

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
LEANDER C. PICKETT,

Plaintiff,

-against-

MIGOS TOURING, INC., CAPITOL
RECORDS, LLC, QUALITY CONTROL
MUSIC, LLC, QUAVIOUS MARSHALL p/k/a
QUAVO, KIARI CEPHUS p/k/a OFFSET,
KIRSNICK BALL p/k/a TAKEOFF, JOSHUA
PARKER p/k/a OG PARKER and GRANT
DECOUTO p/k/a DEKO,

Defendants.

ANALISA TORRES, District Judge:

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18 Civ. 9775 (AT)

ORDER

Plaintiff, Leander C. Pickett, a musical artist, songwriter, and producer, brings this copyright infringement action against Defendants, Migos Touring, Inc. (“Migos”), Capitol Records, LLC (“Capitol”), Quality Control Music, LLC (“Quality Control”), Quavious Marshall p/k/a Quavo, Kiari Cephus p/k/a Offset, Kirsnick Ball p/k/a Takeoff, Joshua Parker p/k/a OG Parker, and Grant Decouto p/k/a Deko. In the second amended complaint, Plaintiff alleges that Defendant Migos’ musical composition “Walk It Talk It,” infringes on Plaintiff’s musical composition “Walk It Like I Talk It.” Complaint ¶¶ 6, 10–16, ECF No. 42. Defendant Quality Control moves to dismiss this action for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). All Defendants move to dismiss for failure to state a claim under Rule 12(b)(6). ECF No. 65. For the reasons stated below, Quality Control’s motion is DENIED, and Defendants’ motion is GRANTED.

BACKGROUND

The following facts are taken from the complaint and “are presumed to be true for purposes of considering a motion to dismiss for failure to state a claim.” *Fin. Guar. Ins. Co. v.*

Putnam Advisory Co., LLC, 783 F.3d 395, 398 (2d Cir. 2015); *see also McDonald v. West*, 138 F. Supp. 3d 448, 452 (S.D.N.Y. 2015), *aff'd*, 669 F. App'x 59 (2d Cir. 2016). Plaintiff, Leander C. Pickett, is a musical artist, songwriter, and producer residing in Charlotte, North Carolina. He is author of the music and lyrics of the song “Walk It Like I Talk It” (“Plaintiff’s Work”). Complaint ¶¶ 6, 17. In 2007, Plaintiff recorded Plaintiff’s Work and, along with non-party DJ Folk, released it on Plaintiff’s 2008 mixtape, “It’s Like a Movie.” *Id.* ¶¶ 17, 20. At the time, non-party CTE Music employed non-parties DJ Folk and Kevin “Coach K” Lee. *Id.* ¶ 22. DJ Folk sold the mixtape and played it for several individuals including Lee. *Id.* ¶ 23. Lee obtained a copy of Plaintiff’s Work from DJ Folk. *Id.* ¶ 25.

In 2013, Lee and his partner, Pierre “Pee” Thomas founded the Atlanta-based record label, Defendant Quality Control. *Id.* Quality Control’s premier artists are Migos, a musical group, and its constituent members, Defendants Quavious Marshall p/k/a Quavo, Kiari Cephus p/k/a Offset, and Kirsnick Ball p/k/a Takeoff. *Id.* ¶¶ 7, 26. Capitol is Quality Control’s distributor. *Id.* ¶ 26. In January 2018, nearly a decade after Plaintiff released the mixtape, Migos released “Walk It Talk It” (“Defendant’s Work”), the third single from the group’s third studio album, “Culture II.” *Id.* ¶¶ 24, 33. Quality Control employed Defendant producers Joshua Parker p/k/a OG Parker and Grant Decouto p/k/a Deko, who musically produced Defendant’s Work. *Id.* ¶ 29.

Plaintiff claims that, without his consent, Defendants reproduced, distributed, and/or publically performed a substantial portion of Plaintiff’s Work in Defendant’s Work. *Id.* ¶ 24. He further claims that Quality Control, Migos, Capitol, Parker, and Decouto “worked in concert to distribute Defendant’s Work in digital and online markets nationwide, including New York.” *Id.* ¶ 29.

In March 2018, Plaintiff applied for and received a certificate of registration (the “Certificate”) from the United States Copyright Office for “Walk It Like I Talk It.” *Id.* ¶ 18. Certificate, ECF No. 42-1.¹ On June 6, 2018, Plaintiff provided written notice to Defendants that Defendant’s Work infringed on Plaintiff’s Work and demanded that Defendants immediately cease and desist from any further use of Plaintiff’s Work. Complaint ¶ 32.

On October 24, 2018, Plaintiff commenced this copyright infringement action. ECF No. 1. Plaintiff filed his first amended complaint on December 17, 2018, ECF No. 9, and a second amended complaint on March 26, 2019, ECF No. 42, adding Defendants Marshall, Cephus, Ball, Parker, and Decouto. Defendants now move to dismiss Plaintiff’s second amended complaint. ECF No. 65.

DISCUSSION

I. Legal Standard

A. Personal Jurisdiction

“On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the plaintiff bears the burden of establishing personal jurisdiction.” *BWP Media USA Inc. v. Hollywood Fan Sites, LLC*, 69 F. Supp. 3d 342, 349 (S.D.N.Y. 2014) (citing *MacDermid, Inc. v. Deiter*, 702 F.3d 725, 727 (2d Cir. 2012)). When the jurisdictional facts are in dispute, “the district court may consider materials outside the pleadings, including affidavits and other written materials.” *Jonas v. Estate of Leven*, 116 F. Supp. 3d 314, 323 (S.D.N.Y. 2015). “Because the Court has not held an evidentiary hearing on this issue, Plaintiff need only make a prima facie showing of jurisdiction through affidavits and supporting materials to satisfy this burden.”

¹ Plaintiff alleges that he “registered with the [United States] Copyright Office his Musical Composition and Sound Recordings in a single application, Registration No. SR 816-366.” Complaint ¶ 18. The Certificate, however, states that the registration is for the “Sound Recording,” not the “Musical Composition and Sound Recordings.” Certificate.

Golden Archer Investments, LLC v. Skynet Fin. Sys., No. 11 Civ. 3673, 2012 WL 123989, at *3 (S.D.N.Y. Jan. 3, 2012).

“District courts deciding a motion to dismiss for lack of personal jurisdiction engage in a two-part analysis, first determining whether there is a statutory basis for exercising personal jurisdiction and second deciding whether the exercise of jurisdiction comports with due process.” *BWP Media*, 69 F. Supp. 3d at 349 (internal quotation marks and citation omitted). In a federal question case, the district court “applies the forum state’s personal jurisdiction rules, unless a federal statute specifically provides for national service of process.” *Id.* at 350 (internal quotation marks, alteration, and citation omitted). Jurisdiction comports with due process if “the defendant has certain minimum contacts with the State such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014) (alterations, internal quotation marks, and citation omitted).

B. Failure to State a Claim

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient factual allegations in the complaint that, accepted as true, “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (internal quotation marks omitted)). A plaintiff is not required to provide “detailed factual allegations” in the complaint, but must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Ultimately, the facts pleaded in the complaint “must be enough to raise a right to relief above the speculative level.” *Id.* The Court must accept the allegations in the pleadings as true and draw all reasonable inferences in favor of the non-movant. *See West*, 138 F. Supp. 3d at 452.

II. Analysis

A. Personal Jurisdiction Over Quality Control

Because it is improper for the Court to opine on the merits of a case where it lacks jurisdiction, the Court first addresses whether it has personal jurisdiction over Quality Control. *See, e.g., Laydon v. Mizuho Bank, Ltd.*, No. 12 Civ. 3419, 2015 WL 1499185, at *7 (S.D.N.Y. Mar. 31, 2015); *Arrowsmith v. United Press Int'l*, 320 F.2d 219, 221 (2d Cir. 1963) (“[L]ogic compel[s] initial consideration of the issue of jurisdiction over the defendant—a court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim.”).

The Copyright Act does not provide for nationwide service of process. Therefore, this Court looks to New York law to determine whether it has personal jurisdiction over Quality Control. *See Royalty Network Inc. v. Dishant.com, LLC*, 638 F. Supp. 2d 410, 417 (S.D.N.Y. 2009). Plaintiff argues that there is a statutory basis for specific personal jurisdiction over Quality Control, a Georgia limited liability company with a principal place of business in Atlanta, Georgia, Complaint ¶ 9, pursuant to N.Y. CPLR § 302(a)(1), which provides that a court may exercise personal jurisdiction over a non-domiciliary who “transacts any business within the state or contracts anywhere to supply goods or services in the state.” Pl. Mem. at 29, ECF No. 74.²

A plaintiff makes a prima facie showing of jurisdiction under § 302(a)(1) by establishing “first, that defendant transacted business within the state of New York, and second, that this action arises from that transaction of business.” *Royalty*, 638 F. Supp. 2d at 417 (citation omitted). “[A] party transacts business within the state when it purposefully avails itself of the privilege of conducting activities within New York.” *Id.* at 417–18 (quotation marks and citation

² Pincites to Plaintiff’s Memorandum of Law refer to the ECF-assigned page number.

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