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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

LAURA ARCHER DICK COELHO, AS  
TRUSTEE OF THE PHILIP K. DICK  
TESTAMENTARY TRUST,

Plaintiff,

v.

MRC II DISTRIBUTION COMPANY,  
L.P.; MRC II HOLDINGS L.P.;  
OAKTREE ENTERTAINMENT, INC.;  
GEORGE NOLFI; AND MICHAEL  
HACKETT,

Defendants.

Case No. CV 11-8913-ODW (JCGx)

ORDER RE DEFENDANTS'  
MOTIONS TO DISMISS [13],[14]

Before the Court are Defendants’ two motions to dismiss—a first combined motion under Fed. Civ. P. 12(b)(1) and 12(b)(3), and a second motion under 12(b)(6). After careful consideration of the parties’ papers, the Court deems the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15.

**I. BACKGROUND**

Plaintiff, the Philip K. Dick Testamentary Trust, was formed to maintain, promote, and develop the creative works of the late science fiction author Philip K. Dick. Mr. Dick’s works numbered over 200, which include works that have been the basis for nearly a dozen feature films, including *Blade Runner*, *Total Recall*, and *Minority Report*.

1 Defendants approached the Trust and negotiated a contract for exclusive movie  
2 rights to *Adjustment Team*. In 2011, after years of work and further contract  
3 renegotiations, the story *Adjustment Team* became the movie *The Adjustment Bureau*.  
4 The feature film was an instant hit, taking in over \$128M at the U.S. and international  
5 box offices, and over \$10M in DVDs in the United States alone.

6 The sudden success of *The Adjustment Bureau* ushered in newfound wealth, and  
7 disputes about how that wealth is to be distributed. The parties now dispute the amount  
8 owed to the Trust under the alleged agreements relating to Mr. Dick's work.

9 Based on the foregoing, Plaintiff asserts the following claims: (1) declaratory relief  
10 to determine whether *Adjustment Team* was in the public domain for purposes of  
11 Copyright; (2) declaratory relief regarding rights under contract; (3) breach of contract;  
12 (4) money had and received; (5) quantum meruit; (6) unjust enrichment; and, (7)  
13 accounting.

## 14 **II. DEFENDANTS' RULE 12(B)(1) MOTION**

15 The Court first considers Defendants' Rule 12(b)(1) motion for lack of subject  
16 matter jurisdiction. Defendants ask the Court to retain the narrow copyright question, but  
17 to dismiss the remaining, and overarching, contract claims.

18 Federal courts are courts of limited jurisdiction and "have only the power that is  
19 authorized by Article III of the Constitution and the statutes enacted by Congress  
20 pursuant thereto." *Couch v. Telescope, Inc.*, 611 F.3d 629, 632 (9th Cir. 2010) (quoting  
21 *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). A case arises under  
22 federal law if the complaint "establishes either that federal law creates the cause of action  
23 or that the plaintiff's right to relief necessarily depends on resolution of a substantial  
24 question of federal law." *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S.  
25 677, 690 (2006).

26 So long as the complaint sets forth a claim arising under federal law, a court may  
27 exercise supplemental jurisdiction over the remaining state law claims if they form part  
28 of the same case or controversy—that is, if they derive from a common nucleus of

1 operative fact such that a plaintiff would ordinarily be expected to try them all in a single  
2 judicial proceeding. *United Mine Workers v. Gibbs*, 383 U.S. 725 (1966); *See* 28 U.S.C.  
3 § 1367. Even so, a court has discretion to decline supplemental jurisdiction where:

4  
5 (1) the claim raises a novel or complex issue of State law; (2)  
6 the claim substantially predominates over the claim or claims  
7 over which the district court has original jurisdiction; (3) the  
8 district court has dismissed all claims over which it has  
9 original jurisdiction; or, (4) in exceptional circumstances, there  
10 are other compelling reasons for declining jurisdiction.

11 28 U.S.C. § 1367(c); *Gibbs*, 383 U.S. at 726-27. Further, a court must consider the  
12 values of judicial economy, convenience, fairness, and comity in order to decide whether  
13 to exercise jurisdiction over a case brought in that court involving pendent state law  
14 claims. *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1174-75 (9th Cir. 2002).

15 A Rule 12(b)(1) motion may be brought as either a facial or factual attack. *Wolfe*  
16 *v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). In a facial attack, the challenger asserts  
17 that the allegations contained in a complaint are insufficient on their face to invoke  
18 federal jurisdiction. *Id.* But, in a factual attack, the challenger disputes the truth of the  
19 allegations that, by themselves, would otherwise invoke federal jurisdiction. *Id.*

20 In this case, Defendants concede that the copyright claim should remain in federal  
21 court and only bring a facial attack against supplemental jurisdiction of the remaining six  
22 causes of action concerning the underlying contract. Therefore, for this analysis, the  
23 Court accepts the allegations in the complaint as true and draws all reasonable inferences  
24 in plaintiff's favor. *See id.*

25 **A. The copyright cause of action is a federal question**

26 Both sides correctly argue that federal courts have original and exclusive  
27 jurisdiction in actions arising out of the federal Copyright Act. 28 U.S.C. § 1338(a).  
28 Plaintiff's peculiar declaratory cause of action requests the Court to determine whether  
*Adjustment Team* is or was in the public domain. Essentially, this is a limited request for  
a determination of validity of the copyright. Thus, the Court finds this cause of action

1 is a federal question and the Court’s jurisdiction over this one narrow issue is proper.

2 **B. The other six causes of action arise under different operative facts and**  
3 **substantially predominate over the copyright issue**

4 Plaintiff’s six other causes of action concern the *Adjustment Team* contract  
5 between the parties. First, there is no common nucleus of *operative* fact between the  
6 copyright validity determination and the six contract claims. The Court finds that there  
7 are some common *background* facts, e.g., both the copyright and contract arise from Mr.  
8 Dick’s *Adjustment Team* work. But that is all. The *operative* facts concerning the rights  
9 under the contract and breach of that contract have nothing do to with the copyright. *See*  
10 *Trilithic, Inc. v. Wavetek U.S.*, 6 F. Supp. 2d 803, 806-07 (S.D. Ind. 1998)(the court  
11 declining supplemental jurisdiction, finding the facts needed for resolving the two claims  
12 are “separate and distinct”: where one claim is for patent infringement, and the other is  
13 for breach of a non-disclosure agreement concerning the same patent).

14 Second, even if there is a common nucleus of operative fact, the copyright issue  
15 is mere fodder compared to the remaining contract claims. The Court finds nothing in  
16 Plaintiff’s pleading to suggest that the contract becomes void or otherwise unenforceable  
17 if the copyright is rendered invalid. In fact, Plaintiff downplays the importance of the  
18 copyright and alleges that Defendants profited from the *Adjustment Team* contract,  
19 regardless of the copyright:

20 Defendants have profited enormously from these benefits,  
21 none of which has anything to do with copyright. Under any  
22 circumstances—with *Adjustment Team* fully protected by  
23 copyright worldwide, or protected internationally, or not  
protected at all—Defendants still received the full value they  
have paid under the Agreement.

24 (Compl. ¶ 66.) In other words, Plaintiff’s recovery under the contract is independent of  
25 the validity of its copyright. Because of the relative unimportance of the copyright in this  
26 dispute, the Court finds that Plaintiff’s six state law claims substantially predominate over  
27 the copyright issue.

28 Plaintiff cites *Ackoff-Ortega* for the proposition that supplemental jurisdiction is

1 proper where the facts include a copyright-based cause of action and a breach of contract  
2 claim. *Ackoff-Ortega v. Windswept Pac. Entm't Co.*, 98 F. Supp. 2d 530, 533-34  
3 (S.D.N.Y 2000). But, *Ackoff-Ortega* is distinguishable: the contract obligations in this  
4 case may be determined apart from the copyright claim; whereas *Ackoff-Ortega* required  
5 evaluation of the underlying contract, which defendants allege released them from the  
6 plaintiffs' copyright claim. *Id.* at 535.

7 Still, Plaintiff argues that preceding cases have found a sufficient nexus between  
8 a copyright claim and a contract claim. *See S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081,  
9 1091 (9th Cir. 1989). Yet, Plaintiff forgets to consider the *Gibbs* factors, and the  
10 discretion given to the Court to decline supplemental jurisdiction when "the state law  
11 claim substantially predominates over the claim on which the court's original jurisdiction  
12 is based." 28 U.S.C. § 1367(c)(2); *Gibbs*, 383 U.S. at 726. Plaintiff's reliance on *S.O.S.*  
13 is misplaced. *S.O.S.* contains no substantive discussion concerning supplemental  
14 jurisdiction. *S.O.S., Inc.* 886 F.2d at 1091. Further, the copyright claim in *S.O.S.* lies at  
15 the center of the dispute and dominates the remaining claims. It is quite the opposite in  
16 this case. The Court finds that judicial economy is best served in this instance by  
17 bifurcating the case: the federal copyright claim in this Court; the remaining six contract  
18 claims in state court.

19 Third, even if the validity of the copyright has a bearing on the determination of  
20 contract damages, the Court finds that the limited determination of the validity of the  
21 copyright; that is, whether *Adjustment Team* is or was in the public domain; can be  
22 quickly achieved on a Rule 56 motion, after a brief opportunity for discovery. The  
23 present case is still in the pleading stage, and the parties have not yet held their Rule 26(f)  
24 conference. This is not an instance where Plaintiff's contract claims are kicked out right  
25 before trial. At this early stage, the Court finds it is imprudent to exercise supplemental  
26 jurisdiction over the six contract claims because the federal copyright claim will be  
27 resolved imminently.

28 Moreover, there will be no prejudice to Plaintiff if its contract claims are tried in

1 state court—the Court’s determination of the validity of the copyright will in all  
2 likelihood precede any resolution of the six contract claims; in state or federal court (if  
3 it remained here). In addition, because the parties reside here in California, the Court  
4 finds no disadvantage to either side to have this case heard in state court instead.

5 **C. Plaintiff does not allege diversity jurisdiction as a fall back**

6 Under 28 U.S.C. § 1332, a federal court has diversity jurisdiction over a case if the  
7 suit is between citizens of different states, and the amount in controversy exceeds  
8 \$75,000 exclusive of interests and costs. *Geographic Expeditions, Inc. v. Estate of*  
9 *Lhotka*, 599 F.3d 1102 (9th Cir. 2010). However, Plaintiff does not allege diversity as  
10 an independent basis for subject-matter jurisdiction. The Court believes that it cannot;  
11 Plaintiff and Defendants are citizens of or have their principal places of business in  
12 California. (Compl. ¶¶ 20-22, 24.).

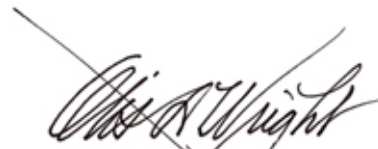
13 **IV. CONCLUSION**

14 For the above reasons, Defendants’ Rule 12(b)(1) motion is **GRANTED** and  
15 Plaintiff’s second, third, fourth, fifth, sixth, and seventh causes of action are  
16 **DISMISSED WITHOUT PREJUDICE**.

17 The Court declines to further analyze the parties’ forum selection clause and  
18 **DENIES** Defendants’ Rule 12(b)(3) motion as **MOOT**. The Court also **DENIES**  
19 Defendants’ Rule 12(b)(6) motion as **MOOT**. Plaintiff’s first cause of action concerning  
20 its copyright remains before this Court. Defendants have until February 22, 2012 to file  
21 a responsive pleading.

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23 IT IS SO ORDERED.

24 February 8, 2012

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HON. OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE