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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Lorenzo Pryor et al.,)	CV 13-4344 RSWL (AJWx)
)	
Plaintiffs,)	
)	
v.)	ORDER re: Defendants
)	Warner/Chappell Music,
)	Inc. and T-Boy Music,
Warner/Chappell Music, Inc.)	LLC's Motion to Dismiss
et al.,)	the Complaint [19]
)	
)	
Defendants.)	
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20 Currently before the Court is Defendants
21 Warner/Chappell Music, Inc. and T-Boy Music, LLC's
22 Motion to Dismiss the Complaint [19]. Plaintiffs
23 Lorenzo Pryor, Trena Steward, and Karla Ray
24 (collectively, "Plaintiffs") filed their Opposition on
25 December 17, 2013 [24]. Defendants Warner/Chappell
26 Music, Inc. and T-Boy Music, LLC filed a Reply on
27 December 24, 2013 [27]. This matter was taken under
28 submission on January 2, 2014 [31]. Having reviewed

1 all papers submitted pertaining to the Motion, and
2 having considered all arguments presented to the Court,
3 the Court **NOW FINDS AND RULES AS FOLLOWS:**

4 Defendants Warner/Chappell Music, Inc. and T-Boy
5 Music, LLC's Motion to Dismiss is hereby **GRANTED.**

6 **I. Background**

7 Plaintiffs are children of the deceased David
8 Pryor, of the music group Thunder & Lightning. Third
9 Amended Compl. ("TAC") ¶¶ 4-6. Each of the Plaintiffs
10 has an ownership interest in the song entitled "Bumpin'
11 Bus Stop," which was written by David Pryor. Id.

12 Defendant Erik Francis Schrody a/k/a Everlast
13 ("Everlast") is an American singer and songwriter; he
14 is the front-man for the rap group House of Pain. Id.
15 at ¶ 7. Defendant Warner Bros. Records, Inc. ("WB
16 Records") is an American record company engaged in the
17 business of manufacturing, selling, and distributing
18 musical recordings. Id. Defendant WB Records is owned
19 by its parent company, Warner Music Group ("WMG").

20 Defendant Warner Bros. Entertainment, Inc. ("WB
21 Entertainment") is a multi-media entertainment company
22 that owns a television production division known as
23 Warner Bros. Television, which creates and produces
24 television content for various networks. Id.

25 Defendant Warner/Chappell Music, Inc.

26 ("Warner/Chappell") is an American music publisher
27 owned and operated by its parent company WMG. Id.

28 Defendant Rhino Entertainment Company ("Rhino") is an

1 American record company owned by WMG. Defendant WEA
2 International, Inc. ("WEA") ships and distributes WMG
3 and Rhino affiliated musical recordings
4 internationally. Id. Defendant T-Boy Music, LLC ("TB
5 Music") is an American music publishing company that
6 publishes, produces, and distributes music. Id.

7 Plaintiffs are the heirs of David Pryor, who wrote
8 the musical composition entitled "Bumpin' Bus Stop."
9 Id. at ¶ 9. David Pryor also produced and recorded the
10 fixed sound recording for "Bumpin' Bus Stop." Id.
11 After he wrote the composition for "Bumpin' Bus Stop,"
12 David Pryor rented studio time, space, and equipment
13 from Gold Future Recording Studio in Kirkwood,
14 Missouri. Id. at ¶¶ 10-11. That recording session
15 with David Pryor and his band, the Play Boys, resulted
16 in a recording bearing the Gold Future label and
17 artwork. Id. at ¶ 11. On the A-Side of the Gold
18 Future record, David Pryor says "Hey Gang, let me show
19 you something! It's the hottest thing and it's on its
20 way to the top! Step up front . . . you dig! Get down
21 with the Bus Stop!" Id. at ¶ 12. In 1974, after the
22 Gold Future record was fully mixed and complete, David
23 Pryor had a copyright notice stamped on his record
24 while he and his band members promoted and distributed
25 the record. Id. at ¶ 13.

26 In 1975, after David Pryor presented his Gold
27 Future record to Private Stock Records, Private Stock
28 Records used its equipment to enhance the mix and sound

1 quality of the original recording for "Bumpin' Bus
2 Stop." Id. at ¶ 14. Private Stock Records changed the
3 name of David Pryor's band to "Thunder & Lightning,"
4 changed the record title's spelling, and changed the
5 record's artwork. Id.

6 Private Stock Record's music publisher, Caesar's
7 Music Library ("Caesar's Music"), federally registered
8 the composition to "Bumpin' Bus Stop" in January 1975
9 (Reg. No. Eu563138 and Eu563139). Id. at ¶ 15. The
10 registrations misattribute authorship and omit that the
11 work was based on David Pryor's preexisting 1974 work.
12 Id.

13 David Pryor did not give Caesar's Music an
14 assignment of rights or an exclusive license to the
15 composition or record for "Bumpin' Bus Stop." Id. at ¶
16 16. David Pryor likewise did not grant Caesar's Music
17 an assignment or transfer of his renewal rights in the
18 composition or record for "Bumpin' Bus Stop." Id.
19 Private Stock Records obtained a compulsory license to
20 distribute the record of "Bumpin' Bus Stop." Id.

21 David Pryor died on May 14, 2006. Id. at ¶ 18.
22 David Pryor did not discover any of the alleged acts of
23 infringement by the Defendants during his lifetime.
24 Id. at ¶ 19. On June 16, 2011, the Probate Division of
25 the Circuit Court of St. Louis County, Missouri,
26 entered a Judgment Determining Heirs, granting
27 ownership rights in the recording and composition of
28 "Bumpin' Bus Stop" to Trena Steward, Lorenzo Pryor,

1 Karla Ray, Sheila Hines, and Margaret Pryor. Id. at ¶
2 20, Ex. 3.

3 After the entry of the Judgment Determining Heirs,
4 Plaintiffs demanded that Private Stock Records and
5 Caesar's Music either furnish proof of any claim of
6 ownership or correct the inaccurate copyright
7 registrations. Id. at ¶ 22. On August 16, 2011,
8 Caesar's Music assigned to Plaintiffs any and all of
9 its purported rights in and to "Bumpin' Bus Stop" in
10 exchange for a release of claims made by Plaintiffs.
11 Id. On October 16, 2012, Private Stock Records did the
12 same. Id.

13 Plaintiffs' composition and recording rights are
14 the subject of Copyright Registration Nos. V3612D942
15 and V3613D044. Id. at ¶ 23.

16 Plaintiffs discovered that Caesar's Music entered
17 into a sample agreement, dated June 16, 1998, with
18 Defendant TB Music to sample and create derivative
19 works based on the composition for "Bumpin' Bus Stop."
20 Id. at ¶ 25. Plaintiffs allege that Caesar's Music was
21 not authorized to consent to the making of derivative
22 works based on the composition for "Bumpin' Bus Stop."
23 Id. Plaintiffs further allege that Defendant TB Music
24 gave unauthorized permission to Defendants WB
25 Entertainment, Rhino, WEA, Warner/Chappell, and WB
26 Records to use, exploit, and distribute a sample of the
27 composition and record to "Bumpin' Bus Stop" by
28 releasing a record entitled "Get Down." Id. "Get

1 Down" allegedly features Defendant Everlast and bears
2 the copyright registration No. PA 917-380. Id. "Get
3 Down" allegedly infringes on Plaintiffs' copyright by
4 repeatedly sampling David Pryor's voice from the sound
5 recording of "Bumpin' Bus Stop." Id. at ¶ 31.

6 On May 1, 2012, Plaintiffs submitted a completed
7 application for a separate copyright registration for
8 the recording David Pryor made at Gold Future and
9 published in 1974. Id. at ¶ 27.

10 Plaintiffs filed their initial Complaint on June
11 17, 2013 [1]. On June 20, 2013, they filed their First
12 Amended Complaint [6]. On October 4, 2013, the
13 Plaintiffs filed a Second Amended Complaint [12].
14 Finally, on November 18, 2013, the Plaintiffs filed the
15 operative Third Amended Complaint [16]. In their TAC,
16 Plaintiffs bring: (1) a claim for copyright
17 infringement of the sound recording to "Bumpin' Bus
18 Stop" against Defendants WB Entertainment, WB Records,
19 WEA, and Rhino arising from their manufacture and
20 distribution of Defendant Everlast's "Get Down" (TAC ¶¶
21 29-47); (2) contributory copyright infringement against
22 Defendant TB Music (Id. at ¶¶ 48-52); (3) breach of an
23 express contract against Defendant TB Music (Id. at ¶¶
24 53-62); and (4) copyright infringement against
25 Defendant WB Entertainment for allegedly creating an
26 infringing musical recording in the opening theme song
27 for the sitcom "Joey" (Id. at ¶¶ 63-71).

28 Defendants TB Music and Warner/Chappell filed the

1 Instant Motion to Dismiss on December 9, 2013 [19].
2 Plaintiffs voluntarily dismissed Defendant
3 Warner/Chappell on December 18, 2013 [26].

4 II. Legal Standard

5 A. Motion to Dismiss Pursuant to Rule 12(b)(6)

6 Federal Rule of Civil Procedure 12(b)(6) allows a
7 party to move for dismissal of one or more claims if
8 the pleading fails to state a claim upon which relief
9 can be granted. Dismissal can be based on a lack of
10 cognizable legal theory or lack of sufficient facts
11 alleged under a cognizable legal theory. Balistreri v.
12 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
13 1990). However, a party is not required to state the
14 legal basis for its claim, only the facts underlying
15 it. McCalden v. Cal. Library Ass'n, 955 F.2d 1214,
16 1223 (9th Cir. 1990). In a Rule 12(b)(6) motion to
17 dismiss, a court must presume all factual allegations
18 of the complaint to be true and draw all reasonable
19 inferences in favor of the non-moving party. Klarfeld
20 v. United States, 944 F.2d 583, 585 (9th Cir. 1991).

21 The question presented by a motion to dismiss is
22 not whether the plaintiff will prevail in the action,
23 but whether the plaintiff is entitled to offer evidence
24 in support of its claim. Swierkiewica v. Sorema N.A.,
25 534 U.S. 506, 511 (2002). "While a complaint attacked
26 by a Rule 12(b)(6) motion to dismiss does not need
27 detailed factual allegations, a plaintiff's obligation
28 to provide the 'grounds' of his 'entitle[ment] to

1 relief' requires more than labels and conclusions, and
2 a formulaic recitation of a cause of action's elements
3 will not do." Bell Atl. Corp. v. Twombly, 550 U.S.
4 544, 555 (2007) (internal citation omitted). Although
5 specific facts are not necessary if the complaint gives
6 the defendant fair notice of the claim and the grounds
7 upon which the claim rests, a complaint must
8 nevertheless "contain sufficient factual matter,
9 accepted as true, to state a claim to relief that is
10 plausible on its face." Ashcroft v. Iqbal, 556 U.S.
11 662, 678 (2009) (internal quotation marks omitted).

12 If dismissed, a court must then decide whether to
13 grant leave to amend. The Ninth Circuit has repeatedly
14 held that a district court should grant leave to amend
15 even if no request to amend the pleadings was made,
16 unless it determines that the pleading could not
17 possibly be cured by the allegation of other facts.
18 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

19 **III. Discussion**

20 **A. Request for Judicial Notice**

21 Plaintiffs include a Request for Judicial Notice
22 with their Opposition. Dkt. #25. Plaintiffs request
23 that this Court take judicial notice of: (1) Defendant
24 TB Music's copyright registration for the composition
25 "Get Down;" and (2) a copy of the 1998 sample agreement
26 between Defendant TB Music and Caesar's Music. Id.

27 Under the incorporation by reference doctrine, the
28 Court may "take into account documents 'whose contents

1 are alleged in a complaint and whose authenticity no
2 party questions, but which are not physically attached
3 to the [plaintiff's] pleading.'" Knievel v. ESPN, 393
4 F.3d 1068, 1076 (9th Cir. 2005) (quoting In re Silicon
5 Graphics Inc. Sec. Litig., 183 F.3d 970, 986 (9th Cir.
6 1999)); see also Lee v. City of Los Angeles, 250 F.3d
7 668, 688 (9th Cir. 2001).

8 The TAC explicitly references both the sample
9 agreement and Defendant TB Music's copyright
10 registration. See Compl. ¶ 25. "Copyright
11 certificates are the type of documents that the court
12 may judicially notice under Rule 201(b)(2)." Warren v.
13 Fox Family Worldwide, Inc., 171 F. Supp. 2d 1057, 1062
14 (C.D. Cal. 2001) (citing Oroamerica Inc. v. D & W
15 Jewelry Co., Inc., 10 F. App'x 516, 517 n.4 (9th Cir.
16 2001); Metro Publ'g, Ltd. v. San Jose Mercury News, 987
17 F.2d 637 (9th Cir. 1993)). As such, the Court takes
18 judicial notice of the copyright registration.

19 Additionally, Defendant TB Music does not appear to
20 dispute the authenticity of the 1998 sample agreement,
21 especially as it relies on the document in making one
22 of its arguments. See Reply 12:1-8. Such licenses may
23 be subject to judicial notice if they are necessarily
24 relied upon in a complaint and their authenticity is
25 not disputed. See Beijing Zhongyi Zhongbiao Elec.
26 Info. Tech. Co. Ltd. v. Microsoft Corp., C13-1300-MJP,
27 203 WL 6979555, at *3 (W.D. Wash. Oct. 31, 2013)
28 (citing Knievel, 393 F.3d at 1076). Consequently, the

1 Court also takes judicial notice of the 1998 sample
2 agreement.

3 **B. Contributory Copyright Infringement**

4 "Contributory copyright infringement is a form of
5 secondary liability with roots in the tort-law concepts
6 of enterprise liability and imputed intent." Perfect
7 10, Inc. v. Visa Int'l Serv. Ass'n, 494 F.3d 788, 794-
8 95 (9th Cir. 2007) (citing Fonovisa, Inc. v. Cherry
9 Auction, Inc., 76 F.3d 259, 264 (9th Cir. 1996);
10 Perfect 10, Inc. v. Amazon.com, Inc., 487 F.3d 701 (9th
11 Cir. 2007)). In the Ninth Circuit, "a defendant is a
12 contributory infringer if it (1) has knowledge of a
13 third party's infringing activity, and (2) 'induces,
14 causes, or materially contributes to the infringing
15 conduct.'" Id. at 795 (quoting Ellison v. Robertson,
16 357 F.3d 1072, 1076 (9th Cir. 2004)). Put another way,
17 "one contributorily infringes when he (1) has knowledge
18 of another's infringement and (2) either (a) materially
19 contributes to or (b) induces that infringement." Id.

20 1. Knowledge

21 Defendant TB Music argues that Plaintiffs'
22 allegation that Defendant TB Music knew that Caesar's
23 Music did not have authority to issue the 1998 license
24 of rights in the "Bumpin' Bus Stop" musical composition
25 is contradicted by their allegation that Caesar's Music
26 had been the registered owner of the "Bumpin' Bus Stop"
27 composition copyright since 1974. Mot. 9:1-8; Reply
28 8:10-16.

1 "A copyright registration 'is prima facie evidence
2 of the validity of the copyright and the facts stated
3 in the certificate.'" United Fabrics Int'l, Inc. v.
4 C&J Wear, Inc., 630 F.3d 1255, 1257 (9th Cir. 2011)
5 (quoting 17 U.S.C. § 410(c); citing S.O.S., Inc. v.
6 Payday, Inc., 886 F.2d 1081, 1085 (9th Cir. 1989)). In
7 this sense, Defendant TB Music was entitled to rely
8 upon Caesar Music's registration of "Bumpin' Bus Stop"
9 in initially licensing it.

10 Yet simply because Defendant TB Music's initial
11 licensing of "Bumpin' Bus Stop" may have been without
12 knowledge of Caesar's Music's unauthorized registration
13 does not mean that Defendant TB Music's subsequent
14 licensing of "Get Down" was made without knowledge of
15 Defendants WB Records, WB Entertainment, WEA, and
16 Rhino's infringement.

17 Defendant TB Music next argues that Plaintiffs'
18 claim is implausible because Defendant TB Music, as a
19 music publisher, could not have knowingly licensed the
20 use of the "Bumpin' Bus Stop" sound recording.

21 There is a distinction in the Copyright Act between
22 musical compositions and sound recordings. See
23 Bridgeport Music, Inc. v. Dimension Films, 410 F.3d
24 792, 796 n.3 (6th Cir. 2005) ("Sound recordings and
25 their underlying musical compositions are separate
26 works with their own distinct copyrights"); Palladium
27 Music, Inc. v. EatSleepMusic, Inc., 398 F.3d 1193, 1197
28 n.3 (10th Cir. 2005) ("Sound recordings and their

1 underlying musical compositions are separate works with
2 their own distinct copyrights"); In re Cellco P'ship,
3 663 F. Supp. 2d 363, 368 (S.D.N.Y. 2009) ("there are
4 separate bundles of rights in a musical composition and
5 in its embodiment in a sound recording"); Pharmacy
6 Records v. Nassar, 248 F.R.D. 507, 527 (E.D. Mich.
7 2008); Newton v. Diamond, 204 F. Supp. 2d 1244, 1249
8 (C.D. Cal. 2002); 17 U.S.C. § 102(a)(2), (7).

9 "A musical composition captures an artist's music
10 in written form. A musical composition's copyright
11 protects the generic sound that would necessarily
12 result from any performance of the piece." Newton, 204
13 F. Supp. 2d at 1249 (citations omitted). In contrast,
14 "the sound recording is the sound produced by the
15 performer's rendition of the musical work." Id. at
16 1249-50 (citation omitted).

17 Finally, the Copyright Act defines a "music
18 publisher" as "a person that is authorized to license
19 the reproduction of a particular musical work in a
20 sound recording." 17 U.S.C. § 1001(9). Such a
21 definition suggest that a musical publisher only
22 licenses musical works, or musical compositions. But
23 this definition applies only in the context of Chapter
24 10 of the Copyright Act, covering Digital Audio
25 Recording Devices and Media. 17 U.S.C. § 1001 ("As
26 *used in this chapter*, the following terms have the
27 following meanings") (emphasis added). This definition
28 therefore has no bearing on Plaintiffs' allegation that

1 Defendant TB Music is a music publisher. In other
2 words, even if Defendant TB Music is a music publisher,
3 it could still plausibly have licensed sound recordings
4 to the directly infringing Defendants.

5 Nevertheless, the Court still finds that Plaintiffs
6 have failed to sufficiently allege Defendant TB Music's
7 knowledge of direct infringement by third parties.

8 "Contributory liability requires that the secondary
9 infringer 'know or have reason to know' of direct
10 infringement." A&M Records, Inc. v. Napster, Inc., 239
11 F.3d 1004, 1020 (9th Cir. 2001) (quoting Cable/Home
12 Commc'n Corp. v. Network Prods., Inc., 902 F.2d 829,
13 845-46 n.29 (11th Cir. 1990); Religious Tech. Ctr. v.
14 Netcom On-Line Commc'n Servs., Inc., 907 F. Supp. 1361,
15 1373-74 (N.D. Cal. 1995)). Moreover, to establish
16 liability for contributory copyright infringement,
17 Plaintiffs must allege "more than a generalized
18 knowledge by the [Defendant] of the possibility of
19 infringement." Luvdarts, LLC v. AT&T Mobility, LLC,
20 710 F.3d 1068, 1072 (9th Cir. 2013). In short, so long
21 as Defendant TB Music knew that "Get Down" contained an
22 unauthorized sample of the "Bumpin' Bus Stop" sound
23 recording and that the other Defendants' distribution
24 of "Get Down" would infringe on that sound recording,
25 Defendant TB Music would have the requisite knowledge
26 for contributory copyright infringement.

27 Plaintiffs have alleged that Defendant TB Music
28 somehow knew that Caesar's Music was not authorized to

1 register the "Bumpin' Bus Stop" musical composition
2 copyright. TAC ¶ 51. Plaintiffs also allege that
3 "'Get Down' samples the recorded voice of David Pryor,
4 exclaiming 'Get Down.'" TAC ¶ 31. Plaintiffs then
5 allege that Defendant TB Music licensed "Get Down" to
6 third parties. Id. at ¶ 51. Finally, Plaintiffs
7 allege that the other Defendants infringed on
8 Plaintiffs' copyright by incorporating the infringing
9 vocal sample into "Get Down" and distributing that
10 song. Id. at ¶ 32.

11 Crucially, what Plaintiffs fail to allege is how
12 Defendant TB Music knew or had reason to know that "Get
13 Down" included an unauthorized, infringing sample of
14 the "Bumpin' Bus Stop" sound recording. Moreover,
15 Plaintiffs fail to plausibly allege how Defendant TB
16 Music knew that the directly infringing Defendants -
17 Defendants WB Entertainment, WB Records, WEA, and Rhino
18 - would infringe as a result of Defendant TB Music's
19 licensing of "Get Down." For this reason, the Court
20 **GRANTS** Defendant TB Music's Motion to Dismiss
21 Plaintiffs' contributory copyright infringement claim.
22 However, the Court finds that Plaintiffs could still
23 cure their claim by alleging additional facts.
24 Accordingly, the Court **DISMISSES** Plaintiffs' second
25 claim **with leave to amend.**

26 **C. Breach of Express Contract**

27 Defendant TB Music argues that Plaintiffs' breach
28 of contract claim fails for three reasons: (1)

1 Plaintiffs allege that the "Bumpin' Bus Stop" musical
2 composition was not used (Reply 9:20-11:15); (2) the
3 "Get Down" copyright registration only creates a
4 rebuttable presumption that "Bumpin' Bus Stop" musical
5 composition was used (Reply 11:16-24); and (3) the 1998
6 license clearly shows that Plaintiffs are not entitled
7 to any royalties (Reply 11:25-12:10).

8 The Court need not address the first two arguments
9 because the third is dispositive. Plaintiffs allege
10 that they retained the right "to collect performance
11 royalties through ASCAP or BMI for the use of the"
12 "Bumpin' Bus Stop" composition. TAC ¶ 56. However,
13 the 1998 license states that Defendant TB Music was to
14 pay "a non-returnable buyout fee" of \$1,750 "for all
15 rights for the use of the" "Bumpin' Bus Stop" musical
16 composition. Request for Judicial Notice, Ex. 2.
17 While the terms of the license do state that Defendant
18 TB Music was to register "Get Down" "with a performing
19 rights organization" such as ASCAP or BMI, such
20 registration was to be "in accordance with the terms of
21 the agreement and the information attached herein as
22 Exhibit A." Id. Neither the language of the agreement
23 nor Exhibit A specifies that Caesar's Music is entitled
24 to royalties. As the license "sets forth the entire
25 understanding between the parties," Plaintiffs are not
26 entitled to any payments or royalties from Defendant TB
27 Music for its use of the "Bumpin' Bus Stop" musical
28 composition. Id.

1 As such, the plain language of the license
2 undermines Plaintiffs' breach of contract claim because
3 it establishes that Defendant TB Music was not
4 obligated to provide any more payments with respect to
5 the license, even after registering "Get Down" with a
6 performance rights organization. Accordingly, the
7 Court **GRANTS** Defendant TB Music's Motion to Dismiss
8 Plaintiffs' breach of contract claim. Furthermore, the
9 Court finds that Plaintiffs cannot cure the claim by
10 pleading additional facts as doing so would contradict
11 the terms of the license. Accordingly, the Court
12 **DISMISSES** Plaintiffs' third claim **without leave to**
13 **amend.**

14 **IV. Conclusion**

15 For the foregoing reasons, the Court hereby **GRANTS**
16 Defendants' Motion to Dismiss the Complaint [19].
17 Plaintiffs' second claim for contributory copyright
18 infringement is **DISMISSED with 20 days leave to amend.**
19 Plaintiffs' third claim for breach of express contract
20 is **DISMISSED without leave to amend.**

21
22 **IT IS SO ORDERED.**

23 DATED: February 20, 2014

24
25 RONALD S.W. LEW

26

HONORABLE RONALD S.W. LEW
27 Senior, U.S. District Court Judge

28