UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LARRY REYNOLDS,
Plaintiff,

v.

APPLE INC., et al.,
Defendants.

Case No. 19-cv-05440-RS

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO DISMISS; GRANTING MOTION TO SEVER

I. INTRODUCTION

In their renewed motions to dismiss, Defendants Apple Inc. ("Apple") and Google LLC ("Google") hum a familiar tune. Once again, they complain Plaintiff Larry Reynolds, appearing *pro se*, has not alleged his claim of copyright infringement with enough specificity. Google also renews its motion to sever. For the reasons set forth below, the motions to dismiss are granted in part and denied in part and the motion to sever is granted.

II. BACKGROUND[1]

Reynolds is a musician who has produced a number of songs and albums under the stage name L.P. Reynolds. He alleges Defendants have initiated a "digital music administrative campaign to reproduce and distribute" approximately seventy of Reynolds' "sound recordings and works of musical composition[] to en[gage] with a third party, (the Harry Fox Agency) without

[1] Facts are drawn from Plaintiff's complaint and are taken as true for the purpose of deciding this motion to dismiss.

Plaintiff['s] authorization." Second Amended Complaint ("SAC") ¶ 10. He identifies the eight albums and seventy songs at issue. SAC at 17-24. He has provided Certificates of Registration showing that he owns valid copyrights in seven albums: L.P. Reynolds Christmas, Tennessee Fever (Presidential Edition), L.P. Reynolds Bride for Doctor Levinstein, L.P. Reynolds Something New, L.P. Reynolds If You Don't Believe, L.P. Reynolds God Gave Love Today, and L.P. Reynolds and the Argonauts.

Reynolds contends the Defendants do not have the proper license, or exceeded the scope of such a license, to distribute his music and that they have not paid, or underpaid, royalty payments owed to him "from as far back as 2015-2017[.]" *Id.* ¶ 11. More specifically, he alleges that the Defendants did not file with him or the United States Copyright Office a Notice of Intent ("NOI") or that they "went far over the (Notice of Intention date) that [] would have been granted." *Id.* ¶ 18. Reynolds explains that he has been served with Notices of Intent from other companies, but neither from Apple nor Google. He does, however, note that he has received small royalty payments from the Harry Fox Agency ("HFA") – $0.75 on December 26, 2018, $0.01 on January 28, 2019, $12.28 on June 3, 2019, $0.02 on August 28, 2019, and $12.81 on November 25, 2019. He also accuses both Defendants of issuing false bank statements related to his "music account" using the HFA. *Id.* ¶ 28.

On October 15, 2020, the parties participated in a settlement conference before Magistrate Judge Ryu. Judge Ryu reported that the matter was fully settled and the parties had agreed to all terms and made arrangements for signing. In an order entered twelve days later, however, Judge Ryu stated that Reynolds had not yet signed the settlement agreement. She explained that as a result of the pandemic, the settlement conference had taken place over Zoom rather than in person and that Reynolds did not have the equipment to sign the agreement at home. He represented to the court at the settlement conference that he would get the agreement signed later that day at his local Office Depot. By October 27, he had not yet done what he promised to do on October 15. As a result, he was ordered to return the signed settlement agreement, or submit a written response explaining why he had not done so, by November 6, 2020. On November 4, 2020, Reynolds filed

a response (now under seal) in which he stated that he had decided not to sign the settlement agreement. These motions followed.

III. LEGAL STANDARDS

A. Motion to Sever

Joinder is proper if the plaintiffs: (1) assert any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and (2) if any question of law or fact common to all the plaintiffs will arise in the action. Fed. R. Civ. P. 20 (a)(1). The Ninth Circuit has noted that Rule 20 "is to be construed liberally in order to promote trial convenience and to expedite the final determination of disputes, thereby preventing multiple lawsuits." *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558 F.2d 914, 917 (9th Cir.1977); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged"). Nonetheless, "a district court must examine whether permissive joinder would comport with the principles of fundamental fairness or would result in prejudice to either side." *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (internal quotations omitted).

B. Motion to Dismiss

Under the Federal Rules of Civil Procedure, a complaint must contain a short and plain statement of the claim showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a). While "detailed factual allegations" are not required, a complaint must have sufficient factual allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)). A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal under Rule 12(b)(6) may be based on either the "lack of a cognizable legal theory" or on "the absence of sufficient facts alleged" under a cognizable legal theory. *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013). *Pro se* complaints are liberally construed and may only be

dismissed for failure to state a claim where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012).

IV. DISCUSSION

A. Reynolds' Motions

Since Defendants filed their motions, Reynolds has filed four motions: two motions to amend his complaint, one for summary judgment, and one "motion for ruling." This Court previously granted Defendant's motion to enlarge time to respond to Reynolds' motion for summary judgment (Dkt. 104) and the later of Reynolds' two motions to amend (Dkt. 103). The earlier titled motion to amend, however, is identical to the SAC, except that it adds a number of new exhibits.[2] For ease of administration, it will be considered here and the motion granted over Defendants' objections. The "motion for ruling," on the other hand, is denied because no such motion exists.[3]

B. Motion to Sever

While Reynolds accuses each Defendant of a similar course of infringing conduct, he does not allege that they worked together or that the findings of fact necessary to resolve each claim in his favor would overlap. He makes separate claims about Google with regard to Google Play and Apple with regard to Apple Music. Even if they both distributed Reynolds' music without a

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[2] The new exhibits include: a formal list of Reynolds' works; scans of print outs of his work on Google Play; a scan of 17 U.S.C. §§ 106, 501, 504; what appears to be the second chapter of a copyright treatise; scans of print outs of his work on iTunes Music; a scan of a print out of a page entitled "Top Songs by L.P. Reynolds" from Shazam; a scan of a print out of a search of "lp reynolds" on Google Play; scans of a print out of Reynolds' albums "Supersaint," "L.P. Reynolds Christmas," "Tennessee Fever (Presidential Edition)," and "L.P. Reynolds & the Argonauts" for sale in an online music store; a scan of a print out of a search for "l.p. reynolds" on Google, and Certificates of Registration from the United States Copyright Office for the albums L.P. Reynolds Christmas, L.P. Reynolds and the Argonauts, L.P. Reynolds Bride for Doctor Levinstein, L.P. Reynolds Something New, Tennessee Fever (Presidential Edition), L.P. Reynolds If You Don't Believe, and L.P. Reynolds God Gave Love Today.

[3] The "motion for ruling" appears also to contain Reynolds' case management statement. Though the motion is technically denied, he need not submit another statement before the case management conference.

license, they did so separately. Because Reynolds' allegations are clearly siloed as to each Defendant, severance is appropriate. The Clerk is directed to open a separate file against Google.

C. Motions to Dismiss

To establish a prima facie case of copyright infringement, a plaintiff must show "(1) ownership of a valid copyright and (2) violation by the alleged infringer of at least one of the exclusive rights granted to copyright owners by the Copyright Act." *UMG Recordings*, 628 F.3d at 1178. Section 106 of the Copyright Act grants copyright owners the exclusive right, among others, "to distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership." 17 U.S.C. §§ 106(3), 501(a). Thus, to survive a motion to dismiss, Reynolds must allege facts showing that he owns valid copyrights and that Apple and Google distributed the copyrighted work without permission. In the previous order, Reynolds was directed to provide an exhaustive list of his copyrights and to describe more fully why Apple's alleged conduct was unauthorized.

Before an entity may reproduce and distribute a phonorecord of a musical work in which another holds a valid copyright, it must obtain a compulsory license. *Eight Mile Style, LLC v. Spotify USA Inc.*, 2021 WL 1578106, at *2 (M.D. Tenn. April 22, 2021). "Once a copyright owner distributes the musical work 'to the public,' the compulsory license provision of § 115 is triggered, and anyone may obtain a compulsory license in the musical work by serving an NOI on the copyright owner within the applicable time frame[.]" *Yesh Music, LLC v. Amazon.com*, 249 F.Supp.3d 645, 651 (E.D.N.Y. 2017) (citing 17 U.S.C. § 115(a), (b)). "For a compulsory license to be available," "the NOI must be sent before, or no more than 30 days after, the first distribution of the composition." *Eight Mile Style*, 2021 WL 1578106, at *2.

Though Reynolds' SAC is at times hard to follow, it is clear he is asserting that Apple and Google are using Apple Music and Google Play to "distribute copies or phonorecords of the copyrighted work to the public," an exclusive right under 17 U.S.C. § 106, without having served on him a valid NOI. Under 17 U.S.C. § 115(b)(4), "the failure to serve or file the notice of intention . . . forecloses the possibility of a compulsory license." Without a voluntary license, "the

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