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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY CASTERLOW-BEY,
Plaintiff,

v.

TRAFFORD PUBLISHING
COMPANY,
Defendant.

CASE NO. 3:17-cv-05459-RJB
ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant Trafford Publishing Company’s (“Trafford”) Motion for Summary Judgment. Dkt. 51. The Court has considered the pleadings filed regarding the motion and the remainder of the record herein.

This case arises from the Defendant’s alleged failure to pay pro se Plaintiff Gary Casterlow-Bey royalties on books he authored. Dkt. 7. Defendant now moves for summary dismissal of the claims asserted against it pursuant to Fed. R. Civ. P. 56. Dkt. 51. Plaintiff was given a notice pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir 1998) on June 29, 2018. Dkt. 56. Plaintiff filed two responses to the motion. Dkts. 55 and 57. The motion for summary

1 judgment (Dkt. 51) should be granted because Plaintiff's claims are barred by res judicata,
2 Plaintiff fails to point to genuine issues of material fact, and Defendant is entitled to a judgment
3 of dismissal as a matter of law.

4 **I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

5 **A. BACKGROUND FACTS**

6 In 2006, Plaintiff contracted with Trafford Holdings, Ltd. ("Trafford") to self-publish his
7 book *Through the Eyes of a Gangster*; and in 2008, he contracted with Trafford to self-publish
8 *Through the Eyes of a Gangster II*. Dkts. 7 at 2 and 53-2, at 1-2. (According to the Defendant,
9 "Trafford Publishing Company," the named Defendant in this case, never existed. Dkt. 53, at 1.
10 The Defendant has construed the Complaint as referring to "Trafford Publishing," which,
11 Defendant maintains, is the trade name of Get Published! LLC, which is a subsidiary of Author
12 Solutions, LLC. *Id.* In 2009, Trafford's assets were purchased by what is now Author Solutions,
13 LLC. *Id.* Plaintiff offers no evidence to the contrary. Accordingly, the Court will construe the
14 claims made in the Complaint against the answering Defendant Trafford Publishing.) Trafford
15 states that, "[a]s a result of the 2009 transaction and the passage of time, Trafford does not have a
16 copy of Plaintiff's signed contracts for his first two novels." Dkt. 53, at 2. The record contains a
17 copy of the form contracts used at the time. Dkt. 53.

18 Plaintiff acknowledges in the Complaint that he and Trafford "reached another
19 agreement," in 2014, to publish a third book, *Wildflower*. Dkt. 7, at 2. On December 7, 2013,
20 Plaintiff entered (via an electronic signature) an Author Agreement to Trafford[']s Terms and
21 Conditions (Dkt. 53-3) and an Installment Payment Agreement (Dkt. 53-4). Plaintiff paid an
22 initial payment of \$500.00, and agreed to pay a remaining \$940.00 in two monthly installments
23 to purchase Trafford's "Tablet Black & White Publishing Package." Dkt. 53, 53-2, 53-3 and 53-
24

1 4. Plaintiff defaulted on this plan, and Trafford agreed to allow Plaintiff to buy a discounted
2 Novo package in April of 2014. Dkts. 53, at 4; 53-5, and 53-6, at 4.

3 In May of 2014, Trafford states that Plaintiff informed it he was in jail and was given
4 information about a niece who would help him. Dkt. 53-6, at 2.

5 Trafford asserts that on June 28, 2014, Plaintiff entered into a Service Agreement, which
6 replaced the December 7, 2013 Author Agreement. Dkt. 53, at 3. In support of its' motion for
7 summary judgment, Trafford points to this June 28, 2014 contract, entitled "Self-Publishing
8 Services Agreement," containing Plaintiff's electronic signature, an address of "15007
9 Weststorm LN SW, Lakewood, WA 98498," and an email address of
10 "garycasterlow@78gmail.com." Dkt. 53-7.

11 Plaintiff contends that the June 28, 2014 contract in Trafford's records is "falsified and
12 forged" and that he did not sign it. Dkt. 57, at 1. He contends that the "Weststorm Lane"
13 address in Lakewood, Washington and the listed phone number do not exist. *Id.* Plaintiff
14 maintains he was in jail at the time, and could not have signed this document. Dkt. 55, at 2.

15 On July 25, 2014, from the email address on the June 28, 2014 contract, Plaintiff emailed
16 Nick Arden, of Trafford, returning electronically signed copies of an "Interior Sign-Off and
17 Pricing" document and a "Cover Sign-Off," regarding *Wildflower*, which, in part, provided that:
18 **[b]y signing this form, I attest that the interior is ready for publication and distribution. By**
19 *distribution, we mean the book will be made available for public sale on retail websites like the*
20 *Trafford bookstore, Amazon, Barnes and Noble, and other online retail websites."* Dkt. 53-9, at
21 3-4 (*emphasis in original*).

22 Trafford states that it distributed all three books in accordance with the agreements with
23 Plaintiff. Dkt. 53, at 3. It notes that once a book is sold, and then offered by a third party seller,
24

1 Trafford has no ability to set the price and such sales do not qualify for royalty payments. *Id.*

2 While Plaintiff maintains in some pleadings that he “has not received a royalty payment
3 on any book sale from [Trafford] since 2009,” (Dkt. 57, at 2) in other pleadings, Plaintiff
4 acknowledges that “from 2009 until 2017[,] Plaintiff has received approximately five (5) royalty
5 payments that grossed less than \$500” (Dkt. 7, at 3). Trafford’s records are in accord: between
6 January 2007 and July 2009, Plaintiff sold 116 copies of his books that resulted in \$101.57 in
7 royalty payments; between October 2009 and July 2017, Plaintiff sold an additional 86 copies,
8 resulting in \$173.46 in royalty payments. *Id.*, at 28-31 and 41-44. Trafford also points to some
9 checks which were cashed by Plaintiff or his designee. Dkt. 53-11, at 1-3.

10 **B. PLAINTIFF’ COMPLAINT AND DEFENDANT’S SUBSEQUENT ACTION**

11 On June 14, 2017, Plaintiff, while a prisoner in the Pierce County, Washington, Jail, filed this
12 case. Dkt. 1. His Complaint makes claims for a breach of contract (for failure to pay him
13 royalties), copyright infringement, and fraud. Dkt. 7. The Complaint also asserts that the forged
14 contract “was on its face a deliberate conspiracy to deny [Plaintiff] adequate compensation for
15 his copyrighted work;” and that Trafford’s actions “rise to the level of criminal activity, *i.e.*
16 fraud, forgery, and criminal conspiracy.” *Id.* Plaintiff seeks an order requiring Trafford to
17 “cease and desist all sales” of Plaintiff’s books and \$10 million in damages. *Id.*

18 On September 19, 2017, Trafford wrote Plaintiff a letter, construing statements made in
19 the Complaint in this case as a “notice by [Plaintiff] exercising [his] right to terminate the
20 agreements governing the publishing and selling of [his] books.” Dkt. 53, at 12. Accordingly,
21 Trafford stopped distributing all Plaintiff’s books. *Id.*

22 **C. OTHER CASES FILED REGARDING PLAINTIFF’S BOOKS**

23 This is one of several cases the Plaintiff has filed regarding his books in U.S. District
24

1 Court for the Western District of Washington. *Casterlow-Bey v. Google.com, Inc.*, case number
2 17-5686 RJB *Casterlow-Bey v. Ebay.com*, case number 17-5687 RJB; *Casterlow-Bey v. Amazon,*
3 *et. al.*, case number 17-5833 RJB; *Casterlow-Bey v. Barnes and Nobles*, case number 17-5834;
4 and *Casterlow-Bey v. Barnes and Nobles*, case number 17-5871.

5 On August 30, 2017, Plaintiff filed a case against Amazon and Google asserting they
6 committed copyright infringement when Plaintiff's books were sold on their website.
7 *Casterlow-Bey v. Google.com, Inc.*, case number 17-5686 RJB, Dkt. 1-1. On January 18, 2018,
8 Defendants Amazon and Google's motions to dismiss pursuant to Fed. R. Civ. P. 12 were
9 granted and the case was dismissed with prejudice. *Casterlow-Bey v. Google.com, Inc.*, case
10 number 17-5686 RJB, Dkt. 27.

11 On August 30, 2017, Plaintiff filed a case against Ebay.com, asserting that Ebay.com
12 committed copyright infringement, breached a contract, and committed fraud when it sold
13 Plaintiff's books. *Casterlow-Bey v. Ebay.com*, case number 17-5687 RJB, Dkt. 1-1. Plaintiff
14 sought injunctive relief and several million dollars in damages in that case. *Id.* Ebay.com
15 moved to dismiss the claims asserted against it, in part, based on Plaintiff's failure to show that
16 his books are registered with the U.S. Copyright Office; the motion was granted and the case was
17 dismissed with prejudice on January 8, 2018. *Casterlow-Bey v. Ebay.com*, case number 17-5687
18 RJB, Dkt. 25.

19 On October 13, 2017, Plaintiff filed a case against "Barnes and Nobles," moved to
20 proceed *in forma pauperis* ("IFP"), and provided a proposed complaint asserting that Defendant
21 "Barnes and Nobles" committed copyright infringement, breached a contract, and committed
22 fraud when it sold Plaintiff's books. *Casterlow-Bey v. Barnes and Nobles*, case number 17-5834,
23 Dkts. 1 and 1-1. Plaintiff made reference to the Racketeer Influenced and Corrupt Organizations
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