

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

<p><b>MARK MAHON,</b></p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p><b>MAINSAIL LLC, ET AL.,</b></p> <p style="text-align: center;">Defendants.</p>	<p><b>ORDER RE: MOTIONS TO DISMISS</b></p> <p>Case No. 20-cv-01523-YGR</p> <p>Dkt. No. 47</p>
<p>v.</p> <p><b>YOUTUBE LLC, ET AL.,</b></p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 20-cv-01525-YGR</p> <p>Dkt. No. 44</p>
<p>v.</p> <p><b>ALPHABET INC., ET AL.,</b></p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 20-cv-01530-YGR</p> <p>Dkt. No. 43</p>
<p>v.</p> <p><b>APPLE INC., ET AL.,</b></p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 20-cv-01534-YGR</p> <p>Dkt. No. 50</p>

Plaintiff Mark Mahon brings five copyright infringement actions, alleging that each defendant infringes Mahon’s copyrights in the motion picture and screenplay titled “Strength and Honor.” In a previous omnibus order, the Court dismissed the complaints against YouTube and Alphabet and dismissed in part the claims against Mainsail and Entertainment One, as well as those against Apple Distribution International Ltd. (“ADI”), all with leave to amend. (*See* Dkt. No. 44 (“Omnibus Order”) in Case no. 20-1523.) The Court further granted Mahon leave to conduct jurisdictional discovery against Entertainment One. Mahon has filed amended complaints

1 dismiss. Mainsail, YouTube, and Alphabet move to dismiss for failure to state a claim under  
 2 Federal Rule of Civil Procedure 12(b)(6), and ADI moves to dismiss for lack of personal  
 3 jurisdiction under Federal Rule of Civil Procedure 12(b)(2).

4 Having considered the papers and pleadings in this action, and the arguments made at the  
 5 hearing held on November 3, 2020, the Court **GRANTS IN PART** and **DENIES IN PART** Mainsail's  
 6 and YouTube's motions and **GRANTS** Alphabet's and Apple's motions.

7 **I. BACKGROUND**

8 The nature of these cases was previously described, and the Court does not repeat the  
 9 allegations in full here.<sup>1</sup> (*See* Omnibus Order at 2:11-4:24.)

10 In summary, Mahon is an independent Irish filmmaker who created the film "Strength and  
 11 Honor" (the "Film") in 2005. (Mainsail SAC ¶¶ 7, 23.) Mahon entered into agreement with  
 12 Mainsail<sup>2</sup> to distribute the Film in 2009. (*Id.* ¶ 27.) As part of the agreement, Mahon sent master  
 13 copies of the Film to Visual Data Media Services, Inc., which is based in Burbank, California. (*Id.*  
 14 ¶ 27.) However, in January 2010, the Film was released with unauthorized covers and trailers,  
 15 which Mahon believes violated the agreement. (*Id.* ¶ 28.) Mahon immediately sent "cease and  
 16 desist" letters to Mainsail, instructing it to remove the Film from distribution, and eventually filed  
 17 suit in the Los Angeles Superior Court. (*Id.* ¶¶ 29-30.) Mahon also sent similar letters to  
 18 Entertainment One, which had subcontracted distribution from Mainsail. (*Id.* ¶ 31.)

19 During the subsequent exchange, Mainsail allegedly offered, and then repeatedly delayed,  
 20 mediation until two years had passed. (*Id.* ¶¶ 35-40.) When Mahon finally filed suit, the Superior  
 21 Court found Mahon's claims time-barred, except for his claim for accounting. (*Id.* ¶¶ 42; Case  
 22 No. 20-1523, Dkt. No 31-32.) During trial on the accounting claim, Mainsail introduced evidence  
 23

24  
 25 <sup>1</sup> The Court references the relevant paragraph numbers of the case with the lowest filing  
 26 number. *See Mahon v. Mainsail LLC*, No. 20-cv-01523, Dkt. No. 45 ("Mainsail SAC."). Where,  
 27 and when appropriate, direct references to the other complaints are made. *See Mahon v. YouTube*  
 28 *LLC*, No. 20-cv-1525, Dkt. No. 42 ("YouTube SAC."); *Mahon v. Alphabet Inc.*, No. 20-cv-1530,  
 29 Dkt. No. 41 ("Alphabet SAC."); *Mahon v. Apple Inc.*, No. 20-1534, Dkt. No. 46 ("Apple SAC.").

30 <sup>2</sup> The Mainsail defendants include Mainsail LLC, Shoreline Entertainment, Inc., Sam  
 31 Eigen, Morris Ruskin, and Does 1 through 21 (collectively, "Mainsail").

1 that Mahon never delivered the Film and that it had stopped all licensing after receiving Mahon's  
2 "cease and desist" letter, which allegedly surprised Mahon and to which Mahon had no response.  
3 (Mainsail SAC ¶¶ 44, 87-88.) Accordingly, Mahon recovered nothing. (*Id.* ¶ 46.)

4 Notwithstanding the Superior Court's findings, the Film continued to be distributed around  
5 the world, which Mahon claims could only occur based on master copies provided to Mainsail  
6 through Visual Data. (*Id.* ¶¶ 44, 47.) In December 2019, Visual Data revealed to Mahon, for the  
7 first time, that it had shipped copies of the Film to companies around the world, on Mainsail's  
8 instruction, after Mahon's "cease and desist" letter. (*Id.* ¶¶ 56, 65; Dkt. No. 19-5 at 55, 61; Dkt.  
9 No. 45-3 at 2.) Visual Data's records show that it shipped DVDs of the Film directly to Mainsail  
10 in 2017.<sup>3</sup> (Dkt. No. 19-5 at 61.)

11 To document his claims, Mahon purchased the Film from YouTube, Google Play, and  
12 iTunes in December 2019, and then sent those companies "cease and desist" letters. (YouTube  
13 SAC ¶¶ 32, 34; Alphabet SAC ¶¶ 33, 35; Apple SAC ¶¶ 35, 37.) The companies took down the  
14 Film, and both Google and Apple identified Entertainment One as the provider of their license and  
15 copy. (Case No. 20-1530, Dkt. No. 16-5 at 39; Apple SAC ¶ 41; Case No. 20-1534, Dkt. No. 15-5  
16 at 45.) Entertainment One reached out to Mahon directly in January 2020, stating:

17 As you might recall, Entertainment One were granted all linear  
18 distribution rights, which included 'all means of download and  
19 streaming,' in this film by way of an agreement with Mainsail LLC  
20 on behalf of [Mahon's production company] dated 16 May 2009.  
21 Those rights have been granted for a fifteen year term from early  
22 2010. As such, we have been and remain the exclusive licensee of  
this title for a further five years. Please be re-assured that we have  
authorised the likes of iTunes, Google and other digital platforms in  
the UK and Eire to offer the title for sale and they have not been  
infringing the copyright of this film.

23 (Case No. 20-1530, Dkt. No. 16-5 at 33.) Mahon filed suit against all defendants shortly after.<sup>4</sup>

24  
25 <sup>3</sup> Mahon also received a royalty report from Entertainment One showing around \$10,000 in  
26 royalties owed for Q4 2017 in February 2018. (Mainsail SAC ¶ 70.) However, Mahon claims he  
believed the report was in error and did not pursue his claims at the time.

27 <sup>4</sup> The Court omits details regarding Mahon's production company, copyright registration  
and assignment history, and appeals in the California state court litigation, which are not directly  
28 relevant to the instant motions. For ease of reference, the Court uses "Mahon" to refer both to

1 **II. LEGAL STANDARD**

2 **A. Rule 12(b)(2)**

3 Rule 12(b)(2) places the burden on the plaintiff to demonstrate that the court has personal  
4 jurisdiction over the defendants. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800  
5 (9th Cir. 2004). A Rule 12(b)(2) motion to dismiss may test either plaintiff’s allegations of  
6 jurisdiction or the facts supporting those allegations. Where defendants’ motion rests on the  
7 written materials, rather than an evidentiary hearing, “the plaintiff need only make a prima facie  
8 showing of jurisdictional facts. *Id.* (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)).  
9 Although plaintiff cannot rest on conclusions, “uncontroverted allegations in the complaint must  
10 be taken as true.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir 2011).  
11 The court does not assume the truth of allegations contradicted by affidavit, but conflicts among  
12 parties’ affidavits are resolved in plaintiff’s favor. *Id.*; *AT&T Co. v. Compagnie Bruxelles*  
13 *Lambert*, 94 F.3d 586, 588-89 (9th Cir. 1996) (citation omitted).

14 Substantively, “[t]here are two limitations on a court’s power to exercise personal  
15 jurisdiction over a nonresident defendant: the applicable state personal jurisdiction rule and  
16 constitutional principles of due process.” *Sher*, 911 F.2d at 1360. California’s long arm statute  
17 allows courts to exercise personal jurisdiction over defendants to the extent permitted by the due  
18 process clause of the United States Constitution. Cal. Civ. P. Code § 410.10. In addition, the  
19 federal long-arm statute—codified as Federal Rule of Civil Procedure 4(k)—allows a court to  
20 exercise jurisdiction over “any defendant who is not subject to the jurisdiction of the courts of  
21 general jurisdiction of any state” through service of process, as long as doing so complies with due  
22 process. *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006).

23 **B. Rule 12(b)(6)**

24 Under Rule 12(b)(6), a complaint may be dismissed for failure to state a claim upon which  
25 relief may be granted. Dismissal under Rule 12(b)(6) is proper if there is a “lack of a cognizable  
26 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”  
27  
28

1 *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting *Balistreri v. Pacifica*  
 2 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988)). The complaint must plead “enough facts to state  
 3 a claim [for] relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
 4 (2007). A claim is plausible on its face “when the plaintiff pleads factual content that allows the  
 5 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
 6 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the facts alleged do not support a reasonable  
 7 inference of liability, stronger than a mere possibility, the claim must be dismissed. *Id.* at 678-79;  
 8 *see also In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (stating that a court is  
 9 not required to accept as true “allegations that are merely conclusory, unwarranted deductions of  
 10 fact, or unreasonable inferences”).

11 If a court dismisses a complaint, it should give leave to amend unless “the pleading could  
 12 not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe, Inc. v. N. Cal.*  
 13 *Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

### 14 **III. MAINSAIL’S MOTION TO DISMISS**

15 Mahon asserts claims for direct and contributory copyright infringement, illicit trafficking  
 16 in counterfeit labels, fraud, and conversion against Mainsail. The Court previously found that  
 17 Mahon adequately alleged direct and contributory copyright infringement, but dismissed the illicit  
 18 trafficking claims as time-barred, the fraud claim as insufficiently pled, and the conversion claim  
 19 as preempted by the Copyright Act. Mahon amended the complaint reasserting the claims, and  
 20 Mainsail moves to dismiss on similar grounds.

#### 21 **A. Contributory Copyright Infringement**

22 The Court has already found Mahon’s contributory infringement allegations sufficient.  
 23 Mainsail therefore did not have leave to reassert its challenge to this claim, especially given the  
 24 nature of the new allegations. The Court addresses Mainsail’s motion nonetheless.

25 Contributory copyright infringement occurs when a party “(1) has knowledge of another’s  
 26 infringement and (2) either (a) materially contributes to or (b) induces that infringement.” *Perfect*  
 27 *10 v. Visa Int’l Serv. Assoc.*, 494 F.3d 788, 795 (9th Cir. 2007). “Material contribution” may

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