

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JEFFREY DAVID BETHEL,  
individually, and as the sole  
member of Santa Performance, LLC  
and SANDIA PERFORMANCE, LLC,

Plaintiffs,

v.

20-cv-596 MV/JHR

SANDIA AEROSPACE CORPORATION,  
a New Mexico corporation, DENNIS  
SCHMIDT, and HONEYWELL  
INTERNATIONAL, INC.,  
(BENDIXKING division),

Defendants.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court on Defendant Honeywell International, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint for Failure to State a Claim [Doc. 40]. The Court, having considered the Motion and relevant law, finds that the Motion is well-taken in part and will be granted in part and denied in part.

**BACKGROUND**

Plaintiff Jeffrey David Bethel independently developed substantial portions of an innovative new display product for the general aviation marketplace. Doc. 38 ¶ 16. On May 22, 2015, Mr. Bethel entered into an Independent Contractor and Intellectual Property Agreement ("the Contract") with Defendant Sandia Aerospace Corporation ("Sandia") for the purpose of bringing this newly developed technology to the market. *Id.* ¶ 19. The new product, described

in the Contract as “an aircraft instrument. . . capable of displaying aircraft roll, pitch, airspeed, and attitude,” was, at the time the Contract was executed, designated “SAI340.” Doc. 1-1 at 1. Mr. Bethel and Sandia intended for “the remaining required engineering work” on SAI340, or the “Instrument,” “to be completed under a cooperative effort between Sandia and [Mr.] Bethel.” Doc. 38 ¶ 20.

The Contract indicates that development of the Instrument included two components: “Mechanical Design,” defined to include but not be limited to “mechanical, electrical, and graphic design”; and “Software,” defined to include but not be limited to “source code, object code, configuration files, calibration code, and production test code.” Doc. 1-1 at 1. “The unique and innovative user interface design incorporated into the SAI-340 . . . was fully implemented in the [S]oftware.” Doc. 38 ¶ 33.

Pursuant to an “Assignment” provision in the Contract, Mr. Bethel assigned, transferred, and conveyed to Sandia “all his right, title and interest in the Mechanical Design.” Doc. 1-1 at 2. Pursuant to a “Software Ownership” provision in the Contract, Mr. Bethel retained “all his right, title, and interest in the Software, including the associated intellectual property rights (e.g., copyright and patent).” *Id.* at 2. Mr. Bethel registered a copyright for “SAI-340,” effective as of October 2, 2017. Doc. 1-1 at 10. The Certificate of Registration indicates that SAI-340 is a “computer program,” and was completed in 2015. *Id.*

The Contract also contains a “Software License” provision, which states as follows:

Subject to the payment of royalties, Bethel hereby grants to Sandia an exclusive license in the Software. Bethel retains no right to use or license the Software in any aviation related application. Further, in the event that ownership of the Software is to be transferred to a third party, to the extent permitted by law Bethel shall insure that such transfer will be subject to the terms of this Agreement.

*Id.* Pursuant to a “Royalties” provision, Sandia agreed to pay Mr. Bethel “a royalty of \$1,000 . . . [f]or each Instrument sold by Sandia.” *Id.* at 3. Pursuant to the Contract, “Sandia would be free to utilize the conveyed intellectual property for newly developed products but would be required to make the \$1,000 per-unit royalty payment if any product they produced directly incorporated the same basic feature set as the SAI-340.” Doc. 38 ¶ 24.

In October 2015, Sandia determined that the SAI-340 was complete and ready for commercial production. *Id.* ¶¶ 44-45. Sandia thus began to fulfill pre-orders, which were “in the hundreds of units.” *Id.* ¶ 45. Sandia “initially complied with their contractual obligation to pay the \$1,000 per unit royalty for each Instrument sold.” *Id.* ¶ 46.

In March 2017, representatives of Defendant Honeywell International, Inc. (BendixKing division) (“Bendix”) approached Sandia about the possibility of creating a Bendix-branded product variant of the SAI-340, to be named the KI-300. *Id.* ¶ 47. “Bendix’s own internal documents, including a Statement of Work, copies of which were sent to Bethel, acknowledged the technical nature of the desired product and evidenced a clear intent that the product would be derivative of Bethel’s intellectual property.” *Id.* ¶ 49. Upon learning that Mr. Bethel, rather than Sandia, “retained the copyright in major portions of the operational software” of the Instrument, and “that Sandia was legally bound to pay Bethel a \$1,000 per-unit royalty, Bendix approached Bethel directly in an attempt to negotiate more attractive licensing terms.” *Id.* ¶ 50. Essentially, Bendix wanted to pay less money in royalties to Mr. Bethel than the \$1,000 per unit as required by Mr. Bethel’s contract with Sandia. *Id.* ¶ 51. During the negotiation process, Mr. Bethel “supplied [to Bendix] copies of the existing Sandia/Bethel licensing agreement.” *Id.* ¶ 53. Negotiations between Mr. Bethel and Bendix ultimately failed. *Id.* ¶ 67.

In July 2017, Bendix launched a marketing campaign at an avionics trade show in Oshkosh, Wisconsin to promote the KI-300, which was the product of work jointly undertaken by Bendix and Sandia. *Id.* ¶¶ 68, 75. The KI-300 units displayed there “were simply reworked SAI-340 units of Bethel’s design, with a slightly modified bezel and the Bendix corporate logo painted on the product’s faceplate.” *Id.* ¶ 70. At the show, Mr. Bethel “personally observed that the innovative techniques and features of the SAI-340 user interface generated by Bethel’s software were being directly utilized in the KI-300, with only minor color variations being applied.” *Id.* ¶ 71.

After the launch of the KI-300, Bendix and Sandia entered into an agreement whereby “Sandia would manufacture the branded KI-300 for Bendix, directly utilizing Bethel’s intellectual property,” but no royalties would be paid to Mr. Bethel. *Id.* ¶ 92. Thereafter, Bendix forbade certain of its staff and third-party contractors from communicating with Mr. Bethel, and Sandia likewise instructed its employees not to talk to Mr. Bethel or allow him to enter the Sandia facilities. *Id.* ¶¶ 95-100.

For a period of a year or more, Sandia and Bendix “reverse-engineer[ed] Bethel’s software,” without taking any steps to protect Mr. Bethel’s copyrights therein. *Id.* ¶¶ 103-04. Specifically, “Sandia hired a third-party software engineer who was tasked explicitly with copying Bethel’s user interface, verbatim.” *Id.* ¶ 105. “Persons at Sandia who were intimately familiar with Bethel’s source code and who had direct access to Bethel’s source code undertook the effort to rewrite Bethel’s code, and to remove Bethel’s copyright notifications, and made no effort whatsoever to ‘clean-room’ or properly attempt to reverse-engineer the design.” *Id.* ¶ 106.

In November 2018, “Sandia and Bendix started the full production, manufacture, and sale of the KI-300,” and paid no royalties to Mr. Bethel. *Id.* ¶ 110. Mr. Bethel purchased a KI-300;

Sandia did not report the sale to him or pay him any royalty based on that purchase. *Id.* ¶¶ 111-12. Sandia also stopped making royalty payments to Mr. Bethel on sales of the SAI-340. *Id.* ¶ 114. Although Sandia “has continued to manufacture and sell hundreds of both the SAI-340 and KI-300 instruments that directly utilize Bethel’s licensed intellectual property,” no royalties have been paid to Mr. Bethel. *Id.* ¶ 115.

As a result, on June 22, 2020, Mr. Bethel commenced the instant action, filing a complaint against Sandia, Dennis Schmidt, who is the owner of Sandia, and Bendix. Doc. 1. Subsequently, on November 23, 2020, Mr. Bethel filed his First Amended Complaint (“FAC”) for Copyright Infringement, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Intentional Interference with Contract and Interference with Prospective Contractual Relations, Civil Conspiracy, Alter Ego, Fraudulent Misrepresentation, Conversion, Unjust Enrichment, Constructive Trust, Prima Facie Tort and Punitive Damages [Doc. 38]. Bendix filed a motion to dismiss all counts of the FAC asserted against it, which Mr. Bethel opposes. Bendix’s motion is now before the Court.

### STANDARD

Under Rule 12(b)(6), the Court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “The nature of a Rule 12(b)(6) motion tests the sufficiency of the allegations within the four corners of the complaint.” *Mobley v. McCormick*, 40 F.3d 337, 340 (10th Cir. 1994). When considering a Rule 12(b)(6) motion, the Court must accept as true all well-pleaded factual allegations in the complaint, view those allegations in the light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff’s favor. *Smith v. United States*, 561 F.3d 1090, 1097 (10th Cir. 2009), *cert. denied*, 130 S. Ct. 1142 (2010).

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