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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL DEUTSCH,
Plaintiff,
v.
DOUGLAS W. COOK,
Defendant.

No. 1:19-cv-00281-DAD-SAB

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

(Doc. No. 29)

This matter is before the court on the motion to dismiss filed by defendant Douglas W. Cook on May 8, 2020.¹ (Doc. No. 29.) Pursuant to General Order No. 617 addressing the public health emergency posed by the COVID-19 pandemic, defendant's motion was taken under submission on the papers. (Doc. No. 30.) For the reasons explained below, the court will deny defendant's motion to dismiss.

¹ The undersigned apologizes to the parties for the delay in the issuance of this order. This court's overwhelming caseload has been well publicized and the long-standing lack of judicial resources in this district long-ago reached crisis proportion. That situation, which has continued unabated for over twenty-two months now, has left the undersigned presiding over approximately 1,300 civil cases and criminal matters involving 732 defendants at last count. Unfortunately, that situation sometimes results in the court not being able to issue orders in submitted civil matters within an acceptable period of time. This situation is frustrating to the court, which fully realizes how incredibly frustrating it is to the parties and their counsel.

1 **BACKGROUND**

2 This case concerns a soured business venture between two purported partners. One
3 partner—plaintiff—allegedly devoted time, energy, and money to the venture and the other
4 partner—defendant—allegedly did not compensate plaintiff for his efforts. Unfortunately for
5 plaintiff, this partnership was never formalized in a contract or in any other written form.

6 On February 28, 2020, the court granted defendant’s motion to dismiss plaintiff’s original
7 complaint and granted plaintiff leave to file an amended complaint to cure the deficiencies the
8 court had identified in that order. (Doc. No. 25.) Plaintiff filed his first amended complaint
9 (“FAC”) in this action on March 27, 2020. (Doc. No. 26.) Therein, plaintiff alleges the
10 following.

11 Defendant Douglas W. Cook is a medical doctor and surgeon who invented a medical
12 device used in hernia repairs. (*Id.* at ¶ 1.) That medical device is called the “Dialfan.” (*Id.* at
13 ¶ 15.) Defendant sought out plaintiff Michael Deutsch for help with commercializing the device,
14 knowing that plaintiff had achieved considerable success marketing and selling related medical
15 devices. (*Id.* at ¶ 2.) Plaintiff agreed to work with defendant. (*Id.* at ¶ 3.) However, the parties
16 never reached or entered into a formal agreement regarding their venture other than defendant
17 promising to reward plaintiff if they succeeded by sharing with plaintiff 49 percent of the profits
18 from any sales. (*Id.* at ¶ 3.) Trusting defendant, plaintiff invested significant amounts of his time,
19 energy, and money into marketing the Dialfan, including displaying the device at trade shows,
20 promoting the device to physicians and medical device companies that might license it, and
21 paying attorneys’ fees for its patent. (*Id.* at ¶ 4.) After plaintiff devoted thousands of dollars and
22 hundreds of hours to the venture, defendant unilaterally decided to cut plaintiff out of any efforts
23 to market the device, allegedly preferring to proceed with commercialization on his own. (*Id.* at
24 ¶ 6.) Nevertheless, for several years—until September 2018—defendant continued to propose
25 and entertain plaintiff’s proposals for arrangements under which plaintiff would be able to recoup
26 his investments upon defendant’s commercialization of the device. (*Id.* at ¶ 7.) Both parties
27 remained in contact and defendant shared with plaintiff information relating to defendant’s efforts

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1 to identify prospective licensors of the device. (*Id.*) Then, in September 2018, defendant cut off
2 all communication with plaintiff, which led plaintiff to file the instant action. (*Id.* at ¶ 8.)

3 In his FAC, plaintiff asserts two causes of action: (1) a claim for unjust enrichment and
4 (2) a claim for *quantum meruit*. (*Id.* at 8–9.) On May 8, 2020, defendant filed a motion to
5 dismiss plaintiff’s FAC in its entirety. (Doc. No. 29.) On June 2, 2020, plaintiff filed an
6 opposition to the pending motion to dismiss and thereafter defendant filed his reply thereto.
7 (Doc. Nos. 32, 33.)

8 LEGAL STANDARD

9 The purpose of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6)
10 is to test the legal sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
11 2001). A dismissal may be warranted where there is “the lack of a cognizable legal theory or the
12 absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*
13 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A claim for relief must contain “a short and plain
14 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
15 Though Rule 8(a) does not require detailed factual allegations, a plaintiff is required to allege
16 “enough facts to state a claim for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*,
17 550 U.S. 544, 570 (2007). A claim is plausible on its face “when the plaintiff pleads factual
18 content that allows the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20 In determining whether a complaint states a claim on which relief may be granted, the
21 court accepts as true the allegations in the complaint and construes the allegations in the light
22 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v.*
23 *United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the court need not assume the truth
24 of legal conclusions cast in the form of factual allegations. *U.S. ex rel. Chunie v. Ringrose*, 788
25 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed factual allegations,
26 “it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*,
27 556 U.S. at 678. A pleading is insufficient if it offers mere “labels and conclusions” or “a
28 formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also*

1 *Iqbal*, 556 U.S. at 676 (“Threadbare recitals of the elements of a cause of action, supported by
2 mere conclusory statements, do not suffice.”). Moreover, it is inappropriate to assume that the
3 plaintiff “can prove facts which it has not alleged or that the defendants have violated the . . . laws
4 in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State*
5 *Council of Carpenters*, 459 U.S. 519, 526 (1983).

6 ANALYSIS

7 Defendant advances two primary arguments in moving to dismiss plaintiff’s FAC. First,
8 defendant contends that the statute of limitations applicable to unjust enrichment and *quantum*
9 *meruit* claims operates as a complete defense to this action. (Doc. No. 29-1 at 12.) Second,
10 defendant argues that plaintiff has not pled the essential elements of his unjust enrichment claim
11 or his *quantum meruit* claim. (*Id.* at 15–17.) For the reasons explained below, the court does not
12 find either argument to be persuasive.

13 A. Statute of Limitations

14 A two-year statute of limitations applies to an unjust enrichment claim. *Wu v. Sunrider*
15 *Corp.*, 793 Fed. App’x. 507, 510 (9th Cir. 2019)²; Cal. Civ. Proc. Code § 339(1). A claim for
16 *quantum meruit* is likewise subject to a two-year limitations period. *Gross Belsky Alonso LLP v.*
17 *Henry Edelson*, No. 4:08-cv-4666-SBA, 2009 WL 1505284, *7 (N.D. Cal. May 27, 2009).

18 Under California law, a statute of limitations “runs from the moment a claim accrues.”
19 *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1191 (2013). The default accrual rule is the
20 “last element accrual rule,” which provides that a claim accrues upon “occurrence of the last
21 element essential to the cause of action.” *Id.* The elements for a claim of unjust enrichment are
22 (1) receipt of a benefit and (2) the unjust retention of the benefit at the expense of another. *Lyles*
23 *v. Sangadeo-Patel*, 225 Cal. App. 4th 759, 769 (2014). Plaintiff’s unjust enrichment claim
24 therefore accrued when the last with respect to these elements occurred. The parties do not
25 appear to dispute that defendant received a benefit in the form of plaintiff’s time, labor, and
26 money spent advancing the venture. “The question, then, is when did Defendant’s retention of

27 ² Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule
28 36-3(b).

1 the benefit [] become unjust?” *Sons v. McManis*, No. 08-cv-0840-AWI-TAG, 2010 WL
2 3491514, at *7 (E.D. Cal. Sept. 3, 2010).

3 Plaintiff argues that his unjust enrichment claim accrued in September 2018. (Doc. No.
4 32 at 8.) Based on the allegations of plaintiff’s FAC, the court agrees that, as alleged, defendant’s
5 retention of the benefit became unjust in September 2018, and that plaintiff thereafter timely filed
6 this action within the two-year limitations period. In his FAC, plaintiff alleges that even after
7 defendant decided to end the venture on June 29, 2015, the parties “spent many months and
8 ultimately years negotiating terms under which Deutsch would be able to recoup his investment
9 on Cook’s successful commercialization of the Dialfan.” (FAC at ¶ 40.) Moreover, plaintiff
10 alleges that “[i]n the course of such negotiations, Cook continued to provide Deutsch information
11 regarding Cook’s independent efforts in furtherance of the Venture, and propose and entertain
12 proposals for sharing profits on sales of the Dialfan.” (*Id.* at ¶ 41.) Plaintiff’s FAC continues,
13 alleging that defendant Cook “acknowledg[ed] his agreement to provide Deutsch some
14 compensation and opportunity to recoup the investment of time and money in the Venture” and
15 that “[i]n March 2017, Cook proposed retaining a third party to continue the Venture, with Cook
16 and Deutsch sharing in the profits resulting therefrom.” (*Id.* at ¶¶ 42, 44.) Lastly, plaintiff’s FAC
17 concludes that “[i]n or about September 2018, . . .Cook cut off all communications with Deutsch,
18 leaving Deutsch no other option than to file this complaint seeking restitution.” (*Id.* at ¶ 47.)
19 Taking these allegations as true and viewing them in the light most favorable to plaintiff—as it
20 must at this stage of the litigation—the court finds that plaintiff has adequately alleged that his
21 unjust enrichment claim did not accrue until September 2018, “when it became clear that Cook
22 would not compensate Deutsch and his services would be unpaid.” (Doc. No. 32 at 8.) At that
23 point, plaintiff knew he would not be compensated, and defendant’s retention of the benefits
24 became unjust. In determining when a benefit becomes unjust, the court looks first to policy
25 considerations. *Sons*, 2010 WL 3491514, at * 7. From a policy standpoint, it would hardly make
26 sense to permit a defendant to evade liability based on continuing false promises of repayment.
27 In such a world, a defendant would be able to continuously promise repayment until the day the
28 statute of limitations expired, at which time he could pull the figurative rug out from under

1 plaintiff's feet and escape any liability on the grounds of untimeliness. The court sees no policy
2 benefit in encouraging such practices. Thus, defendant's motion to dismiss on statute of
3 limitations grounds will be denied.

4 For similar reasons, the court concludes that plaintiff's claim for *quantum meruit* also
5 survives the pending motion to dismiss. The elements of plaintiff's claim for *quantum meruit* are:
6 (1) that the plaintiff performed certain services for the defendant; (2) that plaintiff alleged the
7 services' reasonable value; (3) that the services were rendered at defendant's request; and (4) that
8 the services are unpaid. *Sharp Mem'l Hosp. v. Regence BlueCross BlueShield of Utah*, No. 3:16-
9 cv-2493-JM-RNB, 2018 WL 3993359, *9 (S.D. Cal. Aug. 21, 2018). Plaintiff's *quantum meruit*
10 claim, as alleged in the operative complaint, therefore also did not accrue until defendant's refusal
11 to pay plaintiff became final and unequivocal such that the services were to be deemed unpaid.
12 *See Vishva Dev, M.D., Inc. v. Blue Shield of Cal. Life & Health Ins. Co.*, 2 Cal. App. 5th 1218,
13 1223–24 (2016) (finding that the statute of limitations for a physician's claims in *quantum meruit*
14 against health insurers began to run only when physician received notice that claims for payments
15 were unequivocally being denied). As discussed above, plaintiff alleges that he did not receive
16 final notice that he would be unpaid for his services until September 2018. Accepting that
17 allegation as true, that is also when plaintiff's *quantum meruit* claim accrued because it was at
18 that time the last act with respect to an essential element of the claim occurred.

19 Thus, plaintiff's claims, as alleged, both accrued in September 2018 and he filed his initial
20 complaint on February 25, 2020—less than two years after accrual of the claims. (*See* Doc. No.
21 1.) Accordingly, plaintiff's FAC is not barred by the applicable statutes of limitations.

22 **B. Whether Plaintiff States a Cognizable Claim**

23 Defendant next argues that plaintiff's FAC fails to sufficiently plead the elements of either
24 an unjust enrichment or a *quantum meruit* claim. (Doc. No. 33 at 8.) The court will address both
25 claims in turn.

26 1. Unjust Enrichment

27 “To allege unjust enrichment as an independent cause of action, a plaintiff must show that
28 the defendant received and unjustly retained a benefit at the plaintiff's expense.” *ESG Capital*

1 *Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016) (citing *Lectrodryer v. SeoulBank*, 77
2 Cal. App. 4th 723, 726 (2000)). Here, the parties only dispute the allegations with respect to the
3 second element of plaintiff’s unjust enrichment claim: unjust retention at plaintiff’s expense. In
4 its previous order dismissing plaintiff’s initial complaint, the court relied on the decision in *ESG*
5 *Capital* and concluded that in his original complaint “plaintiff [did] not allege how plaintiff
6 expected to be reimbursed should the Venture not proceed or in what way funds loaned were
7 unjustly retained by defendant Cook.” (Doc. No. 25 at 10.) The court deemed such factual
8 allegations necessary to allege unjust retention in the context of this action. The court explained
9 that “[a]ny amended complaint plaintiff elects to file must allege facts clarifying plaintiff’s
10 expectations regarding reimbursement for costs and defendant’s assurances, if any, regarding
11 defendant’s willingness to proceed with licensing the Dialfan and plaintiff having the opportunity
12 to recoup his costs.” (*Id.* at 11.)

13 In his pending motion to dismiss, defendant argues that plaintiff’s FAC plainly alleges
14 that plaintiff’s expectations for compensation “hinged on the commercialization of the Dialfan.”
15 (Doc. No. 29-1 at 15.) Thus, defendant concludes, plaintiff’s allegations show that plaintiff
16 “expected payment *only if* the Dialfan proved a commercial success.” (*Id.* at 16.) Given that the
17 Dialfan did not prove a commercial success, defendant contends that plaintiff had no reasonable
18 expectation of being compensated. (*Id.*) In contrast, plaintiff argues that his FAC has cured the
19 pleading deficiencies the court identified in its previous order. (Doc. No. 32 at 10.) Specifically,
20 plaintiff points out that his FAC alleges that although plaintiff did expect to recoup his expenses
21 via the commercialization of the Dialfan, that compensation could have occurred even after the
22 partnership ended. (*Id.*) For example, plaintiff contends that, were the venture to dissolve, he
23 expected to be compensated via defendant using a third-party to sell the Dialfan under a licensing
24 agreement or via plaintiff himself selling the Dialfan under a royalty-free license. (*Id.* at 10.)
25 Plaintiff clarifies that “the FAC acknowledges that these are not the only two contingencies the
26 parties contemplated” but that nevertheless “Deutsch expected that Cook would compensate him
27 in some form or manner.” (*Id.* at 11) (quoting FAC at ¶ 23.) In his reply, defendant argues that
28 “the fact that the parties allegedly negotiated a way for Plaintiff to recoup his investment after the

1 ‘venture’ ceased demonstrates that the parties did not [initially] agree that Plaintiff would recoup
2 his investment if the venture failed.” (Doc. No. 33 at 9.)

3 The court concludes that plaintiff has adequately alleged his unjust enrichment claim. In
4 response to the court’s previous order directing plaintiff to allege facts explaining the basis for his
5 expectations regarding reimbursement for costs (Doc. No. 25 at 11), plaintiff has now alleged
6 facts demonstrating that he expected defendant would compensate him in some form or manner.
7 Plaintiff has provided specific examples as to how he expected that compensation to occur. One
8 such example plaintiff has alleged is that he expected defendant would grant him a royalty-free
9 license to sell the Dialfan. (*Id.* at ¶ 23.) Plaintiff further alleges that he “relied on Cook’s
10 representation that the parties were ‘partners’ in the sense that they would work together to offset
11 any losses” should the venture prove less profitable than both parties hoped. (*Id.* at ¶ 23.)
12 Although plaintiff alleges that he expected his profits to come from commercializing the Dialfan,
13 the court notes he does not allege that such commercialization had to occur prior to the
14 conclusion of the partnership. Indeed, plaintiff specifically alleges that he expected to make
15 profits “even if that meant [plaintiff] himself would have to sell the Dialfan to realize such
16 profits.” (*Id.* at ¶ 24.)³ While plaintiff alleges that he expected profits solely from
17 commercialization, those expectations inherently included some expectation that defendant would
18 actively pursue such commercialization or allow plaintiff himself to do so. The factual
19 allegations presented in the FAC therefore sufficiently clarify the alleged basis for plaintiff’s
20 expectations with respect to reimbursement.

21 Furthermore, in response to the court’s instruction that plaintiff allege facts clarifying the
22 basis for his expectations regarding “defendant’s assurances, if any, regarding defendant’s
23 willingness to proceed with licensing the Dialfan and plaintiff having the opportunity to recoup
24 his costs” (Doc. No. 25 at 11), plaintiff has alleged in his FAC that “[b]ased on the

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26 ³ To the extent plaintiff’s FAC alleges that he both expected compensation through the venture
27 or, in the alternative, through other means if the venture ceased, those apparent inconsistencies
28 are not fatal to plaintiff’s FAC. It appears understandable to the court that plaintiff both expected
compensation for the venture and *also* expected compensation should the venture dissolve due to
defendant’s unilateral actions.

1 representations” from defendant, “Deutsch continued to believe that Cook would cooperate in
2 Deutsch’s further efforts to recoup his investments, including by pursuing deals of the sort Cook
3 has since refused to consider or pursue, and in the worst-case scenario, by letting Deutsch make
4 some sales to offset his losses.” (*Id.* at ¶ 45.) Moreover, in his FAC, plaintiff alleges that at all
5 times “Cook represented and agreed that the Venture would continue at least until Deutsch had
6 recouped the value of the time and money” he had invested. (FAC at ¶ 21.) Although these
7 factual allegations are somewhat vague, the court concludes that they satisfy the requirements
8 outlined in the court’s previous order, namely that plaintiff allege facts clarifying what assurances
9 he claims defendant made with respect to his willingness to proceed with licensing the Dialfan in
10 an effort to recoup losses for plaintiff. The court laid out which factual allegations the original
11 complaint lacked, and—in response—plaintiff has cured these deficiencies through the factual
12 allegations set forth in his now operative FAC. Defendant asks the court to disregard the well-
13 established principle that courts should accept non-conclusory factual allegations in the light most
14 favorable to plaintiff. *Friedman v. AARP, Inc.*, 855 F.3d 1047, 1051 (9th Cir. 2017). The court
15 will not do so.

16 Accordingly, defendant’s motion to dismiss with respect to plaintiff’s unjust enrichment
17 claim will be denied.

18 2. Quantum Meruit

19 As with plaintiff’s unjust enrichment claim, in its previous order the court concluded that
20 plaintiff did not adequately allege a *quantum meruit* claim because his original complaint lacked
21 “allegations that plaintiff reasonably expected reimbursement for his expenditures and efforts
22 should the project cease to proceed.” (Doc. No. 25 at 13.)

23 In his pending motion to dismiss, defendant argues that plaintiff’s “failure here largely
24 mirrors his failure with regard to the unjust enrichment claim.” (Doc. No. 29-1 at 17.) The court
25 agrees that the two claims originally suffered from identical deficiencies. However, for the same
26 reasons stated above with respect to plaintiff’s unjust enrichment claim, plaintiff’s FAC has now
27 adequately alleged facts in support of his *quantum meruit* claim. To the extent the court directed
28 plaintiff to provide factual allegations regarding the basis for his expectation of reimbursement,

1 plaintiff's FAC has wholly cured that deficiency as explained above. Taking that resolution into
2 consideration, the remaining elements of a *quantum meruit* claim are: (1) that the plaintiff
3 performed certain services for the defendant; (2) that plaintiff alleged the services' reasonable
4 value; (3) that the services were rendered at defendant's request; and (4) that the services are unpaid.
5 *Sharp Mem'l Hosp.*, 2018 WL 3993359, *9. In his FAC, plaintiff has sufficiently alleged facts in
6 support of each of these elements. The services plaintiff performed are alleged throughout the FAC
7 (*see, e.g.*, FAC at ¶ 32); plaintiff has alleged the value of those services (*see id.* at ¶ 35); those
8 services were allegedly performed at defendant's request (*see id.* at ¶ 32); and those services
9 allegedly went unpaid (*see id.* at ¶ 47). Accordingly, defendant's motion to dismiss with respect to
10 plaintiff's *quantum meruit* claim will also be denied.

11 **CONCLUSION**

12 For the reasons set forth above, defendant's motion to dismiss (Doc. No. 29) is denied.

13 IT IS SO ORDERED.

14 Dated: December 4, 2021

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17 UNITED STATES DISTRICT JUDGE
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