UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-3934 PSG (JPRx)	Date	April 8, 2021
Title	Artem Stoliarov v. Marshmello Creative, LLC, et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): The Court GRANTS Defendants' motion and DENIES Plaintiff's motion

Before the Court are two motions: one for summary judgment filed by Defendants Marshmello Creative, LLC, Joytime Collective LLC, Marshmello Music LLC, WWKD Limited, Kobalt Music Publishing America, Inc., and Polygram Publishing, Inc. (collectively, "Defendants"), *see generally* Dkt. # 87 ("*DMSJ*"); and the other for partial summary judgment filed by Plaintiff Artem Stoliarov p/k/a Arty ("Arty" or "Plaintiff"), *see generally* Dkt. # 90 ("*PMSJ*"). Defendants and Plaintiff opposed each other's motions. *See generally* Dkts. # 93 ("*Def. Opp.*"), # 94 ("*Pltf. Opp.*"). Defendants and Plaintiff replied to each other's oppositions. *See generally* Dkts. # 101 ("*Def. Reply*"), # 100 ("*Pltf. Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the moving, opposing, and reply papers, the Court **GRANTS** Defendants' motion and **DENIES** Plaintiff's motion.

I. Background

Plaintiff is a songwriter, recording artist, electronic dance musician, producer, and DJ. *Plaintiff's Separate Statement of Undisputed Facts*, Dkt. # 90-2 ("*PSUF*"), ¶ 1. Plaintiff records his own original material, but sometimes creates "remixes" of other artists' songs and recordings. *Id.* ¶ 2. A remix involves taking a popular composition or sound recording and changing it, sometimes by adding original material. *Id.* ¶ 3. The changed version is known as a remix of the original work. *Id.*

In 2014, the musical group OneRepublic released a recording of their song "I Lived" through their record label, Interscope Records ("Interscope"). *Defendant's Separate Statement of Undisputed Facts*, Dkt. # 87-1 ("*DSUF*"), ¶ 1. Ryan Tedder ("Tedder") and Noel Zancanella

("Zancanella") co-wrote the musical composition for "I Lived" (the "Original Composition"). *Id.* ¶ 2.

On September 8, 2014, Interscope and Plaintiff's company, Telma Music LLC ("Telma"), entered a contract (the "Remixer Declaration"). *Id.* ¶ 6. Under the terms of the Remixer Declaration, Interscope commissioned Plaintiff to create a remix of "I Lived," titled "I Lived (Arty Remix)." *Id.*

The Remixer Declaration is Interscope's standard form contract for remix agreements. *Id.* ¶ 12. The Remixer Declaration was a buyout agreement, meaning that the remixer (i.e., Plaintiff) received a fee up front and no other remuneration, including record or song royalties. *Id.* ¶ 13.

The relevant portions of the Remixer Declaration are as follows:

> I, Telma Music LLC, furnishing the services of Artem Stolyarov p/k/a "Arty" hereby declare and certify that ***Remixer has remixed or will remix certain original master recordings ("Remix Master(s)") embodying the featured performance of one (1) or more of the members of the group currently professionally known as "Arty".*** In consideration of the fee set forth below (the "Fee"), and for the express and direct benefit of Interscope Records, a division of UMG Recordings, Inc. ("Interscope") and its divisions, affiliates[,] licensees, parents and assigns, I hereby declare and certify as follows:
>
> . . .
>
> B. ***I acknowledge and agree that each Remix Master (excluding the underlying musical composition) embodying the results and proceeds of Remixer's services shall, from the inception of creation, constitute a "work made for hire" for Interscope*** within the meaning of the United States Copyright Act of 1976 (Title 17, U.S.C.), as amended. ***If for any reason the Remix Master(s) do not constitute a work made for hire, then I hereby irrevocably transfer and assign to Interscope all of my right, title and interest in and to such Remix Master(s) (excluding the underlying musical composition), together with all rights therein.*** Without limiting the generality of the foregoing, Interscope shall have the exclusive, unrestricted, worldwide and perpetual right (but not the obligation) to use, distribute, sell and exploit the Remix Master(s) in any and all media now known or hereafter invented. I hereby irrevocably

and unconditionally waive any and all moral and like rights that I have in the Remix Master(s) and in the performances embodied therein and hereby agree not to make any claim against Interscope or any party authorized by Interscope to exploit said Remix Master(s) based on such moral or like rights. I will, upon request, execute, acknowledge and deliver to Interscope such additional documents as Interscope may deem necessary to evidence and effectuate Interscope's rights hereunder, and I hereby grant to Interscope the right as attorney-in-fact to execute, acknowledge, deliver and record in the U.S. Copyright office or elsewhere any and all such documents if I shall fail to execute same within five (5) days after so requested by Interscope.

C. I warrant that all music, performances and other material (including, without limitation, so-called "samples") furnished by Remixer in connections with the Remix Master(s) are or will be original with Remixer or in the public domain throughout the world or used with the consent of the original owner thereof, and shall not infringe upon or violate any copyright of, or infringe upon or violate the right of privacy or any other right of, any person; I warrant that I am free to grant all rights granted and make all agreements made by Remixer and myself herein. I agree to hold Interscope and its successors, licensees and assigns harmless from and against all damages, losses, costs and expenses (including reasonable attorney's fees and costs) which Interscope or any of its successors, licensees or assigns may suffer or incur by reason of the breach of any of the warranties made herein. ***I acknowledge and agree that the services rendered (or to be rendered) by Remixer hereunder do not entitle Remixer or me to any ownership or financial interest in the underlying musical composition(s) embodied in the Remix Master(s), and I specifically agree that neither Remixer nor I will make any claims to the contrary.***

Dkt. # 87-2, Ex. G ("*Remixer Declaration*") (emphases added).

On August 9, 2019, Plaintiff filed the operative First Amended Complaint ("FAC") in this action. *See generally First Amended Complaint*, Dkt. # 24 ("*FAC*"). The FAC alleges that, although Plaintiff has no ownership interest in "I Lived" or the Remix Master itself, he owns the original compositional elements (the "Arty Elements") that he added to "I Lived" to create the Remix Master, and that Defendants infringed his copyright by using the Arty Elements—completely separately from the Remix Master—in a song titled "Happier." *See FAC* ¶¶ 27–28.

Accordingly, at the heart of this dispute is whether Plaintiff disclaimed his ownership

rights in the Arty Elements for purposes other than the Remix Master. The answer depends on the proper interpretation of the Remixer Declaration. Specifically, the answer depends on the meaning of the phrase "underlying musical composition" in the Remixer Declaration.

Defendants argue that "underlying musical composition" refers to the composition embodied in the Remix Master—i.e., the combination of (1) the elements taken from "I Lived" and (2) the Arty Elements (the "Remix Composition").[1] *See DMSJ* 26:12–14. Therefore, because Plaintiff agreed that he is not entitled to "any ownership or financial interest in the underlying musical composition(s) embodied in the Remix Master(s)," *see Remixer Declaration* ¶ C, Defendants argue that he lacks standing to bring a copyright infringement claim against them, *see DMSJ* 24:26–25:9.

On the other hand, Plaintiff argues that "underlying musical composition" refers solely to OneRepublic's "I Lived," and not the combination of the "I Lived" elements and the Arty Elements in the Remix Master, meaning that Plaintiff retained an ownership interest in the Arty Elements. *See PMSJ* 4:20–5:4. Therefore, Plaintiff contends that he can bring a claim for copyright infringement for Defendants' extraction and use of the Arty Elements in "Happier"—a song that is distinct from, and unrelated to, the Remix Master except for the alleged infringement of the Arty Elements. *See generally PMSJ*; *FAC*.

The Court **GRANTS** Defendants' motion and **DENIES** Plaintiff's motion because the Remixer Declaration is unambiguous and Plaintiff waived all of his ownership and financial interests in the Remix Composition.

II. Legal Standard

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party will have the burden of proof at trial, the movant

[1] The Remix Master itself is a performance (by Arty) of the Remix Composition. *See Remixer Declaration*.

can prevail by pointing out that there is an absence of evidence to support the nonmoving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all reasonable inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The evidence presented by the parties must be capable of being presented at trial in a form that would be admissible in evidence. *See* Fed. R. Civ. P. 56(c)(2). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

III. Evidentiary Objections

Defendants assert various evidentiary objections in their opposition and reply briefs. *See generally* Dkts. # 93-2, # 101-2. To the extent that the Court relies on objected-to evidence, it relies only on admissible evidence and, therefore, the objections are overruled. *See Godinez v. Alta-Dena Certified Dairy LLC*, No. CV 15-01652 RSWL (SSx), 2016 WL 6915509, at *3 (C.D. Cal. Jan. 29, 2016).

IV. Discussion

"In California, the meaning of a contract . . . is a question of law, unless it is ambiguous and there is 'conflicting extrinsic evidence' from which a jury could resolve the ambiguity in favor of either party." *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981, 988 (9th Cir. 2014) (quoting *Scheenstra v. Cal. Dairies, Inc.*, 213 Cal. App. 4th 370, 390 (2013)). "A [contract] provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable. But language in a contract must be interpreted as a whole, and in the circumstances of the case, and cannot be found to be ambiguous in the abstract." *Int'l Bhd. of Teamsters v. NASA Servs., Inc.*, 957 F.3d 1038, 1044 (9th Cir. 2020) (quoting *MacKinnon v. Truck Ins. Exch.*, 31 Cal. 4th 635, 648 (2003)).

Defendants argue that the Remixer Declaration is unambiguous and entitles them to summary judgment. *See generally Mot.* The Court agrees.

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As a threshold matter, the Court notes that the Remixer Declaration does not define the phrase "underlying musical composition." *See generally Remixer Declaration*. Therefore, the parties assert various arguments, based on context, regarding proper interpretation of the phrase. However, only one argument is necessary to resolve this dispute.

Defendants point to the "Disclaimer Provision," which is in ¶ C of the Remixer Declaration: "I acknowledge and agree that the services rendered (or to be rendered) by Remixer hereunder do not entitle Remixer or me to any ownership or financial interest in the underlying musical composition(s) embodied in the Remix Master(s), and I specifically agree that neither Remixer nor I will make any claims to the contrary." *See Remixer Declaration* ¶ C.

Defendants argue that, "because the Remixer Declaration defines 'Remix Master(s)' as master recordings 'embodying the featured performance of [Arty]', the Disclaimer Provision's specific reference to the 'underlying musical composition(s) ***embodied in the Remix Master(s)***' . . . confirms that the phrase 'underlying musical composition' refers to the Remix Composition, not the Original Composition."[2] *See DMSJ* 27:4–9. The Court agrees.

Under the Remixer Declaration, the "Remix Master(s)" are recorded performances of the Remix Composition by Plaintiff. *See Remixer Declaration* (each Remix Master consists of the featured performance by Arty of the results and proceeds of his remixing services). Therefore, the Disclaimer Provision's reference to "the underlying musical composition(s) embodied in the Remix Master(s)" can only refer to the Remix Composition. Accordingly, even if the phrase "underlying musical composition" is ambiguous as used elsewhere in the contract, the Disclaimer Provision resolves that ambiguity in favor of Defendants' interpretation—i.e., "underlying musical composition" as used in the Remixer Declaration means the Remix Composition.

Accordingly, from the terms of the contract it is clear that Plaintiff disclaimed "any ownership or financial interest" in the Remix Composition. *See Remixer Declaration* ¶ C. This necessarily includes his ownership and financial interest in the Arty Elements, which were part of the Remix Composition. *See Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998) ("'[A]ny' means 'any.'"). As such, Defendants are entitled to summary judgment on Plaintiff's infringement claims because Plaintiff disclaimed his ownership and financial interests in the Arty Elements.

[2] Recall that the Remix Composition consists of two elements: the elements taken from "I Lived" and the Arty Elements.

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V. Conclusion

The Remixer Declaration is unambiguous and entitles Defendants to summary judgment on Plaintiff's infringement claim. Accordingly, the Court **GRANTS** Defendants' motion and **DENIES** Plaintiff's motion.

IT IS SO ORDERED.