
4 provide a specialized screen and sound experience at certain locations called ACX—APPLE
5 CINEMATIC EXPERIENCE. Based on news reports and historic preservations of the applecinemas.com
6 website, Apple Cinemas started in New England with minimal fanfare, no logo, and a basic website.
7 Indeed, Defendants opened no other theaters from 2016 to 2018, and in 2023 they closed more theaters
8 than they opened. That changed in 2024, when Defendants undertook a rapid, nationwide expansion of
9 Apple Cinemas theaters, transforming themselves from a small regional brand to a nascent national brand.
10 Part of that strategy involves expanding to new locations and shifting focus toward opening theaters in
11 traditional malls (as opposed to strip malls or standalone buildings). This is significant, as mall owners
12 have long coveted having Apple retail stores as anchor tenants. Moreover, unlike the original Apple
13 Cinemas theaters, Defendants’ new theaters routinely feature an apple logo, much like the logo Apple uses
14 at its own stores.

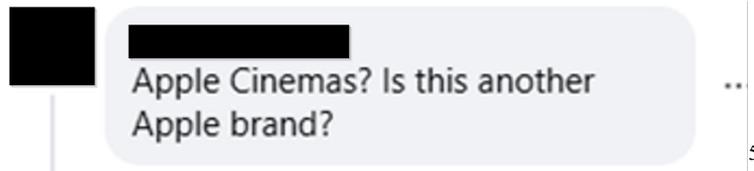
15 A key part of Defendants’ expansion strategy was the opening of the Apple Cinemas Van Ness
16 Location. 1000 Van Ness owns the property located at 1000 Van Ness Ave, San Francisco, California
17 94109. On or about July 10, 2025, Defendants announced plans to open an Apple Cinemas movie theater
18 at the 1000 Van Ness property. James Kilpatrick, “an investor” in 1000 Van Ness, stated that Defendants
19 would be paying “less than a third” of what the previous lessee of the theater paid, indicating that
20 Defendants were able to secure a substantial deal on the property.¹

21 On June 25, 2025, Apple sent 1000 Van Ness a letter explaining that “Sand Media’s use of the
22 APPLE CINEMAS name and an apple-shaped logo in connection with cinema services” at the Apple
23 Cinemas Van Ness Location “is likely to mislead consumers and diminish the distinctiveness and strength
24 of the Apple Marks.” Apple requested “written confirmation” that 1000 Van Ness LP would “not use the
25 APPLE name, an apple-shaped logo, or any marks confusingly similar to or dilutive of the Apple Marks”
26 at the property. 1000 Van Ness did not respond to that letter in any capacity.

27 ¹ [https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-
28 20376086.php](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-20376086.php)

1 Meanwhile, Defendants tapped many prominent media sources and members of the local
 2 community to promote the opening of the Apple Cinemas Van Ness Location. This included a post on
 3 social media by San Francisco Mayor Daniel Lurie and coverage by ABC7,² the *San Francisco*
 4 *Chronicle*,³ and local news website *SFist*.⁴ According to news reports, Defendants opened the San
 5 Francisco theater on or about July 10, 2025.

6 The Apple Cinemas Van Ness Location’s opening caused rampant confusion. The comment
 7 sections of articles and social media posts promoting the new Apple Cinemas opening are full of questions
 8 from the public. For example, one user responded to the announcement of the San Francisco location, “Is
 9 this another Apple brand?”



13 Exacerbating the problem, consumers have noted numerous quality issues with the Apple Cinemas
 14 Van Ness Location. From complaints about rude customer service, to messy bathrooms and theaters, to
 15 malfunctioning technology, many customers have felt that Defendants’ theater is “sinister” and a
 16 “[h]orrible experience from start to finish.”⁶

21 ² [https://abc7news.com/post/san-francisco-getting-new-movie-theater-vacated-van-ness-](https://abc7news.com/post/san-francisco-getting-new-movie-theater-vacated-van-ness-buildingreport/16769960/)
 22 [buildingreport/16769960/; https://www.msn.com/en-us/news/technology/san-francisco-getting-new-](https://www.msn.com/en-us/news/technology/san-francisco-getting-new-movie-theater-atvacated-van-ness-building-mayor-lurie-says/ar-AA1GR9b4)
 23 [movie-theater-atvacated-van-ness-building-mayor-lurie-says/ar-AA1GR9b4](https://www.msn.com/en-us/news/technology/san-francisco-getting-new-movie-theater-atvacated-van-ness-building-mayor-lurie-says/ar-AA1GR9b4)

23 ³ [https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-20376086.php)
 24 [20376086.php](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-20376086.php)

24 ⁴ [https://sfist.com/2025/07/09/former-amc-van-ness-1000-movie-theater-reopens-this-weekend-as-](https://sfist.com/2025/07/09/former-amc-van-ness-1000-movie-theater-reopens-this-weekend-as-applecinemas-van-ness/)
 25 [applecinemas-van-ness/; https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-opening-20762805.php)
 26 [francisco-opening-20762805.php](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-opening-20762805.php)

26 ⁵ <https://www.facebook.com/reel/706561949028963>

27 ⁶ <https://share.google/B1ISUhHUMLv9gmfGP>; <https://share.google/7yBIY4ipmmo8mOodI>;
 28 <https://share.google/v6qVMKRiSp1ZVbeyi>

 Christina Owen
4 reviews 

This used to be my favorite theater in the city. Spacious, labyrinthine, fascinating, beautiful building, chill and friendly employees.
Now it sucks! What a tragedy. I got screamed at by an employee the second I walked in and it was all downhill from there. I think there's a new manager and god knows what they're doing to the kids that work there. Go literally anywhere else. Something sinister is going on.

 Hover to react 

7

★★★★★ 4 months ago

Horrible experience from start to finish. The sound in the theatre was extremely loud—so loud we couldn't even understand the dialogue. It was physically uncomfortable and gave us a headache within minutes. We politely informed the manager, but instead of addressing the issue, they actually increased the volume. We left just 10 minutes into the movie.
The concessions were equally disappointing—no real food options, just candy, some soft drinks, and popcorn that looked (and tasted) old and stale. Escalators were partly out of service, and the staff seemed disorganized and confused.
A complete waste of time and money. Definitely won't be returning.

  2 

8

★★★★★ a month ago

I will not return here. It appears to be experimenting with a nearly human-free "automated" experience... as in they try to run it with as few ppl as possible. When the tech breaks, there are few ppl to help. When I was there this week it happened. The IMAX screen broke down. The popcorn machine broke down. The soda machine broke down. And nothing could be done. I had a fandango ticket so they couldn't even refund me. (And I'm still waiting for fandango to refund me, since they can't do it if you request refund after movie start time!) Tricia, the nice human being on premises was trying to juggle 800 things and was very nice and kept her cool, which I appreciate. I sympathized with her situation. It wasn't her fault I was out \$30 in round trip uber rides. What a disappointment.

This was my 2nd and last strike here. I came a month earlier and was disappointed they had stale popcorn, messy lobby areas, and lots of signage that they would be upgrading their seats "soon..."

Those seats have not been upgraded as of this week :/

9

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 It harms Apple’s brand and reputation when consumers attribute issues such as these to Apple, particularly
2 as Apple is a technology company, and many of Defendants’ complaints pertain to their “nearly human-
3 free ‘automated’ experience” and broken “tech.”¹⁰

4 Against this backdrop of expansion and the resulting confusion it has caused, Apple had no choice
5 but to act to enforce its rights. On August 1, 2025, Apple filed suit against Defendants in the District of
6 Massachusetts. *See* Plaintiff Apple Inc.’s Complaint, *Apple Inc. v. Sand Media Corp Inc, et al.*, Case No.
7 1:25-CV-12173 (D. Mass. 2025), Dkt. No. 1. To obtain relevant discovery, Apple subpoenaed Apple
8 Cinemas’ landlords. Apple initially identified 1000 Van Ness as a landlord through a San Francisco
9 Chronicle published an article stating that “Apple Cinemas, a small East Coast-based chain that opened
10 its first theater in 2013, signed a lease with the building’s owners, a partnership called 1000 Van Ness LP,
11 in June.”¹¹ Defendants would later identify 1000 Van Ness LP as its landlord in their responses to
12 interrogatories served by Apple, which asked Defendants to identify all of Apple Cinemas’ landlords.
13 Apple obtained contact information for 1000 Van Ness from the California Secretary of State’s website,
14 1000 Van Ness’ registered agent is “Mia Aceves” at 1 Embarcadero Center, Suite 1200, San Francisco,
15 CA 94111.¹² Apple also found an email address and contact information for John Kilpatrick, a partner in
16 1000 Van Ness, through articles and business profiles.

17 On September 8, 2025, Apple sent 1000 Van Ness LP a letter informing it that it “likely has
18 documents relevant to the” lawsuit and demanding that 1000 Van Ness “preserve all documents and
19 communications.” Declaration of Miranda D. Means, Dated January 29, 2026 (“Means Decl.”) Exhibit 1
20 (Preservation Letter). 1000 Van Ness, again, did not respond in any capacity.

21 On October 17, 2025, 1000 Van Ness was validly served with the Subpoena. *See* Means Decl.
22 Exhibit 2 (1000 Van Ness Document Subpoena). Apple’s process server served Peter Pokalsky,
23 community manager for the 1000 Van Ness property, at 1 Embarcadero Center, Suite 1200, San Francisco,
24 California 94111. Means Decl. Exhibit 3 (Affidavit of Service). The Subpoena was served at the address

25 ¹⁰ *Id.*

26 ¹¹ [https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-opening-
27 20762805.php](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-opening-20762805.php)

28 ¹² <https://bizfileonline.sos.ca.gov/search/business>

1 for 1000 Van Ness’s designated agent based on a search of the California Secretary of State website. The
2 Subpoena requested documents highly relevant to this litigation, including documents concerning
3 “whether customers would and/or did confuse or associate” Defendants’ movie theaters with Apple’s
4 goods and services, as well as documents concerning “whether the name ‘Apple Cinemas’ would draw
5 consumers” to 1000 Van Ness. *Id.* The Subpoena requested the production of documents on or before
6 November 7, 2025. *Id.* 1000 Van Ness, again, did not respond in any capacity.

7 On November 14, 2025, Apple sent 1000 Van Ness yet another letter explaining that “1000 Van
8 Ness LP must comply with the aforementioned subpoena” and requested that 1000 Van Ness LP “respond
9 by no later than November 21, 2025 with the requested documents in their entirety.” Means Decl. Exhibit
10 4 (11/14/2025 Correspondence). Apple stated that if 1000 Van Ness “had any questions” Apple was
11 “happy to discuss so as to move these discovery requests forward without involving the Court.” *Id.* 1000
12 Van Ness again did not respond in any capacity.

13 On December 18, 2025, Apple again reached out to request 1000 Van Ness’s compliance with the
14 Subpoena, offering a new deadline of January 2, 2026. Means Decl. Exhibit 5 (12/18/2025
15 Correspondence). 1000 Van Ness again did not respond in any capacity.

16 On January 9, 2026, Apple tried to contact 1000 Van Ness yet again. Unable to reach 1000 Van
17 Ness, Apple left a voicemail. 1000 Van Ness again did not respond in any capacity.

18 Finally, on January 26, 2026, Apple attempted to serve 1000 Van Ness at a different address based
19 on searches of both Westlaw Corporate Records & Business Registrations and Westlaw Company
20 Investigator: 4 Embarcadero Center, Suite 1400, San Francisco, California 94111. However, Apple was
21 still unable to reach 1000 Van Ness.

22 After receiving no response from 1000 Van Ness, Apple had no choice but to file this Motion. For
23 the reasons explained below, the Court should compel 1000 Van Ness LP to fully comply with the
24 Subpoena, or, in the alternative, transfer this motion to the District of Massachusetts.

25 **III. ARGUMENT**

26 **A. Legal Standard**

27 Federal Rule of Civil Procedure 45 governs the discovery of nonparties by subpoena. *See Fed. R.*
28 *Civ. P. 45; see also BBK Tobacco & Foods LLP v. Cent. Coast Agriculture, Inc.*, No. 21-MC-80189-

1 DMR, 2021 WL 5507167, at *2 (N.D. Cal. Nov. 24, 2021). “If a non-party fails to respond, a party
2 seeking enforcement of a subpoena [may] bring a motion in ‘the court for the district where compliance
3 is required for an order compelling production or inspection.’” *Erickson v. Builder Advisor Grp. LLC*, No.
4 22-MC-80094-TSH, 2022 WL 1265823, at *2 (N.D. Cal. Apr. 28, 2022) (citing Fed. R. Civ. P.
5 45(d)(2)(B)(i)); *BBK Tobacco*, 2021 WL 5507167, at *3 (allowing a motion to compel “‘where the
6 nonparty has not formally objected but has instead failed to respond’”) (citing *Fujikura Ltd. v. Finisar*
7 *Corp.*, No. 15-MC-80110-JSC, 2015 WL 5782351, at *3 (N.D. Cal. Oct. 5, 2015)) (citing *In re Subpoena*
8 *to VaughnPerling*, No. 19-MC-00083-CAS(Ex), 2019 WL 8012372, at *3 (C.D. Cal. Dec. 2, 2019)).

9 On a motion to compel discovery, “the moving party must first demonstrate that the information
10 requested is within the scope of permissible discovery.” *Erickson*, 2022 WL 1265823, at *2. The burden
11 then shifts to the nonmoving party to show any reason the discovery should not be permitted. *Id.* The
12 scope of discovery under a Rule 45 subpoena is the same as the scope of discovery permitted under Federal
13 Rule 26(b). *Mariano v. Villa*, No. 5:16-CV-03467-EJD, 2020 WL 3615554, at *2 (N.D. Cal. July 2,
14 2020). Federal Rule 26 provides that a party may discover any matter that is relevant to a claim or defense
15 and that is “proportional to the needs of case, considering the importance of the issues at stake in the
16 action, the amount in controversy, the parties' relative access to relevant information, the parties' resources,
17 the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed
18 discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

19 Pursuant to this law and as detailed below, the Court should compel 1000 Van Ness to comply
20 with the Subpoena for two reasons. **First**, the Subpoena seeks information that is within the scope of
21 permissible discovery because it seeks nonprivileged, relevant documents. **Second**, despite Apple’s
22 proper methods of service and reminders to 1000 Van Ness of its obligation to respond, 1000 Van Ness
23 has failed to acknowledge the subpoena, waiving all objections thereto. There are no grounds on which
24 discovery should not be permitted. Accordingly, the Court should compel 1000 Van Ness to comply fully
25 with the Subpoena by searching for and producing responsive documents.

1 **B. 1000 Van Ness Possesses Relevant Information Discoverable Through a Third-Party**
2 **Subpoena**

3 The Subpoena seeks documents that are relevant to at least three aspects of the Underlying Action.
4 **First**, it seeks documents concerning Defendants’ intent to trade on Apple’s brand recognition. Intent is
5 relevant to the likelihood-of-confusion analysis, among other elements of trademark infringement.
6 *Peoples Fed. Sav. Bank v. People's United Bank*, 672 F.3d 1, 11 (1st Cir. 2012) (“[A]lthough bad intent
7 is ‘not required’ for a finding of trademark infringement, the defendant’s intent in adopting the mark is an
8 appropriate consideration in the court’s assessment of whether the public is likely to be confused about
9 the actual source of the goods or services at issue”); *see also Ji v. Bose Corp.*, 538 F. Supp. 2d 349, 353
10 (D. Mass. 2008) (“If there is evidence that the defendant intended to profit by creating confusion among
11 consumers with respect to whether the plaintiff had endorsed its products, that is relevant to the
12 determination of the likelihood of confusion as well”); *see also Deckers Outdoor Corp. v. Last Brand,*
13 *Inc.*, No. 23-CV-04850-AMO (LJC), 2024 WL 3905034, at *3 (N.D. Cal. Aug. 21, 2024) (ordering
14 production of documents in trade dress infringement case, holding that “a defendant’s knowledge of an
15 existing product and intent to copy it can be relevant to showing consumers’ likelihood of confusion, even
16 though it is not a necessary component of that element of the claim” and explaining that “[s]upposing
17 hypothetically that one of [defendant’s] employees sent an email stating ‘we should sell a version of
18 [plaintiff’s] boots’ with a photograph of one of the products at issue—or perhaps even stated their intent
19 to sell something resembling [plaintiff’s] boots more generally, before bringing one of the allegedly
20 infringing products to market—such correspondence would likely warrant production”). Documents
21 concerning a defendant’s knowledge of a plaintiff’s trademark and intent to trade on brand recognition
22 may be properly sought from third parties via a subpoena. *See In re Allergan, Inc. Proxy Violation Sec.*
23 *Litig.*, No. SACV142004DOCKESX, 2016 WL 11742759, at *2 (C.D. Cal. Nov. 28, 2016) (“When a non-
24 party possesses the potentially relevant information, a party [seeking discovery] may obtain [a subpoena
25 for the evidence] via a Rule 45 subpoena.”).

26 Here, the Subpoena seeks documents that are highly relevant to Defendants’ knowledge of Apple’s
27 trademark and intent in adopting the Apple Cinemas mark. For example, the Subpoena seeks documents
28 concerning “Defendants’ or 1000 Van Ness LP’s awareness of Apple, the Apple Marks, the Apple brands,

1 and Apple’s goodwill, value, and reputation.” *See* Means Decl. Exhibit 2 (1000 Van Ness Document
2 Subpoena) at Request No. 10; *see also id.* at Request No. 4 (seeking documents concerning “any potential
3 name change” that “departs from, modifies, or changes the name ‘Apple Cinemas’ or any of the Accused
4 Apple Cinemas Marks, including, but not limited to, [1000 Van Ness’s] reaction to or impression of such
5 a change”), Request No. 7 (seeking documents concerning “the value or desirability of having an Apple-
6 operated retail store branded with the Apple Marks as a tenant or lessee”), and Request No. 8 (seeking
7 documents concerning 1000 Van Ness’s “interest in obtaining” or “efforts to obtain, if any, a retail store
8 branded with the Apple Marks as a tenant or lessee”). Commercial landlords such as 1000 Van Ness are
9 in unique positions to evaluate prospective tenants based on brand recognition, reputation, and the ability
10 to attract foot traffic. Indeed, other commercial landlords have responded to subpoenas in connection
11 with other Apple Cinemas locations in this case. Evidence reflecting 1000 Van Ness’s understanding of
12 the strength of Apple’s brand and consumer perceptions of Apple therefore provides context for the
13 environment in which Defendants may have represented their business to 1000 Van Ness. Moreover,
14 1000 Van Ness is a San Francisco landlord, which would likely be aware of tech companies like Apple
15 and the value the Apple brand can bring to commercial properties. As a result, the Subpoena’s requests
16 are within the scope of permissible discovery under Federal Rule 26.

17 ***Second***, the Subpoena seeks documents concerning actual confusion. Evidence bearing on actual
18 confusion is highly relevant to Apple’s trademark infringement claims. “Actual confusion ‘is often taken
19 to be the most persuasive possible evidence that there is a likelihood of confusion. Actual confusion is
20 such persuasive evidence that even a minimal demonstration of actual confusion may be significant.’”
21 *CrossFit, Inc. v. Mustapha*, No. CV 13-11498-FDS, 2015 WL 12724069, at *8 (D. Mass. Nov. 16, 2015)
22 (citing *Boustany v. Bos. Dental Grp., Inc.*, 42 F. Supp. 2d 100, 108 (D. Mass. 1999)) (finding actual
23 confusion where plaintiff presented evidence of potential customers posting comments online expressing
24 confusion about defendant’s affiliation with plaintiff). “[E]ven a few incidents of actual confusion are
25 highly probative of the likelihood of confusion.” *A. Simon & Sons, Inc. v. Simonfurniture Int’l, Inc.*, No.
26 21-CV-11254-PBS, 2021 WL 6144611, at *7 (D. Mass. Nov. 19, 2021) (citing *Dorpan, S.L. v. Hotel*
27 *Meliá*, 728 F.3d 55, 66 (1st Cir. 2013)) (finding actual confusion where plaintiff received communications
28 intended for defendant). Multiple requests in the Subpoena bear on this issue, including Request No. 2,

1 which seeks documents concerning “whether customers would and/or did confuse or associate”
2 Defendants’ movie theaters with Apple’s goods and services, as well as Request No. 3, which seeks
3 documents concerning “whether the name ‘Apple Cinemas’ would draw consumers” to 1000 Van Ness.
4 *See Means Decl. Exhibit 2 (1000 Van Ness Document Subpoena); see also id.* at Request No. 12 (seeking
5 documents concerning “the public’s or consumers’ impression of Defendants or Defendants’ Theaters,
6 including, but not limited to, negative complaints or reviews”), Request No. 14 (seeking a “representative
7 sample of all promotional materials, advertising, and marketing displaying the Accused Apple Cinemas
8 Marks in connection with any of Defendants’ Goods and Services”), and Request No. 16 (seeking a
9 “representative sample of all promotional materials, advertising, and marketing displaying the Accused
10 Apple Cinemas Marks in connection with any of the Apple Marks”).

11 ***Third***, the Subpoena seeks documents that are relevant to the value of the APPLE trademark to
12 landlords. As the commercial landlord of the space, 1000 Van Ness was directly involved in negotiating
13 the lease under which Defendants operate Apple Cinemas. Notably, one of 1000 Van Ness’ investors is
14 on record stating that Defendants would pay “less than a third” of what the previous lessee for that same
15 space paid.¹³ Information concerning the negotiations of the lease price (including communications,
16 drafts, and internal analyses) is relevant to why 1000 Van Ness, as the landlord, agreed to such a
17 substantial reduction and what representations Defendants may have made in order to secure the lease at
18 that price. This would include evidence about what Defendants represented in terms of the value of their
19 APPLE-formative trademark, which could bear on Defendants’ intent. *See CrossFit*, 2015 WL 12724069,
20 at *8; *see also A. Simon & Sons*, 2021 WL 6144611, at *7. Numerous requests in the Subpoena bear on
21 this issue, including Request No. 9, which seeks documents concerning “Defendants’ tenancy or lease of
22 [1000 Van Ness’s] Property, including, but not limited to, 1000 Van Ness LP’s contract(s) with
23 Defendants and the selection of the terms thereof.” *See Means Decl. Exhibit 2 (1000 Van Ness Document*
24 *Subpoena); see also Request No. 6 (seeking documents concerning 1000 Van Ness’s “analysis, if any, of*
25 *having one of Defendants’ Theaters at Your Property, including, but not limited to, Your evaluations (if*
26 *any) of the value thereof and Market Research”)* and Request No. 11 (seeking documents concerning “the

27 ¹³ [https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-20376086.php)
28 [20376086.php](https://www.sfchronicle.com/entertainment/article/apple-cinemas-san-francisco-movie-theater-20376086.php)

1 Accused Apple Cinemas Marks, Defendants’ Theaters, and Defendants’ Goods and Services, including,
2 but not limited to, marketing strategies, advertising strategies, Market Research, and plans for expansion
3 of locations or services”).

4 Accordingly, the Subpoena seeks evidence that is properly within the scope of permissible
5 discovery from third parties under Fed. Rule Civ. P. 26(b)(1). Ultimately, 1000 Van Ness’s failure to
6 respond to the subpoena has deprived Apple of discovery that is relevant to the key issues in this case, and
7 Apple respectfully submits that the Court should compel compliance.

8 **C. Failure to Comply with Subpoena Warrants Compelled Compliance, and All Objections**
9 **Have Been Waived as Untimely**

10 “The court may compel compliance with a subpoena ‘where the nonparty has not formally objected
11 but has instead failed to respond.’” *Dominguez v. Ford Motor Co.*, No. 5:21-CV-00226-JWH-SP, 2021
12 WL 6496838, at *2 (C.D. Cal. Dec. 1, 2021). Here, Apple properly served the subpoena on 1000 Van
13 Ness on October 17, 2025. *See* Means Decl. Exhibits 2 and 3 (1000 Van Ness Document Subpoena and
14 Affidavit of Service). The Subpoena requested the production of documents on or before November 7,
15 2025. 1000 Van Ness did not respond to this Subpoena in any capacity. On November 14, 2025 (notably,
16 seven days past 1000 Van Ness’s initial deadline to respond), Apple reached out again to request 1000
17 Van Ness’s compliance with the Subpoena, offering a new deadline of November 21, 2025 (fourteen days
18 beyond the initial deadline). Means Decl. Exhibit 4 (11/14/2025 Correspondence). Again, 1000 Van Ness
19 did not respond. On December 18, 2025, Apple again reached out to request 1000 Van Ness’s compliance
20 with the Subpoena, offering a new deadline of January 2, 2026 (fifty-six days beyond the initial deadline).
21 Means Decl. Exhibit 5 (12/18/2025 Correspondence). Finally, on January 9, 2026, Apple again tried to
22 contact 1000 Van Ness via voicemail, to which 1000 Van Ness again did not respond in any capacity.
23 Accordingly, 1000 Van Ness’s failure to respond entirely to the subpoena despite Apple’s reminders
24 warrants court-compelled compliance. *See Dominguez*, 2021 WL 6496838, at *2 (granting plaintiff’s
25 motion to compel third party’s compliance with subpoena where third party failed to timely produce the
26 requested records and ignored plaintiff’s attempts to meet and confer).

27 Moreover, failure to timely serve objections results in waiver of all grounds for objection to a
28 subpoena. *See* Fed. R. Civ. P. 45(d)(2)(B) (“The objection must be served before the earlier of the time

1 specified for compliance or 14 days after the subpoena is served.”); *see also McCoy v. Sw. Airlines Co.*,
2 211 F.R.D. 381, 385 (C.D. Cal. 2002) (“Failure to serve timely objections waives all grounds for
3 objection”); *see also Poturich v. Allstate Ins. Co.*, No. 5:15-CV-00081, 2015 WL 12766048, at *2 (C.D.
4 Cal. Aug. 11, 2015) (holding that non-party witness “ha[d] failed to object within the time required and
5 hence, ha[d] waived any objections.”); *Doe v. United States*, No. 5:24-MC-00003-KK-SPX, 2024 WL
6 1481443, at *2 (C.D. Cal. Mar. 18, 2024), *report and recommendation adopted*, No. 5:24-MC-00003-
7 KK-SPX, 2024 WL 5104095, at *2 (C.D. Cal. Apr. 10, 2024) (granting defendant’s motion to compel
8 non-party’s compliance with subpoena where non-party had failed to obey the subpoena and the court had
9 “no opposing papers to consider” from the non-party). 1000 Van Ness did not serve any objections in
10 response to the Subpoena, and thus waived all objections. Accordingly, the Court should order 1000 Van
11 Ness to fully comply with the Subpoena and produce all non-privileged, responsive documents.

12 **D. Alternatively, This Motion Should Be Transferred to the District of Massachusetts**

13 Alternatively, the Court should transfer this Motion to the Underlying Action in the District of
14 Massachusetts, which issued the Subpoena, for Judge Casper’s consideration and decision. Rule 45
15 permits a court to transfer a motion to compel a Rule 45 subpoena if the subpoenaed party consents or
16 even over 1000 Van Ness’s objection if there are “exceptional circumstances.” Fed. R. Civ. P. 45(f). As
17 1000 Van Ness has not responded to any of Apple’s correspondence, it is unclear whether it consents or
18 objects to such a transfer. But regardless, a transfer is warranted here for two reasons.

19 **First**, transfer is warranted because Apple has sought subpoena responses from several third-party
20 landlords with relevant information, and transferring this motion would reduce the risk of inconsistent
21 results in the Underlying Action. *See UBS Sec. LLC v. Third Eye Cap. Corp.*, No. CV143997FMOMANX,
22 2014 WL 12613381, at *3 (C.D. Cal. Oct. 21, 2014) (granting plaintiff’s motion to transfer motion to
23 compel third party’s subpoena compliance, finding exceptional circumstances met where plaintiff had
24 “sought additional discovery from other ‘third parties with relevant information’” and thus, there was a
25 substantial likelihood that the same or similar discovery issues would arise, holding that transfer “would
26 avoid disruption of the [underlying] action and would decrease the risk of inconsistent results”).

27 **Second**, the District of Massachusetts is already presiding over the merits of the issues in this
28 litigation, including but not limited to Defendants’ knowledge of Apple’s brand, Defendants’ intent in

1 adopting the Accused Marks, and the likelihood of consumer confusion, and is therefore best positioned
2 to assess the relevance, proportionality, and proper scope of the requested discovery. *See also Helping*
3 *Hand Caregivers Ltd. v. Darden Corp.*, No. MC1600011BRORAO, 2016 WL 10987313, at *2-3 (C.D.
4 Cal. Feb. 17, 2016) (granting plaintiff’s motion to transfer motion to compel compliance with subpoena
5 where subpoenaed party had “not filed an Opposition or otherwise responded to Plaintiff’s motions,”
6 holding that exceptional circumstances existed based on judicial economy and efficiency and that the
7 motion would be “better decided by the court with control over the disposition of the underlying case,”
8 especially where the transferee court was “familiar with some the topics listed in the subpoenas”).

9 Moreover, the burden on 1000 Van Ness as the subpoenaed third party does not weigh against
10 transfer. Here, 1000 Van Ness has neither responded to the Subpoena nor objected to compliance in this
11 District, and thus has failed to assert any local burden or hardship that would be alleviated by keeping the
12 dispute here. Under these circumstances, “such interests outweigh the interest of the nonparty served
13 with the subpoena in obtaining local resolution of the motion.” *See UBS*, 2014 WL 12613381, at *3
14 (finding exceptional circumstances met and that transferee court was in a “better position to rule on the
15 motion to compel” where transferee court was familiar with the full scope of the issues and any
16 implications the resolution of the motion would have on the underlying litigation).

17 Accordingly, while Apple respectfully submits that this Court has ample authority to compel
18 compliance directly, Apple alternatively requests that the Court transfer this motion to compel to the
19 District of Massachusetts for resolution pursuant to Rule 45(f).

20 **IV. CONCLUSION**

21 For the foregoing reasons, Apple respectfully requests that the Court grant Apple’s Motion to
22 Compel and enter an order requiring 1000 Van Ness to fully comply with Apple’s third-party Subpoena.

1 DATED: January 29, 2026

Respectfully submitted,

2 By: /s/ Yan-Xin Li

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