

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON CATHOLIC PRESS, an Oregon
nonprofit corporation,

Plaintiff,

v.

VINCE AMBROSETTI, TRUSTEE OF
VINCE AMBROSETTI MINISTRIES aka
INTERNATIONAL LITURGY PUBLICATIONS,
a 501(c)(3) trust; LAMB PUBLICATIONS, LLC,
a Tennessee limited liability company; VINCE
AMBROSETTI, an individual; and DOES 1–10,
inclusive,

Defendants.

No. 3:16-cv-00651-HZ

OPINION & ORDER

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HERNÁNDEZ, District Judge:

Plaintiff, Oregon Catholic Press (“OCP”), brings its claims for copyright infringement under 17 U.S.C. § 501–13. Defendants are: International Liturgy Publications (“ILP”); Lamb Publications, LLC (“Lamb”); the president of ILP Vince Ambrosetti as an individual; and unnamed individuals Does 1–10. OCP and ILP had multiple agreements whereby OCP granted licenses to ILP to reprint certain songs. OCP’s claims fall into two categories. First are OCP’s claims that relate to ILP’s publication of OCP material in an allegedly unauthorized second edition of the Saint Augustine Hymnal (hereinafter “Hymnal Claims”). The second category is OCP’s claims that ILP published two songs—“Glorious God” and “Bright As the Sun”—without licenses in the book “You Are Holy” (hereinafter “Songbook Claims”). OCP is also suing Lamb and Ambrosetti for their roles in the alleged copyright infringement under theories of

contributory and vicarious liability. Defendants now move to dismiss Plaintiff's claims on several grounds discussed below.

Defendants' motion to dismiss is granted in part. The motion is denied regarding the Hymnal Claims. The motion is denied with respect to the song "Bright As the Sun." The motion is denied with respect to OCP's claims against Lamb and Ambrosetti. The motion is granted with respect to the song "Glorious God" and the Court also grants OCP's request for leave to amend its complaint on this claim.

BACKGROUND

The following facts come from the Amended Complaint and documents referred to or relied upon in the Amended Complaint. OCP and ILP publish and sell hymnals and song books to Catholic parishes. Am. Compl. ¶¶ 4–6, 11–14, 28, ECF No. 23. On May 14, 2009, OCP and ILP entered into an agreement ("2009 Agreement") whereby OCP licensed certain songs to ILP to be published in the Saint Augustine Hymnal ("Hymnal"). Am. Compl. ¶ 11, Ex. C, at 6. The 2009 Agreement enumerated 75 OCP songs. Am. Compl. Ex. C, at 9–13. ILP published a "first edition" of the Hymnal in 2010. Am. Compl. ¶ 13.

Subsequently, the parties amended the 2009 Agreement on November 27, 2011 to permit ILP to publish "new editions" of the Hymnal ("2009/2011 Agreement"). Am. Compl. Ex. C, at 14–15. The 2009/2011 Agreement also extended the term of the license for a period of five years from September 27, 2011 to November 26, 2016. *Id.* Plaintiff contends that the 2009 Agreement was amended for the purpose of including a revised "Order of the Mass" at the beginning of the Hymnal pursuant to decision by the Bishops Committee on Divine Worship of the U.S. Conference of Catholic Bishops. Am. Compl. ¶ 13.

On February 3, 2014, the parties entered into another agreement (“2014 Agreement”) whereby OCP licensed up to 10 songs to be chosen by ILP to be published in any ILP publication. Am. Compl. ¶ 14, Ex. C, at 1. In July of 2014, Ambrosetti sent a letter on behalf of ILP stating that it intended to publish certain OCP songs in a new edition of the Hymnal. Am. Compl. ¶ 15. OCP wrote back stating that the 2009/2011 Agreement did not permit ILP to reprint OCP materials in a second edition of the Hymnal. Id. ¶ 16. ILP replied that if OCP did not agree to the proposed song list then ILP would proceed with publication and only publish songs licensed to it under the 2009/2011 Agreement. Id. ¶ 17. OCP reiterated that it did not authorize the publication of the second edition of the Hymnal. Id. ¶ 18. ILP proceeded with publication of the second edition of the Hymnal which included 74 OCP songs covered by the parties’ Agreements. Id. ¶ 20.

With respect to the Songbook Claims, OCP alleges that around June 15, 2010, it granted licenses to ILP to reprint certain songs including “Bright As the Sun” in certain publications including “Living World, Living Song, Living Faith” (“Living World”). Am. Compl. ¶ 12, Ex. C, at 23–25. In 2014, ILP published the songbook “You Are Holy” which included 12 OCP songs. Am. Compl. ¶ 19. OCP alleges that ILP did not have a license to publish the songs “Bright As the Sun” and “Glorious God” in “You Are Holy.” Id. Defendants contends that OCP agreed to overlook the error regarding “Glorious God” and that its use of “Bright As the Sun” was proper because “You Are Holy” is merely “Living World” retitled. Mot. Dismiss 6, 10–14, ECF No. 29.

STANDARDS

To survive a motion to dismiss, a complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face[.]” meaning “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the

defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Additionally, “only a complaint that states a plausible claim for relief survives a motion to dismiss.” Id. at 679. A complaint must contain “well-pleaded facts” which “permit the court to infer more than the mere possibility of misconduct.” Id. at 679. In evaluating the sufficiency of a complaint’s factual allegations, the court must accept all material facts alleged in the complaint as true and construe them in the light most favorable to the non-moving party. Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012). “Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)[.]” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). (citations and footnote omitted). However, the court need not accept unsupported conclusory allegations as truthful. Holden v. Hagopian, 978 F.2d 1115, 1121 (9th Cir. 1992). A motion to dismiss under Rule 12(b)(6) will be granted if a plaintiff alleges the “grounds” of his “entitlement to relief” with nothing “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” Twombly, 550 U.S. at 555.

DISCUSSION

OCP alleges two claims of direct copyright infringement against ILP. First, the Hymnal Claims include OCP’s allegations that ILP exceeded the scope of its licenses under the 2009/2011 Agreement by publishing an unauthorized second edition of the Hymnal. OCP’s position is that the 2009/2011 Agreement permitted ILP to republish the original version of the Hymnal with the addition of the “Order of Mass.” ILP disagrees with that restriction and contends that the second edition was permitted by the plain language of the 2009/2011 Agreement. Second, the Songbook Claims include OCP’s allegations that ILP published the

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