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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY CASTERLOW-BEY,
Plaintiff,

v.

EBAY, INC.,
Defendant.

CASE NO. 3:17-cv-05687-RJB
ORDER ON MOTION TO
DISMISS

This matter comes before the Court on Defendant eBay, Inc.’s (“eBay”) Motion to Dismiss. Dkt. 7. The Court has considered the motion and the remainder of the record herein.

This case arises from the alleged sale of Plaintiff’s books on Defendant eBay’s website. Dkt. 4. Plaintiff is a *pro se* prisoner, proceeding IFP. Dkt. 3. Defendant “eBay operates a popular Internet Web site that allows private sellers to list goods they wish to sell, either through an auction or at a fixed price.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 390 (2006). Defendant eBay now moves for dismissal of the claims asserted against it pursuant to Fed. R. Civ. P. 12 (b). Dkts. 7. On December 6, 2017, the motion was provisionally granted, and Plaintiff was given an opportunity to amend his complaint in an effort to properly plead his

1 claims. Dkt. 16. Plaintiff filed an Amended Complaint. Dkt. 20. After review of the Amended
2 Complaint, eBay's Motion to Dismiss (Dkt. 7) should be granted and the claims dismissed for
3 the reasons provided below.

4 **I. FACTS AND PROCEDURAL HISTORY**

5 This case is one of several Plaintiff has filed against the alleged publisher (Trafford
6 Publishing Company) of his books and various alleged sellers of those books: Google.Com, Inc.,
7 Amazon.Com, Inc., eBay, Inc., and Barnes & Nobles [sic]. *Casterlow-Bey v. Trafford*
8 *Publishing Company*, Western District of Washington case number 17-5459-RJB; *Casterlow-*
9 *Bey v. Google.Com, Inc., et. al.*, U.S. District Court for the Western District of Washington case
10 number 17-5686; *Casterlow-Bey v. Amazon.Com, et al.*, Western District of Washington case
11 number 17-5833 RJB; *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western
12 District of Washington case number 17-5834 and *Casterlow-Bey v. Barnes and Nobles*, U.S.
13 District Court for the Western District of Washington case number 17-5871.

14 The facts and procedural history regarding this case are in the December 6, 2017 order, and
15 are repeated here, for ease of reference:

16 On August 30, 2017, Plaintiff, a *pro se* prisoner, filed this case, moved to
17 proceed *in forma pauperis* ("IFP"), and provided a proposed complaint asserting
18 that Defendant eBay, Inc. committed copyright infringement, breached a contract,
and committed fraud when Plaintiff's books were sold on its website. Dkts. 1, 1-1,
and 4. He was granted IFP. Dkt. 3.

19 According to the Complaint, Plaintiff and non-party Trafford Publishing
20 Company ("Trafford") (Plaintiff has other lawsuits pending against Trafford)
21 entered a contract in which Trafford would publish and distribute Plaintiff's
books and would then pay Plaintiff the royalties from the sales. Dkt. 4. Although
22 Plaintiff asserts that he is the copyright owner of the books, he does not allege that
23 he registered any of them with the Copyright Office. *Id.*

24 Plaintiff further maintains that "[a] fake/illegal/bogus contract was produced
by Trafford Publishing Company with false name, address, and phone number
signed by someone other than Plaintiff entering into agreement with eBay to sale
Plaintiffs [sic] books universally for astronomical, ridiculous prices," which hurt
the market for his books because his "target audience was poor, impoverished

1 children living in crime/gang infested areas” *Id.*, at 2-3. Plaintiff alleges that
2 “[b]oth eBay and Trafford . . . have conspired to exploit and deprive Plaintiff of
3 his royalty payments for copyrighted work.” *Id.*, at 3. He maintains that “[b]oth
4 companies have gained financially at [sic] expense of Plaintiff’s hard labor and
5 ultimate dream of being successfully recognized and honored in the literary
6 world.” *Id.* In addition to copyright infringement, breach of contract, and fraud
7 claims, Plaintiff’s Complaint also asserts that eBay violated his civil
8 constitutional rights, committed “criminal conspiracy” and engaged in
9 “international racketeering.” *Id.* Plaintiff seeks injunctive relief and several
10 million dollars in damages. *Id.*

11 Defendant eBay moved to dismiss on November 6, 2017. Dkt. 7. The
12 Court issued a notice to Plaintiff, as a *pro se* litigant, regarding eBay’s motion to
13 dismiss under Fed. R. Civ. P. 12 (b), and Plaintiff’s obligations if he intended to
14 oppose the motion. Dkt. 14. Plaintiff did not respond to the motion to dismiss.

15 Dkt. 16, at 2-3. The order noted that Plaintiff’s claim for copyright infringement should
16 be dismissed because Plaintiff failed to allege that any of his works were registered with
17 the U.S. Copyright Office and so, there is no allegation supporting this Court’s subject
18 matter jurisdiction under Fed. R. Civ. P. 12 (b)(1). *Id.*, at 4. It further noted that
19 Plaintiff’s other claims: breach of contract, fraud, violation of Plaintiff’s constitutional
20 rights, criminal conspiracy, and racketeering should be dismissed for failure to state a
21 claim under Rule 12 (b)(6). *Id.* Plaintiff was given until December 22, 2017 to amend
22 his complaint in order to establish subject matter jurisdiction and to attempt to state a
23 claim. *Id.*

24 After the order was entered, on December 7, 2017, Plaintiff filed a pleading with the
Court, stating that “Plaintiff has never received a motion to dismiss from Plaintiff to
respond to.” Dkt. 18.

On December 12, 2017, Plaintiff filed a response to two motions to dismiss in
Casterlow-Bey v. Google.Com, Inc., et. al., U.S. District Court for the Western District of
Washington case number 17-5686, Dkt. 23. On the fourth page of this pleading, Plaintiff
wrote: “*Also, this is the response to eBay through its attorney . . . case number 3:17-cv-

1 05687-RJB.” *Id.* The Clerk of the Court docketed this pleading in this case. Dkt. 19. In
2 this pleading, Plaintiff argues that “[i]t is undisputed that Defendants have engaged in
3 ‘predicate acts’ that constitute an ‘illegal pattern of racketeering activity’ dating back to
4 2006.” Dkt. 19, at 1-2. He maintains that “Defendants cannot claim ‘lawful sales’ of
5 Plaintiff’s books because ‘all sales’ by Trafford Publishing and third party distributors
6 stem from falsified, forged, and fraudulent contract/document that ultimately initiated
7 national and international conspiracy to illegally traffic in stolen property for financial
8 gain.” *Id.*, at 3. Plaintiff argues that “Trafford Publishing, through Defendants, have
9 deprived Plaintiff of his legal earnings, none of the named Defendants have legal
10 authorization or justification under civil or criminal statutes to manufacture or distribute
11 Plaintiff’s copyrighted work.” *Id.* He asserts that the “exhibits attached to this motion
12 demonstrate Defendants’ involvement in sales of Plaintiffs’ copyrighted work not only in
13 foreign countries but all over the United States.” *Id.* Plaintiff also attaches documents
14 entitled “Sales and Royalties Page” and “Trafford Publishing Quarterly Royalty Report,”
15 which purport to relate to sales in the United States. Dkt. 19, at 5-7. Plaintiff also again
16 asserts that he “owns the copyrights to all (3) books published through Trafford, attached
17 to this motion is a copy of original contract outlining details of copyright/registration
18 ownership, *i.e.* ‘Exhibit D’ page 3, paragraphs 5.6 and 5.7.” *Id.* Exhibit D is entitled
19 “Trafford Publishing Self-Publishing Services Agreement.” Dkt. 19, at 8-18. Page three,
20 paragraphs 5.6 and 5.7 provide:

21 **5.6 Copyright and Title Registration.** If purchased by You as part of Your
22 Services, We shall include a copyright notice in accordance with Your
23 instructions in each copy of the Work. We shall secure a unique International
24 Standard Book Number (ISBN) for each version of the work where applicable.
You may not use the formatted Manuscript (at any stage of development) or

1 finished Work, the ISBN, and/or cover with any other provider of similar Services
2 at any time during or after the term of this agreement.

3 **5.7 Rights to Manuscript and the Work.** There are generally three sets of
4 intellectual property rights that are included in any Work; (a) the first set of rights
5 relates to the Manuscript or Your Work. You shall remain the sole and exclusive
6 owner of all right, title, and interest in and to Manuscript and Your Work as
7 initially submitted to Us. We shall have no right or license to use any Manuscript
8 or Work except as permitted herein with respect to development of the resulting
9 book in print, digital, or audio format; (b) the second set of intellectual property
10 rights relates to content that We, Our employees, Our Affiliates or Our
11 Contractors create as part of the Services that We offer ("Our Work Product");
12 and (c) the third set of intellectual property rights relates to the content that We
13 own or that We license from third parties that We cannot transfer to You.

14 Dkt. 19, at 10.

15 On December 20, 2017, Plaintiff filed a pleading entitled, "Motion to Amend
16 Complaint Pursuant to Courts [sic] Order of December 6, 2017." Dkt. 20. The pleading
17 contains provisions regarding jurisdiction, facts, claims and requested relief. *Id.*

18 Accordingly, the Court will construe this pleading as Plaintiff's Amended Complaint.

19 In the Amended Complaint, Plaintiff asserts that, "[t]his civil action originates from
20 an unlawful, forged document/contract illegally crafted by Trafford Publishing" that "has
21 a bogus signature . . . non-existent address, fabricated telephone number" and so, is
22 "invalid." Dkt. 20, at 1. He maintains that "every business transaction initiated from this
23 bogus, illegal, and invalid document/contract is fruit of the poisonous tree." *Id.* Plaintiff
24 asserts that "[f]ruit of the poisonous tree doctrine mandates the suppression of all 'fruits'
derived from a defective, deficient source. Here the subject matter being 'forged
contract.'" *Id.* Plaintiff alleges that his copyrighted material was stolen with a forged
contract. *Id.*, at 2. Plaintiff asserts that Defendant eBay "has perpetually promoted,
encouraged, and facilitated trafficking in stolen property since 2006, gaining financially
with no regard for compensation to Plaintiff or with Plaintiff's consent." *Id.* He alleges

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