

during live performances in a church setting for “personal and non-commercial use” and are subject to “a fine of \$1,000 per Download Product for each instance of a violation.” *Id.*; Dkt. 2-3, at 11. To identify and prevent misuse of its product, Multitracks embeds each of its recordings with a digital watermark that it can use to identify its products in subsequent recordings. Dkt. 18, at 3.

Multitracks claims that Defendant Palmer, despite agreeing to the terms of use, has misused its recordings to build his own company, Defendant Worship Online, Inc. *Id.* at 4. Multitracks alleges that Worship Online’s “entire business is built on its historical misuse of the MultiTracks Product and its continued violations of MultiTracks’ Terms of Use.” *Id.* According to Multitracks, Palmer has used the recordings he accessed from Multitracks to create video tutorials of songs customarily played by church leaders, “going so far as embedding the MultiTracks Product into the video tutorials that Worship Online sells to its customers.” *Id.* When Multitracks discovered its digital watermark on Worship Online’s commercial products in 2016, it demanded Worship Online remove the content from its website. *Id.* at 5.

Despite promising to remove the misused content, Worship Online allegedly continued to publish commercial products bearing Multitracks’ watermark. *Id.* 5-8. In early 2021, Multitracks disabled Palmer’s account to prevent him from further misusing its products. *Id.* at 6. Palmer then created a new MultiTracks account under the name “Jenson Davidson” to continue accessing its products. *Id.* Multitracks alleges that Worship Online has “generated millions of dollars in revenues by exploiting the investments that MultiTracks has made in its business.” *Id.* at 7-8.

Multitracks brings three causes of action against Worship Online for: (1) breach of contract; (2) fraudulent inducement; and (3) fraud. *Id.* at 9-10.

At the time Multitracks filed its complaint, it also moved for a temporary restraining order and preliminary injunction enjoining Worship Online's alleged continued unlawful conduct. Dkt. 2. After holding a hearing on the motion, the undersigned recommended that the district court deny Multitracks' requested injunctive relief. Dkt. 28. The district court adopted this report and recommendation, Dkt. 31, and subsequently referred Worship Online's motion to dismiss to the undersigned, Dkt. 32.

II. LEGAL STANDARD

A. 12(b)(1)

A party moving to dismiss based on preemption does so under Federal Rule of Civil Procedure 12(b)(1). *See, e.g., Griener v. United States*, 900 F.3d 700, 702-03 (5th Cir. 2018). Rule 12(b)(1) allows a party to assert lack of subject-matter jurisdiction as a defense to suit. Fed. R. Civ. P. 12(b)(1). Federal district courts are courts of limited jurisdiction and may only exercise such jurisdiction as is expressly conferred by the Constitution and federal statutes. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A federal court properly dismisses a case for lack of subject-matter jurisdiction when it lacks the statutory or constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.

2001), *cert. denied*, 536 U.S. 960 (2002). “Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Id.* In ruling on a Rule 12(b)(1) motion, the court may consider any one of the following: (1) the complaint alone; (2) the complaint plus undisputed facts evidenced in the record; or (3) the complaint, undisputed facts, and the court’s resolution of disputed facts. *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008).

B. 12(b)(6)

Pursuant to Rule 12(b)(6), a court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In deciding a 12(b)(6) motion, a “court accepts ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.’” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). “To survive a Rule 12(b)(6) motion to dismiss, a complaint ‘does not need detailed factual allegations,’ but must provide the plaintiff’s grounds for entitlement to relief—including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’” *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). That is, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

A claim has facial plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged.” *Id.* “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* A court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (citations and internal quotation marks omitted). A court may also consider documents that a defendant attaches to a motion to dismiss “if they are referred to in the plaintiff’s complaint and are central to her claim.” *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004). But because the court reviews only the well-pleaded facts in the complaint, it may not consider new factual allegations made outside the complaint. *Dorsey*, 540 F.3d at 338. “[A] motion to dismiss under 12(b)(6) ‘is viewed with disfavor and is rarely granted.’” *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (quoting *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009)).

III. DISCUSSION

A. Preemption by the Copyright Act

Worship Online contends that the Copyright Act preempts Multitracks’ breach-of-contract claim, which is based on Worship Online’s alleged violation of the license Multitracks granted Worship Online. Dkt. 23-1, at 16-24; Dkt. 33, at 6-9. Courts “employ a two-prong test to determine whether the Act preempts a state law cause of action.” *Digit. Drilling Data Sys., L.L.C. v. Petrolink Servs., Inc.*, 965 F.3d

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