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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 JOHN MICHAEL "OZZY"
OSBOURNE, an individual, on his
14 own behalf and for all others similarly
15 situated,

16 Plaintiff,

17 v.

18 ANSCHUTZ ENTERTAINMENT
19 GROUP, INC., a Colorado corporation,
AEG PRESENTS LLC, a Delaware
20 limited liability company, L.A.
21 ARENA COMPANY, LLC, a
Delaware limited liability company,
22 ANSCO ARENA LTD., a U.K. limited
23 company, and JOHN DOE 1
24 THROUGH 10, whose true names are
unknown, inclusive,

25 Defendants.
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CASE NO. 2:18-cv-02310

**CLASS ACTION COMPLAINT
TO ENJOIN VIOLATIONS
OF THE SHERMAN ACT
AND FOR DECLARATORY RELIEF
(15 U.S.C. § 1 AND 28 U.S.C. § 2201)**

1 All persons required to sign the Staples Center Commitment as a
2 condition of renting, booking, or otherwise using the O2.

3 17. The class is so numerous that joinder of all members is impracticable.
4 Plaintiff estimates that the O2 hosts over 120 concerts per year, in addition to other
5 events. Plaintiff is also informed and believes that most artists who hold concerts at
6 the O2 do so in connection with an international tour that includes performances in
7 Los Angeles, and that the AEG Defendants require all of those artists to agree to the
8 Staples Center Commitment (as described herein, encompassing a general obligation
9 to play Staples when in LA, often reflected in a form letter agreement imposed by
10 the AEG Defendants). As a result, one can presume that many dozens of artists have
11 been required to sign the Staples Center Commitment.

12 18. There are questions of law that are common to the class—in particular,
13 the questions underlying whether the Staples Center Commitment is lawful, such as
14 whether it must be evaluated under the “rule of reason” or as a *per se* antitrust
15 violation. There are also questions of fact and mixed questions of law and fact that
16 are common to the class, including:

- 17 a. the definition of the relevant markets;
- 18 b. AEG’s market or monopoly power in London or greater
19 London;
- 20 c. the existence of a tying arrangement;
- 21 d. the effects of the tying arrangement; and
- 22 e. In the event that “rule of reason” analysis applies, the
23 business justifications, if any, for the tying arrangement,
24 and any less restrictive alternatives for meeting legitimate
business justifications.

25 19. The claims or defenses of the representative Plaintiff (Ozzy) are typical
26 of the claims or defenses of the class. The version of the Staples Center Commitment
27 presented to Ozzy (through his promoter) is substantively identical to the version
28 presented to all other class members. The common contention of all Plaintiffs,

1 including absent class members, is that the Staples Center Commitment is an
2 unlawful tying arrangement; there is no way for that tying arrangement to be lawful
3 to some members of the class, but not others.

4 20. All class members are threatened with the same injuries as a result of
5 Defendants' conduct, even if their monetary damages—not sought in this action—
6 may differ marginally. Each (a) loses the benefits of free and open competition
7 between Staples and other competing venues such as the Forum; (b) loses any
8 additional monetary compensation that would flow to them (through the percentage
9 of the profits they are entitled to under promoter agreements and other financial
10 incentives from venues) in a market with unrestrained competition; and (c) loses the
11 ability to choose the venues they prefer for artistic or other intangible reasons, even
12 if the monetary loss is tolerable.

13 21. The representative Plaintiff (Ozzy) will adequately and fairly protect
14 the interests of the class. Ozzy has retained competent counsel who are experienced
15 in complex antitrust class action litigation, and Ozzy and his counsel intend to
16 prosecute this action vigorously to vindicate the rights of the entire class. Neither
17 Ozzy nor his counsel have interests that conflict with the interests of the absent class
18 members.

19 22. A class action under Rule 23(b)(2) is appropriate because in enacting
20 and enforcing the Staples Center Commitment, AEG has acted on grounds that apply
21 generally to the class, so that final injunctive relief or corresponding declaratory
22 relief is appropriate respecting the class as a whole.

23 23. Notice to absent class members is not necessarily required in a class
24 action, such as this one, proceeding under Rule 23(b)(2). However, if the Court
25 determines that notice should be given, Plaintiff contemplates that absent class
26 members will be served in a manner deemed appropriate by the Court (*see* Fed. R.
27 Civ. P. 23(c)(2)(A)) following the completion of discovery sufficient to identify and
28 locate the absent class members.

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JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States—specifically, under Section 1 of the Sherman Act, 15 U.S.C. § 1.

25. This Court has personal jurisdiction over all Defendants because the AEG Defendants have purposefully directed their conduct with respect to the Staples Center Commitment at this forum, Plaintiffs’ claims all arise out of that conduct, and the exercise of jurisdiction over the AEG Defendants is reasonable. For example, the Staples Center Commitment letter issued by UK-based Defendant AnSCO expressly requires artists to play Staples in Los Angeles, and is to be countersigned both by AnSCO and by Defendant L.A. Arena Company LLC. In addition, all of the AEG Defendants except AnSCO are headquartered in Los Angeles, and thus have continuous and systematic contacts with this forum that are sufficient to establish this Court’s general personal jurisdiction.

26. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this Complaint occurred within this District. In addition, a substantial part of property that is subject to this action (*i.e.*, Staples) is situated in this District. *Id.* Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and 1391(c)(2) because all of the AEG Defendants except AnSCO are headquartered in Los Angeles.

FACTUAL BACKGROUND COMMON TO ALL CLAIMS

27. In January 2018, Ozzy, through his UK promoter Live Nation UK, informed representatives of AEG that he wished to reserve performance dates at the O2 arena in London for Ozzy’s upcoming international tour. In industry jargon, Live Nation UK asked to “pencil in” February 11, 2019. “Penciling in” that date would reserve it for Ozzy’s performance, pending the completion of a formal venue-hire agreement. The February 11, 2019 date that Ozzy requested was available.

1 28. However, per its now standard practice, AEG (through AnSCO) then
2 transmitted a letter agreement to Ozzy’s promoters imposing the mandatory Staples
3 Center Commitment (attached to this Complaint as **Exhibit 1**). The subject line of
4 that letter, dated January 11, 2018, reads: “Staples Center Commitment – Ozzy
5 Osbourne at The O2 arena.” That body of the letter stated, among other things:

6 Staples Center Commitment

7 As we have previously communicated, and to give effect to our
8 new booking policy, *as a condition of entering the pencils for*
9 *the O2 Shows, we require* both Live Nation Entertainment, Inc.
10 Live Nation (Music) UK Limited (collectively “you” or “Live
11 Nation”) to execute this letter agreement for the purpose of
12 setting forth *your irrevocable and binding commitment* that, if
13 (i) any of the aforementioned The O2 Shows are booked at The
14 O2 arena and (ii) Ozzy Osbourne also plays an indoor arena
15 anywhere within twenty five (25) miles of the City of Los
16 Angeles as part of the same tour cycle as the aforementioned The
17 O2 Shows and that show/those shows is/are promoted by a Live
18 Nation Entertainment, Inc. group company, *then you shall*
19 *ensure at least one of those Ozzy Osbourne shows in Los*
20 *Angeles shall be held at the Staples Center (the “Staples Center*
21 *Commitment”).*

22 The foregoing Staples Center Commitment shall not apply to the
23 extent [AnSCO] or [L.A. Arena Company] advise you that the
24 Staples Center is not available on the particular date(s) in
25 question due to another event, although, in such instance, you
26 agree to use your best efforts in keeping with customary industry
27 practice to work with us to find mutually acceptable dates.

28 *See* Exh. 1 at p. 17 (emphasis added).

29 29. The letter agreement also contained a clause requiring the resolution of
30 disputes in “any state or federal court located in Los Angeles, California.”

31 30. On information and belief, the letter was a barely modified version of a
32 form letter that AEG routinely sends to promoters, booking agents, and other artist
33 representatives, imposing the same Staples Center Commitment as a condition of
34 booking the O2.

1 31. On February 7, 2018, Sharon Osbourne responded by email to Jay
2 Marciano, the Chief Operating Officer of AEG, and the Chairman and CEO of AEG
3 Presents. Mrs. Osbourne wrote:

4 Mr. Marciano,

5 I am returning the enclosed Staples Center Commitment
6 Agreement to you, unsigned.

7 Shame on AEG for bringing artists into a power struggle that
8 you're having with your competitor, Live Nation. I can assure
9 you that Live Nation would never strong-arm an artist into
10 playing a venue they're not comfortable performing in.

11 In closing, without the artists there would be no AEG, no Live
12 Nation, no promoters, agents or managers. The artists should
13 always come first. Never forget that! There's enough for
14 everyone without you trying to monopolize the world of
15 entertainment.

16 32. Mr. Marciano responded on the same day, as follows:

17 Dear Sharon,

18 Thank you for your note.

19 Please understand this dispute is between The Forum and Staples
20 Center and we couldn't agree with you more — it should always
21 be the artist's choice. We long for the days when artists and fans
22 came first.

23 Kindest regards -

24 Jay

25 PS - The other guys started this first!

26 33. Mr. Marciano's references to the Forum and his statement "The other
27 guys started this first!" are part of an argument AEG has resorted to, in the context
28 of this ongoing dispute, that the Staples Center Commitment is a legitimate response
to a similar practice by the Madison Square Garden Company ("MSG"), which owns
the Forum. On information and belief, the premise of AEG's argument is incorrect:
artists who wish to book Madison Square Garden in New York City are not required
to commit—in a formal written contract, no less—that they will play the Forum if

1 they tour Los Angeles. Indeed, in response to the exchange of emails between
2 Sharon Osbourne and Jay Marciano, Irving Azoff, the Chairman and Chief
3 Executive Officer of Azoff MSG Entertainment LLC, was quoted in *Amplify* as
4 saying that Mr. Marciano’s statements were “a pack of lies,” and, “We do not block
5 book Madison Square Garden and The Forum.”

6 34. In any event, MSG’s practices, whatever they may be, cannot justify
7 the Staples Center Commitment. As a threshold matter, even if it were true that
8 MSG were committing some form of wrong here (legal or otherwise)—which it is
9 not—that would not absolve the AEG Defendants of liability for the glaring antitrust
10 violations challenged in this Complaint.

11 35. But regardless, the circumstances surrounding MSG’s conduct are
12 critically different. Madison Square Garden, as important a concert venue as it is,
13 faces strong competition in New York from (at least) the brand-new Barclays Center
14 in Brooklyn and the Prudential Center in Newark, New Jersey. The O2 faces no
15 such competition. An artist wishing to play a large indoor arena in London cannot
16 avoid the Staples Center Commitment by playing a venue other than the O2 (*i.e.*,
17 playing the London equivalent of a Barclays or Prudential Center), since no such
18 option exists.

19 36. As events transpired here, the AEG Defendants did not relent in
20 response to Sharon Osbourne’s objections, and continued to insist that Ozzy would
21 not be allowed to perform at London’s O2 arena unless he also agreed to perform at
22 Staples in Los Angeles.

23 37. The AEG Defendants’ insistence on the Staples Center Commitment
24 left Ozzy with a choice that, realistically, was no choice at all. For a major artist
25 such as Ozzy, there is simply no substitute for the O2 arena when booking the
26 London leg of an international tour. Recent data shows that the O2 has the highest
27 volume of ticket sales (as much as 50 percent higher) out of all arena-sized venues
28 in the world, making it the single most desirable venue for an artist hoping to

1 maximize attendance at his or her performance. The O2 thus holds a unique place
2 in the global concert and live entertainment industry; certainly, there is no
3 comparable venue anywhere near it in the area of greater London—particularly
4 during winter months, when outdoor stadiums and festivals are not a realistic
5 alternative. The nearest large indoor venue (*e.g.*, indoor venue with over 14,000
6 capacity) in England is in Birmingham, over 160 miles away.

7 38. Even if there were realistic alternatives to the O2 in greater London,
8 AEG's dominance and control over the other large performance venues in the area
9 is formidable. For example, AEG not only owns and controls the O2 arena, but also
10 manages The SSE Arena, Wembley. AEG also has the exclusive rights to hold
11 concerts in Hyde Park and Victoria Park in London. Overall, AEG has significant
12 market power in and around greater London.

13 39. Because it is impossible to book a major international tour in greater
14 London without dealing with AEG, and/or because AEG has substantial market
15 power, AEG is able to coerce artists into signing the Staples Center Commitment.
16 In practical terms, international tours that are significant enough to play the O2 are
17 likely to have a Los Angeles leg as well. Plaintiff is informed and believes that more
18 than a dozen artists, facing this pressure, have signed the Staples Center
19 Commitment. As a result, those artists have lost the benefits of the competitive
20 market that exists (for now) in Los Angeles: they can no longer bargain for better
21 terms at the Forum, or for better terms at Staples as a result of unrestrained
22 negotiations with the Forum. The restriction on the ability of these artists (and other
23 absent class members) to choose their venue has thus affected a substantial volume
24 of commerce in Los Angeles—entirely as a consequence of AEG's strong-arming
25 and leveraging tactics.

26 40. Facing these pressures, Ozzy directed Live Nation UK to sign and
27 return the Staples Center Commitment, which was done on March 19, 2018. But
28 because AEG's conditions restrict his freedom (and the freedom of many other

1 artists) to play at a venue of their choice, and because those conditions serve only to
2 enrich AEG while restraining competition, Ozzy brings this Complaint to enjoin,
3 nullify, and defeat the Staples Center Commitment on his own behalf and for all
4 other similarly situated persons. Practically speaking, this suit is intended to restore
5 competition via a prohibitory injunction precluding the AEG Defendants from
6 enforcing the flagrantly unlawful contractual term they regularly impose on artists,
7 forcing them to take dates at Staples that they either do not want, or would agree to
8 only after fully enjoying the fruits of unrestrained competition among venues.

9 41. The harm from the AEG Defendants' illegal tying practice is not
10 compensable with money damages. For one thing, it is impossible to catalogue, let
11 alone value, the myriad benefits that artists and consumers would enjoy by virtue of
12 competition between Staples and the Forum, which the Staples Center Commitment
13 thwarts. For another, depriving artists of the choice of which venue to play in the
14 greater Los Angeles area is an irremediable harm in its own right: delivering the
15 concert experience that, in the *artist's* own calculation, best reflects his or her vision
16 for fans—in the environment of the *artist's* own choosing—is an essential and
17 integral component of the connection between a musician and his or her most ardent
18 supporters. This is about identity, freedom, and choice, as much or more than it is
19 about money.

20 42. On information and belief, the AEG Defendants' unlawful and coercive
21 conduct with respect to the Staples Center Commitment was aided, abetted,
22 facilitated, and/or implemented by Defendants John Doe 1 through 10.

23 **CLAIMS FOR RELIEF**

24 **First Claim for Relief**

25 Violation of Section 1 of the Sherman Act (15 U.S.C. § 1)

26 *Against All Defendants*

27 43. Plaintiff repeats and re-alleges the foregoing paragraphs 1 through 42
28 above as though fully set forth herein.

1 44. The AEG Defendants’ imposition of the Staples Center Commitment is
2 a *per se* violation of tying doctrine under Section 1 of the Sherman Act (15 U.S.C.
3 § 1). The Staples Center Commitment ties together two distinct products or
4 services—arena-sized venues for musical concerts in (a) London or greater London
5 and (b) Los Angeles or greater Los Angeles (perhaps defined by AEG’s own criteria
6 of venues within, or within 25 miles of, Los Angeles County)—and the AEG
7 Defendants have substantial economic power in the tying product market, which
8 allows them to coerce artists into agreeing to the Staples Center Commitment. By
9 imposing the Staples Center Commitment on artists, the AEG Defendants have
10 impacted a substantial volume of commerce in the tied product market.

11 45. Because of the AEG Defendants’ overwhelming market power in the
12 tying product market—the market for the rental of arena-sized venues for musical
13 concerts or other live performances in London or greater London—and the explicit
14 nature of the tying arrangement, the Staples Center Commitment is *per se* unlawful
15 (as that term is used in connection with tying). It is therefore unnecessary for
16 Plaintiffs to plead (or prove) injury to competition in the tied product market for the
17 rental of arena-sized venues for musical concerts in or around greater Los Angeles.

18 46. That said, the AEG Defendants’ imposition of the Staples Center
19 Commitment is also a violation of tying doctrine under the “rule of reason.” The
20 purpose and intent of the Staples Center Commitment is for AEG to leverage its
21 dominance of the market for arena-sized venues in greater London to restrain,
22 exclude, and weaken competition of the market for arena-sized venues in greater Los
23 Angeles to the detriment of the artists and concert-goers. It has that effect. However
24 one defines the precise contours of the tied product market, it is undeniable that the
25 Forum is the closest and most intense competitor to Staples. The two venues are
26 less than ten miles apart, each has the capacity and other amenities to host major
27 music concerts, and, since the Forum was refurbished, the two venues have
28 competed intensely and head-to-head for dozens of major artists. When AEG began

1 losing concerts to the Forum, it first competed for artists' patronage with better rental
2 terms and other financial inducements. The Staples Center Commitment was
3 adopted because competition on the merits was not working to AEG's satisfaction.
4 It was losing too much.

5 47. There is no justification for this conduct, let alone one that can meet the
6 exacting standards of tying law. The Staples Center Commitment does not promote
7 goodwill or quality control within the tying market, and it does not promote cost
8 savings (quite the opposite) or other potentially valuable effects, such as metering or
9 risk allocation. Nor can the Staples Center Commitment be justified on some "two
10 wrongs make a right" theory related to what MSG allegedly has done to offer artists
11 inducements to play the Forum (*i.e.*, Mr. Marciano's "The other guys started this
12 first!" argument). Anticompetitive conduct cannot be justified on the basis that "the
13 other guys" are also alleged to have engaged in anticompetitive conduct. The Staples
14 Center Commitment is rank anticompetitive conduct; its purpose and effect is to
15 injure competition in the tied product market.

16 48. The AEG Defendants' wrongful conduct has caused—and threatens to
17 continue to cause—injury to Plaintiffs. The Staples Center Commitment prevents
18 promoters or other artist representatives from negotiating better terms at the
19 available venues in greater Los Angeles and locks artists into performing at one
20 venue when they would prefer to perform at another, in addition to the myriad other
21 harms described herein. This restraint on promoters and representatives from
22 negotiating better terms harms artists directly because it is typical in the industry for
23 the artists to recover a fixed percentage of whatever deal their promoters or
24 representatives are able to strike.

25 49. The AEG Defendants' wrongful conduct has caused—and threatens to
26 continue to cause—injury to competition. Indeed, the *sole purpose* of the Staples
27 Center Commitment is to coerce artists into playing Staples instead of the Forum.
28 Further, the Staples Center Commitment creates a barrier to entry for any other

1 venues (or potential, developing venues) that may wish to compete for large concerts
2 or other performances.

3 50. An injunction is necessary to prevent any of the AEG Defendants’
4 conduct from causing further harm. AEG continues to impose the Staples Center
5 Commitment. The Staples Center Commitment causes an irreparable injury to the
6 artists affected by it, who are put to the impossible choice of foregoing the must-
7 have venue in the London area, or losing the benefits of competition in the Los
8 Angeles area. Monetary damages are inadequate to compensate Plaintiffs for this
9 loss—in choice, and in the benefits of competition itself. The balance of hardships
10 favors the exercise of this Court’s equitable powers in Plaintiffs’ favor, and the
11 public interest would not be disserved by an injunction, because Defendants’
12 conduct is unlawful, anticompetitive, and without justification.

13 **Second Claim for Relief**

14 Declaratory Relief (28 U.S.C. § 2201)

15 *Against All Defendants*

16 51. Plaintiff repeats and re-alleges the foregoing paragraphs 1 through 50
17 above as though fully set forth herein.

18 52. An actual controversy exists between Plaintiffs and Defendants
19 regarding their respective rights and duties in connection with, and the enforceability
20 of, the Staples Center Commitment. Plaintiffs contend that the Staples Center
21 Commitment is unlawful and unenforceable; Defendants oppose these contentions.

22 53. A judicial declaration is necessary and proper at this time under the
23 circumstances so that Plaintiffs may ascertain their rights and duties in connection
24 with the Staples Center Commitment. In the absence of a judicial declaration,
25 Plaintiffs may have no choice but to comply with an unlawful, unreasonable, and
26 unenforceable restraint.

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PRAYER FOR RELIEF

WHEREFOR, Plaintiffs pray for judgment against all Defendants as follows:

1. For an injunction enjoining and restraining the AEG Defendants, and those acting in concert with them or at their direction, from imposing or enforcing the Staples Center Commitment (or any other policy that conditions the use of the O2 on the agreement also to use Staples) on any artist, musician, performer, and/or their agents or promoters, directly or indirectly.
2. For a judicial determination by this Court that the Staples Center Commitment is contrary to the antitrust laws of the United States, and that the portion of the agreement between Plaintiffs and the AEG Defendants that conditions the use of the O2 on the use of Staples is, accordingly, unenforceable;
3. For reasonable attorney’s fees (*see* 15 U.S.C. § 15(a)) and costs of suit incurred herein;
4. For any and all other relief as this Court may deem proper and just.

Dated: March 21, 2018

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By /s/ Daniel M. Wall
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