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

GLOBAL MUSIC RIGHTS, LLC,
Plaintiff,
v.
RADIO MUSIC LICENSE
COMMITTEE, INC., et al.,
Defendants.

Case No. 2:16-cv-9051-TJH (ASx)

**GLOBAL MUSIC RIGHTS,
LLC'S OPPOSITION TO
NATIONAL ASSOCIATION OF
BROADCASTERS' MOTION
FOR LEAVE TO FILE *AMICUS
CURIAE* BRIEF**

Hearing Date: February 24, 2020

INTRODUCTION

1
2 Ignoring the admonition that “‘amicus curiae’ means friend of the court, not
3 friend of a party,”¹ the National Association of Broadcasters (NAB), seeks to inject
4 its untimely, partisan, and erroneous views into this proceeding. The Court should
5 not allow it. NAB’s proposed *amicus* brief is:

6 ***Untimely.*** NAB concedes that Federal Rule of Appellate Procedure 29
7 applies to its motion for leave. Under that Rule, NAB’s would-be *amicus* brief was
8 due July 18, 2019. *See* Fed. R. App. P. 29(a)(6). NAB did not seek leave until
9 January 14, 2020—nearly six months late. NAB does not acknowledge this delay,
10 much less justify its untimely *amicus* request.

11 ***Improper.*** NAB concedes that *amicus* briefs are not appropriate where the
12 litigants are adequately represented, the *amicus* filer fails to identify an interest in
13 any other case that may be affected by the Court’s order, and the *amicus* filer does
14 not present any “unique” information or perspective that the parties are not able to
15 provide. NAB does not satisfy any of these criteria. NAB merely parrots RMLC,
16 effectively giving RMLC a sur-sur-reply—which is hardly surprising, given that
17 over half a dozen of the same radio conglomerates run both organizations.

18 ***Unhelpful and wrong.*** NAB ostensibly seeks to support RMLC’s motion for
19 judgment on the pleadings, and yet all but entirely ignores the pleadings and the
20 parties’ briefing. Instead, NAB’s brief attacks the U.S. Department of Justice’s
21 (DOJ) Statement of Interest, claiming that the DOJ has historically approved
22 buyers’ “cooperatives.” But NAB is dead wrong to suggest that buyers’
23 “cooperatives” are entitled to fix prices or engage in other naked collusion. When
24 buyers conspire to fix the price they will pay for a product or service—which is
25 exactly what GMR alleges here—it violates the antitrust laws on a *per se* basis.²

26 ¹ *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.).

27 ² Compl. ¶¶ 9–10, 69–76, 95–99, 107–09; *see Mandeville Island Farms, Inc. v. Am.*
28 *Crystal Sugar Co.*, 334 U.S. 219, 235–36 (1948).

1 Because NAB’s proposed *amicus* brief is untimely, unhelpful, and wrong, we
2 respectfully request that the Court deny NAB’s motion for leave to file.

3 ARGUMENT

4 “There is no inherent right to file an *amicus curiae* brief with the Court.”
5 *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999). As NAB
6 admits, district courts apply Federal Rule of Appellate Procedure 29 in evaluating
7 requests to file *amicus* briefs. Notice of Motion and Motion for Leave (hereinafter
8 “Mot.”) at 5–6, Dkt. 128; see *Earth Island Inst. v. Nash*, No. 1:19-cv-01420-DAD-
9 SAB, 2019 WL 6790682, at *1 (E.D. Cal. Dec. 12, 2019). Additionally, and as
10 NAB further concedes, courts do not permit *amicus* filings unless (1) “a party is not
11 represented competently or is not represented at all,” (2) “the *amicus* has an interest
12 in some other case that may be affected by the decision in the present case,” or (3)
13 “the *amicus* has unique information or perspective that can help the court beyond
14 the help that the lawyers for the parties are able to provide.” *Ryan*, 125 F.3d at
15 1063; see Mot. at 5.³ Finally, and above all, an *amicus* filing must be “helpful” to
16 the Court. *Earth Island*, 2019 WL 26790682, at *1 (quotation omitted).

17 The Court should reject NAB’s proposed *amicus* brief. Not only is the filing
18 untimely to the tune of six months, it does not satisfy any of the *Ryan* criteria and is
19 not helpful. To the contrary, it is a transparent “friend of a party” brief that “merely
20 extend[s] the length” of RMLC’s own submissions. *Ryan*, 125 F.3d at 1063.

21 **I. NAB’s Proposed *Amicus* Brief is Not Timely.**

22 Under Rule 29(a)(6), a would-be *amicus curiae* must file its brief by “no later
23 than 7 days after the principal brief of the party being supported is filed.” NAB

24 ³ Courts in this Circuit have widely adopted the *Ryan* criteria. *E.g.*, *AmeriCare*
25 *MedSerts, Inc. v. City of Anaheim*, No. 8:16-cv-1703-JLS-AFMx, 2017 WL
26 1836354, at *1 n.3 (C.D. Cal. Mar. 28, 2017); *Merritt v. McKenney*, No. C 13-
27 01391 JSW, 2013 WL 4552672, at *4 (N.D. Cal. Aug. 27, 2013); *Gabriel Techs.*
28 *Corp. v. Qualcomm Inc.*, No. 08CV1992 AJB (MDD), 2012 WL 849167, at *4
(S.D. Cal. Mar. 13, 2012).

1 seeks to support RMLC’s motion for judgment on the pleadings. Mot. at 1. Since
2 RMLC filed that motion on July 11, 2019, Dkt. 95-1, NAB should have filed its
3 brief by July 18, 2019. That was over six months ago.

4 NAB concedes that this Court should reject *amicus* filings that “do not meet
5 Rule 29’s criteria.” Mot. at 6 (quoting *Neonatology Assocs., P.A. v. CIR*, 293 F.3d
6 128, 133 (3d Cir. 2002)). Since NAB’s proposed filing is patently untimely under
7 Rule 29, the Court should deny NAB’s motion for leave. *See Finkle v. Howard*
8 *Cty., Md.*, 12 F. Supp. 3d 780, 783 (D. Md. 2014) (rejecting *amicus* brief filed 73
9 days after supported party’s principal brief was filed).⁴

10 **II. NAB is Not a “Friend of the Court.”**

11 Setting aside its severe tardiness, NAB’s brief does not satisfy any of the
12 *Ryan* criteria. This is an independent basis for rejecting it. *E.g., AmeriCare*, 2017
13 WL 1836354, at *1 n.3; *Gabriel Techs.*, 2012 WL 849167, at *5.

14 ***RMLC is adequately represented.*** *Amicus* filings are “seldom appropriate”
15 at the district court level “where the parties are adequately represented by
16 experienced counsel.” *ForestKeeper v. Elliott*, 50 F. Supp. 3d 1371, 1380 (E.D.
17 Cal. 2014) (citing *Ryan*, 125 F.3d at 1063). NAB does not and could not argue that
18 RMLC is “not represented competently.” *Ryan*, 125 F.3d at 1063.

19 ***NAB does not identify any other case that may be affected.*** NAB does not
20 identify an interest in any “other case that may be affected by the decision in the
21 present case.” *Id.* NAB’s allusions to unspecified “legal matters impacting its
22 members” and unparticularized “ramifications beyond the parties” do not cut it.
23 Mot. at 6; *see Best Payphones, Inc. v. Dobrin*, No. 01-CV-3934 (LDJ) (ST), --- F.

24 ⁴ NAB may retort that its proposed *amicus* brief, while supporting RMLC’s motion
25 for judgment on the pleadings, also seeks to respond to the DOJ’s Statement of
26 Interest. Proposed *Amicus* Br. at 2, Dkt. 128-1. NAB’s filing is still untimely. The
27 DOJ filed its Statement of Interest nearly six weeks before NAB’s filing, and
28 RMLC filed a response to that Statement nearly one month before NAB’s filing.
NAB provides no explanation for its delay.

1 Supp. 3d ---, 2019 WL 4911189, at *1 n.3 (E.D.N.Y. Oct. 4, 2019) (denying *amicus*
2 request where filer failed to identify an interest in any other active litigation
3 involving issues “similar to the First Amendment claims raised here”); *Dibbs v.*
4 *Hillsborough Cty.*, No. 8:12-cv-2851-T-36TGW, 2014 WL 12839780, at *1–2
5 (M.D. Fla. Dec. 4, 2014) (denying motion for leave where proposed *amicus* “cited
6 no other case that might be affected by the decision in this case”).

7 ***NAB does not offer any unique information or perspective.*** Finally, NAB
8 does not offer any “unique information or perspective that can help the court
9 beyond the help that the lawyers for the parties are able to provide.” *Ryan*, 125
10 F.3d at 1063. Quite the opposite: NAB offers the ***same*** “perspective” and
11 “information” that RMLC is “able to provide.” NAB says its brief “provides this
12 Court with context about the Radio Music Licensing Committee . . . and its role in
13 the music licensing industry,” Mot. at 1, but there is no reason why RMLC cannot
14 provide “context” about ***itself*** or ***its own*** “role” in the industry. *See Barnes-Wallace*
15 *v. Boy Scouts of Am.*, No. 00CV1726-J (AJB), 2004 WL 7334945, at *1–2 (S.D.
16 Cal. Mar. 23, 2004) (where “the interests of Defendants . . . [were] adequately
17 represented,” would-be *amicus* filer did not “possess[] ‘unique information or
18 perspective that can help the court beyond the help the lawyers for the parties are
19 able to provide’”) (quoting *Ryan*, 125 F.3d at 1064).

20 NAB’s substantial ties to RMLC belie any suggestion that its perspective is
21 “unique.” *See Hartford Fire Ins. Co. v. Expeditors Int’l of Wash., Inc.*, No. 10 Civ.
22 5643 (KBF), 2012 WL 6200958, at *1 n.1 (S.D.N.Y. Dec. 11, 2012) (rejecting
23 *amicus* brief due to filer’s “close relationship” with litigant). Just like RMLC,
24 NAB represents “nationwide broadcasting companies with hundreds of radio
25 stations” and “small broadcasters with one or just a few radio stations.” Mot. at 4.
26 Many of ***the same radio companies***—including iHeartMedia, Townsquare,
27 Cumulus, Salem, Entercom, Cox, Univision, and Hubbard—are represented on both
28

1 organizations’ governing bodies.⁵ In some instances, the *same people* serve or have
 2 served on both organizations’ boards. NAB is “more a ‘friend of the [RMLC] than
 3 a ‘friend of the court.’” *See Hartford Fire*, 2012 WL 6200958, at *1 n.1 (rejecting
 4 brief where the plaintiff’s counsel belonged to the *amicus* filer’s Board). While an
 5 *amicus* need not be completely neutral, NAB “has made patently clear its partisan
 6 interest in the matter before the Court.” *Feld Entm’t, Inc. v. Arena Group 2000*,
 7 *LP*, No. 06cv1077 J (WMC), 2006 WL 8455518, at *2 (S.D. Cal. June 2, 2006).⁶

8 Far from offering a “unique” perspective beyond what “lawyers for the
 9 parties are able to provide,” NAB’s brief is an attempt by RMLC’s “allies” to
 10 “extend the length of [RMLC’s] brief.” *See Ryan*, 125 F.3d at 1063. There is no
 11 need for this avowed partisan to supplement RMLC’s “already-voluminous filings.”
 12 *City & Cty. of S.F. v. USCIS*, No. 19-cv-04717-PJH, --- F. Supp. 3d ---, 2019 WL
 13 5100718, at *1 (N.D. Cal. Oct. 11, 2019) (rejecting *amicus* briefs).

14 **III. NAB’s Proposed Amicus Brief is Not Helpful.**

15 NAB’s proposed *amicus* brief is not helpful to the Court. Ignoring the
 16 procedural posture of this case—a motion based strictly on the pleadings—NAB
 17 levels a broadside attack on the DOJ, relying in substantial part on briefs and
 18 correspondence that fall well outside of Global Music Rights’ First Amended
 19 Complaint. *See Proposed Amicus Br.* at 3–6 & App. In fact, NAB scarcely even
 20 mentions Global Music Rights’ Complaint. This sideshow is not “necessary for the
 21 Court’s disposition of the present motion[.]”—not even close. *Gingery v. City of*
 22 *Glendale*, No. CV 14-1291 PA (AJWx), 2014 WL 10987395, at *2 (C.D. Cal. Aug.
 23 4, 2014) (denying motion to appear as *amicus*).⁷

24 ⁵ *See* NAB Board, <https://www.nab.org/about/nabBoard.asp>; Committee Roster,
 25 <https://www.radiomlc.org/committee-roster>.

26 ⁶ Notably, NAB does not disclose whether “a party’s counsel authored the brief in
 27 whole or in part,” as required by Rule 29(a)(4)(E).

28 ⁷ *See Abadia-Peixoto v. U.S. Dep’t of Homeland Sec.*, 277 F.R.D. 572, 576 (N.D.
 Cal. 2011) (“Because the motion to dismiss presents purely legal issues as to the

1 NAB also misses the point of this lawsuit. NAB spills a pint of ink on the
 2 DOJ's supposed enforcement policies with respect to "competitor collaborations,"
 3 and lists various "business review letters" involving unrelated industries and
 4 organizations, but these have nothing to do with the *price-fixing conspiracy* alleged
 5 here. As the DOJ instructs, "[a]n agreement among purchasers that simply fixes the
 6 price that each purchaser will pay or offer to pay for a product or service is not a
 7 legitimate joint purchasing arrangement and is a *per se* antitrust violation." First
 8 Am. Compl. ¶ 108, Dkt. 23 (quoting U.S. Dep't of Justice & Fed. Trade Comm'n,
 9 *Statements of Antitrust Enforcement Policy in Healthcare* 54 n.17 (Aug. 1996)).
 10 **That** is what this case is about: competing buyers in the radio industry brazenly
 11 colluding on price and other licensing terms. It is *per se* illegal.⁸

12 NAB's opinions about the DOJ are "unnecessary and unhelpful." *Gabriel*
 13 *Techs.*, 2012 WL 849167, at *5 (rejecting "generally biased" *amicus* brief). The
 14 Court should deny NAB's motion for leave.

15 CONCLUSION

16 The Court should deny NAB's motion for leave to file an *amicus* brief. In
 17 the alternative, Global Music Rights requests leave to file a response to NAB.
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 19
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21 _____
 22 sufficiency of the pleadings, any unique perspectives or information the proposed
 23 *amici* might have to offer are not especially pertinent at this juncture.").

24 ⁸ NAB cherry-picks from the *Competitor Collaboration Guidelines*, but
 25 conspicuously omits the agencies' warning that "buying collaborations . . . may
 26 provide opportunities for their participants to collude on price, output, customers,
 27 territories, or other competitively sensitive variables," and that the "mere
 28 coordination of decisions on price, output, customers, territories, and the like is not
 integration" and does not afford any "basis for avoiding *per se* condemnation."
 U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for*
Collaborations Among Competitors §§ 3.2, 3.31(b) (Apr. 2000).

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Respectfully submitted,

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