



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRETT LAUTER,)	Case No. CV 15-08481 DDP (KSx)
)	
Plaintiff,)	
)	
v.)	ORDER RE: DEFENDANT MICHAEL
)	ROSENBLATT'S MOTION TO DISMISS
MICHAEL ROSENBLATT; ECHO)	THE THIRD AMENDED COMPLAINT
BRIDGE ENTERTAINMENT, LLC;)	
PLATINUM DISC. LLC; ECHO)	
BRIDGE HOME ENTERTAINMENT;,)	[Dkt 191]
)	
Defendants.)	
)	

Presently before the Court is Defendant Michael Rosenblatt ("Rosenblatt")'s Motion to Dismiss the Third Amended Complaint ("TAC"). Having considered the submissions of the parties, the court grants the motion in part, denies the motion in part, and adopts the following Order.

I. Background

As set forth in this Court's prior Order, Plaintiff Brett Lauter ("Lauter") is the sole proprietor of Pan Global

1 Entertainment ("PGE"). Plaintiff acquires distribution rights to
2 movies and other media and licenses those rights to other
3 distributors, such as tv channels, video on demand services,
4 websites, and DVD distributors. Plaintiff alleges that Defendant
5 Rosenblatt is the founder, Chairman, CEO, President, managing
6 partner, member, and majority shareholder of Defendant Echo Bridge
7 Entertainment ("EBE") and related entities.

8 On June 15, 2011, Plaintiff and EBE entered into a "Multi
9 Picture Deal/Acquisition of Digital Rights" Agreement ("the
10 Agreement") with respect to ten films. The Agreement granted EBE a
11 digital distribution license for the ten films in exchange for
12 royalty payments to Lauter. Plaintiff alleges that EBE breached
13 the Agreement by packaging free digital copies of the films
14 together with DVD copies of the same film and other films that
15 Lauter did not own, and by failing to pay royalties owed to
16 Lauter.¹

17 Lauter obtained a default judgment against EBE in state court
18 for the unpaid royalties. Lauter attempted to contact EBE
19 regarding subsequent alleged breaches of the Agreement, but
20 received no response. Lauter concluded that, as a result of EBE's
21 silence, continued breach, and perceived insolvency, the Agreement
22 terminated in February 2014. Nevertheless, Lauter alleges, EBE and
23 associated entities continue to distribute the films.

24 After the initial filing of this lawsuit, Lauter alleges, EBE
25 shut down its office and disconnected all phone and e-mail
26

27 ¹ As discussed further below, Plaintiff's TAC asserts all
28 causes of action against all Defendants, including Rosenblatt.

1 accounts. Sometime later, Defendant BHCIF, one of EBE's lenders,
2 foreclosed upon EBE's assets to satisfy a debt of \$37 million.
3 Lauter alleges that EBE had assets sufficient to cover its debts,
4 but that BHCIF, an alleged insider, nevertheless obtained EBE's
5 assets for only \$15 million in canceled debt.

6 Soon after, BHCIF transferred some of EBE's former assets to
7 another entity, Defendant Echo Bridge Acquisition Corporation
8 ("EBAC"). Within three months, EBAC had obtained all of EBE's
9 former assets. Lauter alleges that BHCIF and EBAC were not good
10 faith transferees of EBE's assets, but rather are EBE's successors.
11 Lauter further alleges that EBAC now distributes some of Lauter's
12 films in violation of his exclusive distribution rights.

13 Lauter's Second Amended Complaint ("SAC") asserted claims
14 against EBE, EBAC, and BHCIF entities for (1) Breach of Contract,
15 (2) Equitable Accounting, (3) Rescission of Contract, (4) Relief
16 from Transfer under the Uniform Voidable Transaction Act (UVTA),
17 (5) Interference with Prospective Economic Advantage, (6) Copyright
18 Infringement, including contributory and vicarious infringement,
19 (7) Unfair Competition in violation of California Business &
20 Professions Code § 17200, and (8) unfair competition in violation
21 of 15 U.S.C. §1125 (a) [Lanham Act § 43 (a)]. The SAC alleged the
22 latter four claims against Defendant Rosenblatt in his individual
23 capacity as well.

24 On motions to dismiss brought by EBAC and Rosenblatt, this
25 Court dismissed certain claims against EBAC and all claims against
26 Rosenblatt. The court granted Plaintiff leave to amend, but
27 limited that leave to the scope laid out in the order of dismissal.

28

1 Plaintiff then filed the operative Third Amended Complaint. The
2 TAC alleges six causes of action for (1) Breach of Contract, (2)
3 Equitable Accounting, (3) Rescission of Contract, (4) UVTA claims,
4 (5) copyright infringement, including contributory and vicarious
5 infringement, and (6) unfair competition in violation of California
6 Business & Professions Code Section 17200. Unlike the SAC, all
7 causes of action are alleged against all Defendants, including
8 Rosenblatt. Rosenblatt now moves to dismiss all claims against
9 him.

10 **ii. Legal Standard**

11 A complaint will survive a motion to dismiss when it contains
12 "sufficient factual matter, accepted as true, to state a claim to
13 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
14 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
15 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
16 "accept as true all allegations of material fact and must construe
17 those facts in the light most favorable to the plaintiff." Resnick
18 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
19 need not include "detailed factual allegations," it must offer
20 "more than an unadorned, the-defendant-unlawfully-harmed-me
21 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
22 allegations that are no more than a statement of a legal conclusion
23 "are not entitled to the assumption of truth." Id. at 679. In
24 other words, a pleading that merely offers "labels and
25 conclusions," a "formulaic recitation of the elements," or "naked
26 assertions" will not be sufficient to state a claim upon which

27

28

1 relief can be granted. Id. at 678 (citations and internal
2 quotation marks omitted).

3 "When there are well-pleaded factual allegations, a court
4 should assume their veracity and then determine whether they
5 plausibly give rise to an entitlement of relief." Id. at 679.
6 Plaintiffs must allege "plausible grounds to infer" that their
7 claims rise "above the speculative level." Twombly, 550 U.S. at
8 555. "Determining whether a complaint states a plausible claim for
9 relief" is a "context-specific task that requires the reviewing
10 court to draw on its judicial experience and common sense." Iqbal,
11 556 U.S. at 679.

12 **III. Discussion**

13 **A. New Causes of Action against Rosenblatt**

14 Rosenblatt argues that the first four causes of action against
15 him should be dismissed because they were not alleged against him
16 in the Second Amended Complaint. Thus, Rosenblatt contends, the
17 Third Amended Complaint's addition of these new causes of action
18 against him exceeds the scope of this Court's leave to amend the
19 SAC. The court agrees.

20 This Court's prior Order explained, at length, the
21 deficiencies in certain of Plaintiff's allegations against EBAC and
22 the infirmities in all of his claims against Rosenblatt. (Dkt.
23 183.) The Order specifically observed in the first instance that
24 only some of the SAC's causes of action were alleged against
25 Rosenblatt individually. (Dkt. 183 at 18.) Although the court
26 granted Plaintiff leave to amend his complaint a third time, the
27 court limited that leave "to the scope described in this Order,"

28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.