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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD A. HINSON,
Plaintiff,
v.
CALVARY RECORDS, INC., et al.,
Defendants.

No. 2:15-cv-02227-TLN-EFB

**ORDER GRANTING DEFENDANT
WARNER/CHAPPELL MUSIC, INC.'S
MOTION TO DISMISS**

This matter is before the Court pursuant to Defendant Warner/Chappell Music, Inc.'s ("Warner/Chappell") Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") under Federal Rule of Civil Procedure ("Rule") 12(b)(6). (Mot. to Dismiss First Am. Compl., ECF No. 52.) Plaintiff Ronald A. Hinson ("Plaintiff") filed an opposition (Opp'n to Mot. to Dismiss, ECF No. 53), and Warner/Chappell filed a reply (Reply to Mot. to Dismiss, ECF No. 57). For the reasons set forth below, the Court hereby GRANTS Warner/Chappell's Motion to Dismiss with leave to amend. (ECF No. 52.)

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I. FACTUAL AND PROCEDURAL BACKGROUND

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**
2 Plaintiff filed this suit on October 26, 2015. (ECF No. 1.) On January 11, 2016, Plaintiff
3 filed the FAC against Calvary Records, Inc., a California corporation dba The Calvary Music
4 Group dba Songs of Calvary (“Calvary Records”); Songs of Calvary, an entity whose form of
5 organization is unknown (“Songs of Calvary”); Calvary Music Group, Inc., a Tennessee
6 corporation (“Calvary Music”); Nelson S. Parkerson, Jr., deceased, by and through the Public
7 Administrator, as special administrator of Parkerson’s estate (“Parkerson”)¹; and Phyllis
8 Bradhurst (“Bradhurst”); Warner/Chappell (collectively, “Defendants”) for various causes of
9 action resulting out of the alleged copyright infringement of Plaintiff’s gospel songs. (ECF No.
10 7.) Plaintiff’s FAC alleges the following:

11 In 1971, Plaintiff, a professional songwriter and composer of gospel songs, composed the
12 words and music to the songs “The Lighthouse” and “He Pilots My Ship.” (ECF No. 7 ¶¶ 13–
13 14.) Both songs contain “a large amount of material wholly original with [P]laintiff,” and are
14 thus copyrightable subject matter under United States law. (ECF No. 7 ¶ 15.) On September 8,
15 1971, “The Lighthouse” was registered with the U.S. Copyright Office. (ECF No. 7 ¶ 16.) On
16 July 24, 1972, Plaintiff’s song “He Pilots My Ship” was registered with the U.S. Copyright
17 Office. (ECF No. 7 ¶ 16.)

18 On an unidentified date, Plaintiff entered into a contractual agreement with Calvary
19 Records, Songs of Calvary, Calvary Music, Parkerson, and/or Bradhurst (collectively, “Calvary
20 Defendants”), wherein the Calvary Defendants were granted the right to publish and “split-
21 publish” both “The Lighthouse” and “He Pilots My Ship.” (ECF No. 7 ¶¶ 9, 16.) Calvary
22 Records and Calvary Music are the alter egos of Parkerson and/or Bradhurst and are mere shells
23 through which Parkerson and/or Bradhurst carried on music publishing and recording businesses.
24 (ECF No. 7 ¶ 9.) At some time from 1971 to 1972, the Calvary Defendants and Journey Music
25 Company split-published “The Lighthouse” and “He Pilots My Ship.” (ECF No. 7 ¶ 16.)
26 Pursuant to the terms of the split-publishing arrangement, fifty percent of the income generated
27 from the exploitation of the songs was to be payable to Plaintiff as the songwriter, and the

28 ¹ On February 6, 2018, the parties stipulated to dismiss Defendant Parkerson with prejudice.

1 remaining fifty percent was to be apportioned between the Calvary Defendants and Journey
2 Music Company as the split-publishers. (ECF No. 7 ¶ 16.)

3 On August 11, 1975, Plaintiff and the Calvary Defendants entered into a subsequent
4 “Artist Recording & Songwriter’s Agreement” (the “1975 Agreement”). (ECF No. 7 ¶ 17.) The
5 1975 Agreement consisted of a Part A entitled “Artist Recording Agreement” and a Part B
6 entitled “Songwriter’s Agreement.” (ECF No. 7 ¶ 17.) Part B granted the Calvary Defendants,
7 among other things, “exclusive publishing rights to any and all songs Plaintiff composed—
8 including ‘The Lighthouse’ and ‘He Pilots My Ship,’ the right to split-publish any song Plaintiff
9 composed with another publisher, and the right to administer the copyright of any song Plaintiff
10 composed.” (ECF No. 7 ¶ 17.) Pursuant to the 1975 Agreement, income generated from the
11 songs continued to be split fifty percent to Plaintiff and fifty percent between Journey Music
12 Company and the Calvary Defendants. (ECF No. 7 ¶ 17.)

13 On or about June 9, 1992, Plaintiff and the Calvary Defendants entered into a new “Artist
14 Recording Agreement” (the “1992 Agreement”). (ECF No. 7 ¶ 18.) The 1992 Agreement
15 expressly nullified all prior agreements between the parties, except Part B of the 1975 agreement,
16 which was to remain in effect temporarily and be renegotiated within three months. (ECF No. 7
17 ¶ 18.) The 1992 Agreement also obligated Plaintiff to “perform at a mutually designated studio,
18 for the purpose of recording three master scale studio projects, and one live audio-video project,
19 each project containing a minimum of 9 songs.” (ECF No. 7 ¶ 19.) It further provided that the
20 term of the 1992 Agreement would be a minimum of 36 months and a maximum of 48 months.
21 (ECF No. 7 ¶ 19.) However, if all projects were not completed in 48 months, the 1992
22 Agreement would remain in effect unless it could be demonstrated that “[Calvary Records] was in
23 any way responsible for their incompleteness.” (ECF No. 7 ¶ 19.) The projects were never
24 completed because the Calvary Defendants never secured the use of a recording studio. (ECF No.
25 7 ¶ 19.)

26 Between 1971 and 1995, Journey Music Company’s publishing rights with regard to “The
27 Lighthouse” and “He Pilots My Ship,” as well as other songs written by Plaintiff, “ultimately
28 devolved to Word Music.” (ECF No. 7 ¶ 20.) In 1995, the Calvary Defendants wrote to Word

1 Music and claimed that Plaintiff was an exclusive songwriter for them and that they held the
2 publishing rights for “The Lighthouse.” (ECF No. 7 ¶ 21.) The Calvary Defendants then
3 demanded they should be paid the songwriter’s share of all songwriter royalties in addition to the
4 publisher’s share. (ECF No. 7 ¶ 21.) Word Music agreed and established two accounts, one in
5 the name of Plaintiff as the songwriter under his social security number and the other in the name
6 of Songs of Calvary as the publisher under Parkerson’s social security number. (ECF No. 7 ¶ 21.)
7 Thereafter, “with respect to the royalties paid on ‘The Lighthouse,’ Word Music paid both the
8 publisher’s share and the songwriter’s share from the two respective accounts to the Calvary
9 Defendants.” (ECF No. 7 ¶ 21.)

10 In 2002, Warner/Chappell acquired Word Music, including Word Music’s rights with
11 respect to “The Lighthouse” and “He Pilots My Ship.” (ECF No. 7 ¶ 22.) Warner/Chappell
12 continued to pay both the publisher and songwriter’s royalty shares to the Calvary Defendants
13 from the two accounts Word Music had set up. (ECF No. 7 ¶ 22.) On April 27, 2011, the
14 Calvary Defendants emailed Warner/Chappell and notified it that the songwriter and publisher
15 royalty accounts for “The Lighthouse” should have been merged, requesting that those accounts
16 from then on be maintained under only Parkerson’s social security number. (ECF No. 7 ¶ 23.)
17 Warner/Chappell made the requested change. (ECF No. 7 ¶ 23.)

18 On October 25, 2012, Plaintiff discovered that the Calvary Defendants had “for a number
19 of years concealed, withheld, and cashed checks representing accrued royalties for ‘The
20 Lighthouse’ and ‘He Pilots My Ship.’” (ECF No. 7 ¶ 24.) The amount of royalties wrongfully
21 concealed is presently unknown, but amounts to at least \$66,200.41. (ECF No. 7 ¶ 24.) On
22 December 18, 2013, Warner/Chappell advised Plaintiff that it placed a legal hold on the Calvary
23 Defendants’ royalty accounts. (ECF No. 7 ¶ 25.) Warner/Chappell has since refused to release
24 any of the money placed on legal hold, which is at least \$29,000.00. (ECF No. 7 ¶ 25.)

25 Plaintiff pleads the following causes of action: (1) violation of the Copyright Act, 17
26 U.S.C. §§ 101 *et seq.*, against all Defendants; (2) breach of fiduciary duty (constructive fraud)
27 against all Defendants except for Warner/Chappell; (3) conversion against all Defendants; (4)
28 declaratory relief against all Defendants except for Warner/Chappell; (5) breach of contract

1 against all Defendants except for Warner/Chappell; (6) rescission of contract against all
2 Defendants except for Warner/Chappell; (7) negligence against all Defendants; (8) common
3 counts – money had and received against all Defendants except Warner/Chappell; (9) common
4 counts – money had and received against Warner/Chappell; and (10) accounting against all
5 Defendants. (ECF No. 7.)

6 II. STANDARD OF LAW

7 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
8 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a)
9 requires that a pleading contain “a short and plain statement of the claim showing that the pleader
10 is entitled to relief.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). Under notice pleading
11 in federal court, the complaint must “give the defendant fair notice of what the . . . claim is and
12 the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). “This
13 simplified notice pleading standard relies on liberal discovery rules and summary judgment
14 motions to define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz*
15 *v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

16 On a motion to dismiss, the factual allegations of the complaint must be accepted
17 as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give plaintiff the benefit of
18 every reasonable inference to be drawn from the “well-pleaded” allegations of the complaint.
19 *Retail Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not
20 allege “‘specific facts’ beyond those necessary to state his claim and the grounds showing
21 entitlement to relief.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the
22 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
23 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S.
24 544, 556 (2007)).

25 Nevertheless, a court “need not assume the truth of legal conclusions cast in the
26 form of factual allegations.” *United States ex rel. Chunie v. RingrosHee*, 788 F.2d 638, 643 n.2
27 (9th Cir. 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more
28 than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A

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