

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VICTOR WILLIS,  
Plaintiff,

v.

SCORPIO MUSIC (BLACK  
SCORPIO) S.A., CAN'T STOP  
PRODUCTIONS, INC., AND  
HENRI BELOLO,

Defendants.

Case No.: 15cv1078 BTM(RBB)

**ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS**

Defendants Scorpio Music ("Scorpio"), Henri Belolo ("Belolo"), and Can't Stop Productions, Inc. ("CSP"), have filed motions to dismiss the Complaint. For the reasons discussed below, Defendants' motions to dismiss are **GRANTED**.

**I. BACKGROUND**

In a prior lawsuit, Scorpio Music S.A. v. Willis, Case No. 11cv1557 BTM(RBB), Scorpio and CSP sought a judicial determination regarding the percentage of copyrights to 24 compositions ("24 Disputed Works") that Victor Willis was entitled to recover upon termination of his grants of copyright. Willis filed a counterclaim for a declaratory judgment that Belolo did not contribute to the

1 authorship of the lyrics or the music of the 24 Disputed Works and that Willis was  
2 entitled to recapture 50% of the copyright interests in each of those works. (Willis  
3 did not dispute that Jacque Morali composed the music to these works.)

4 After a jury trial in February 2015, the Court issued a judgment that decreed  
5 that Belolo is not a joint author of 13 of the 24 Disputed Works (the “13  
6 Compositions”), including “YMCA,” and that Willis has recaptured 50% of the  
7 copyrights in those 13 works.

8 On May 13, 2015, Willis commenced this action. Willis alleges that all  
9 financial and business decisions of CSP and its wholly-owned publishing division,  
10 Can’t Stop Music (“CSM”) were solely made by Belolo. (Compl. ¶ 23.) According  
11 to Willis, Belolo caused CSP/CSM to utilize a form contract that denominated  
12 songwriters that assigned their works to CSP/CSM as “adapters,” even though  
13 such songwriters routinely created original music and lyrics that were not based  
14 upon any previously existing work. (Compl. ¶¶ 28-29.) Belolo also allegedly  
15 caused CSP/CSM to enter into a sub-publishing agreement with Scorpio (the  
16 “Scorpio Sub-Publishing Agreement”), under which Scorpio licensed allegedly  
17 original French songs to CSP/CSM for CSP/CSM to create English language  
18 “adaptations” of the alleged French songs. (Compl. ¶¶ 23, 39.) Willis alleges that  
19 Belolo engaged in these actions to create a foundation for Belolo’s knowingly false  
20 claim to authorship of the lyrics of purported “Foreign Works” referred to in the form

1 contracts, including the 13 Compositions. (Compl. ¶ 30.)

2 Belolo, by and through CSP, filed in the United States Copyright Office  
3 registrations for each of the 13 Compositions. (Compl. ¶ 40.) The Registrations  
4 identify Belolo as a co-author of the lyrics. (Compl. ¶ 43.)

5 Willis claims that by falsely claiming authorship, Belolo effectively obtained  
6 for himself a 50% share of royalties for all usages of the musical compositions  
7 governed by the form contract. (Compl. ¶ 31.) Belolo, by and through CSP/CSM  
8 caused registrations of the 13 Compositions with SACEM (the French rights  
9 organization that administers the collection and distribution of royalties for uses of  
10 musical compositions), which has remitted to Belolo a 50% share of royalties  
11 pursuant to its policy of remitting a 50% portion of royalties to the author of the  
12 underlying original language lyrics for all territories around the world except the  
13 United States. (Compl. ¶¶ 35-36.)

14 Belolo also caused registrations of the 13 Compositions with BMI, the  
15 American performing rights organization that administers the collection and  
16 distribution of royalties for uses of musical compositions in the United States.  
17 (Compl. ¶ 37.) Based on such registrations, BMI has remitted to Belolo a 25%  
18 share of nondramatic performance royalties pursuant to its policy of remitting  
19 royalties to the author of the underlying original language lyrics. (Compl. ¶ 38.)

20 Willis alleges that as a result of his fraudulent conduct, Belolo has advanced

1 his own self-interest to the detriment of Willis and has obtained substantial gains  
2 and advantages to which he is not entitled. (Compl. ¶ 40.) Accordingly, Willis  
3 asserts the following claims against Defendants: (1) unjust enrichment (against  
4 Belolo); (2) conversion (against Belolo); (3) misappropriation (against Belolo), and  
5 (4) fraud (against all Defendants).

6 The Complaint also asserts claims based on allegedly unauthorized dramatic  
7 “grand rights” performances of the 13 Compositions, 20 additional compositions,  
8 and “Macho Man,” by Sixuvus, Ltd. (“Sixuvus”). According to the Complaint,  
9 during the three years prior to the commencement of this action, Sixuvus, an entity  
10 dominated and controlled by Belolo and CSP, presented grand rights public  
11 performances of the songs at issue through the group then performing under the  
12 name “Village People.” (Compl. ¶ 52.) Willis alleges that CSP authorized third  
13 parties including Sixuvus to present the dramatic performances on a royalty-free  
14 license basis, charging only for the use of the Village People trademark. (Compl.  
15 ¶ 59.) CSP has never reported or paid to Willis proceeds from the dramatic  
16 performances. (Compl. ¶ 60.)

17 Willis asserts the following claims in connection with the dramatic grand  
18 rights performances: (1) vicarious copyright infringement (against Belolo); and (2)  
19 breach of fiduciary duty (against CSP).

20

## II. DISCUSSION

### A. Claims Based on Belolo's False Claim of Authorship

Willis's first four causes of action (unjust enrichment, conversion, misappropriation, and fraud) are based on Willis's allegations that Belolo, through CSP/CSM, carried out a scheme that allowed Belolo to falsely claim to be an author of the lyrics of the 13 Compositions and thereby obtain credit and royalties, to which he was not entitled, in connection with the exploitation of the works. These claims are barred by the doctrine of res judicata because they could have been brought in the prior action.

The doctrine of res judicata "bars relitigation of all grounds of recovery that were asserted, or could have been asserted, in a previous action between the parties, where the previous action was resolved on the merits." United States ex rel. Barajas v. Northrop Corp., 147 F.3d 905, 909 (9th Cir. 1998). "It is immaterial whether the claims asserted subsequent to the judgment were actually pursued in the action that led to the judgment; rather, the relevant inquiry is whether they could have been brought." Id.

There are three elements to a successful res judicata defense: (1) an identity of claims; (2) a final judgment on the merits; and (3) privity between the parties. United States v. Liquidators of European Federal Credit Bank, 630 F.3d 1139, 1150 (9th Cir. 2011). There was a final judgment on the merits in the prior case

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