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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS,
INC.,

Plaintiff,

v.

JOYCE ANN SKINNER and LARRY
LEROY SKINNER, individually
and d/b/a CAMANCHE HILLS
DINNER HOUSE & LOUNGE A/K/A
BELLA ROSA,

Defendants.

No. CIV. S-13-0877 LKK/CKD

ORDER

JOYCE ANN SKINNER and LARRY
LEROY SKINNER,

Defendants and
Third-Party
Plaintiffs,

v.

BRIAN M. ELIA and MICHAEL
ELIA,

Third-Party
Defendants.

Third-party defendants move to dismiss the third-party

1 complaint. For the reasons set forth below, the motion will be
2 granted.

3 **I. BACKGROUND**

4 On May 5, 2012, the boxing match between Floyd Mayweather,
5 Jr. and Miguel Cotto (the "Match") was telecast nationwide. See
6 First Amended Complaint (ECF No. 24) ¶ 23. Plaintiff J&J Sports
7 Productions, Inc., "was granted the exclusive nationwide
8 commercial distribution (closed-circuit) rights" to the Program.
9 Id. The First Amended Complaint alleges that defendants Joyce
10 and Larry Skinner, are the owners and operators of the Camanche
11 Hills Dinner House & Lounge (the "Lounge"). Id., ¶¶ 7-8. On the
12 day of the Program, the defendants directed the Lounge employees
13 to unlawfully intercept and broadcast the Match. Id., ¶ 14.

14 On May 3, 2013, plaintiff filed their original complaint
15 against the Skinners (ECF No. 1), asserting claims under the
16 Cable Communications Policy Act of 1984, 47 U.S.C. §§ 553,¹ and
17 the Communications Act of 1934, 47 U.S.C § 605,² as well as state
18 law claims, for the alleged unauthorized interception and
19 broadcast of the Match.

20 Thereupon, the Skinners filed a third-party complaint
21 against Michael and Brian Elia (father and son). Third Party
22 Complaint ("Complaint") (ECF No. 16). The third-party complaint

23 _____
24 ¹ "No person shall intercept ... any communications service offered
25 over a cable system, unless specifically authorized to do so by a
cable operator or as may otherwise be specifically authorized by
law." 47 U.S.C. § 553.

26 ² "[N]o person receiving, ... any interstate ... communication by
27 wire ... shall ... publish the ... contents ... thereof, except through
28 authorized channels of transmission or reception." 47 U.S.C.
§ 605.

1 alleges that although the Skinners are the owners of the real
2 estate and building where the Lounge is located, the Elias are
3 the operators of the Lounge. Id., ¶ 7. The third-party
4 complaint asserts that if anyone unlawfully intercepted and
5 broadcast the Match in the Lounge, it was the Elias, and that any
6 such wrongdoing was carried out without the knowledge,
7 acquiescence or assistance of the Skinners. Id., ¶ 11.

8 The Elias move to dismiss the third-party complaint in its
9 entirety.

10 II. DISMISSAL STANDARDS

11 A dismissal motion under Fed. R. Civ. P. 12(b)(6) challenges
12 a complaint's compliance with the federal pleading requirements.
13 Under Fed. R. Civ. P. 8(a)(2), a pleading must contain a "short
14 and plain statement of the claim showing that the pleader is
15 entitled to relief." The complaint must give the defendant
16 "'fair notice of what the ... claim is and the grounds upon which
17 it rests.'" Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)
18 (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

19 To meet this requirement, the complaint must be supported by
20 factual allegations. Ashcroft v. Iqbal, 556 U.S. 662, 678
21 (2009). Moreover, this court "must accept as true all of the
22 factual allegations contained in the complaint." Erickson v.
23 Pardus, 551 U.S. 89, 94 (2007).³

24
25 ³ Citing Twombly, 550 U.S. at 555-56, Neitzke v. Williams, 490
26 U.S. 319, 327 (1989) ("What Rule 12(b)(6) does not countenance
27 are dismissals based on a judge's disbelief of a complaint's
28 factual allegations"), and Scheuer v. Rhodes, 416 U.S. 232, 236
(1974) ("[I]t may appear on the face of the pleadings that a
recovery is very remote and unlikely but that is not the test"
under Rule 12(b)(6)).

1 “While legal conclusions can provide the framework of a
2 complaint,” neither legal conclusions nor conclusory statements
3 are themselves sufficient, and such statements are not entitled
4 to a presumption of truth. Iqbal, 556 U.S. at 679. Iqbal and
5 Twombly therefore prescribe a two-step process for evaluation of
6 motions to dismiss. The court first identifies the non-
7 conclusory factual allegations, and then determines whether these
8 allegations, taken as true and construed in the light most
9 favorable to the plaintiff, “plausibly give rise to an
10 entitlement to relief.” Iqbal, 556 U.S. at 679.

11 “Plausibility,” as it is used in Twombly and Iqbal, does not
12 refer to the likelihood that a pleader will succeed in proving
13 the allegations. Instead, it refers to whether the non-
14 conclusory factual allegations, when assumed to be true, “allow[]
15 the court to draw the reasonable inference that the defendant is
16 liable for the misconduct alleged.” Iqbal, 556 U.S. at 678.
17 “The plausibility standard is not akin to a ‘probability
18 requirement,’ but it asks for more than a sheer possibility that
19 a defendant has acted unlawfully.” *Id.* (quoting Twombly, 550 U.S.
20 at 557).⁴ A complaint may fail to show a right to relief either

21 ⁴ Twombly imposed an apparently new “plausibility” gloss on the
22 previously well-known Rule 8(a) standard, and retired the long-
23 established “no set of facts” standard of Conley v. Gibson, 355
24 U.S. 41 (1957), although it did not overrule that case outright.
25 See Moss v. U.S. Secret Service, 572 F.3d 962, 968 (9th Cir.
26 2009) (the Twombly Court “cautioned that it was not outright
27 overruling Conley . . .,” although it was retiring the “no set of
28 facts” language from Conley). The Ninth Circuit has acknowledged
the difficulty of applying the resulting standard, given the
“perplexing” mix of standards the Supreme Court has applied in
recent cases. See Starr v. Baca, 652 F.3d 1202, 1215 (9th Cir.
2011) (comparing the Court’s application of the “original, more
lenient version of Rule 8(a)” in Swierkiewicz v. Sorema N.A., 534

1 by lacking a cognizable legal theory or by lacking sufficient
2 facts alleged under a cognizable legal theory. Balistreri v.
3 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

4 III. ANALYSIS

5 A. Claim One - Declaratory Relief.

6 Third party plaintiffs (Skinners) seek a declaration that
7 the third party defendants (Elias) are liable to the Skinners for
8 any and all "legal costs, attorney's fees, required settlement,
9 and/or judgment" entered against the Skinners. Defendants move
10 to dismiss on the grounds that the Skinners are seeking
11 indemnity, which is not permitted against federal claims under
12 Sections 553 and 605. Third-party defendants are correct.
13 Doherty v. Wireless Broadcasting Systems of Sacramento, Inc., 151
14 F.3d 1129, 1130-31 (9th Cir. 1998) (no right of indemnification
15 or contribution exists against a suit for unauthorized
16 interception and broadcast of boxing match, under Sections 553
17 and 605), cert. denied, 528 U.S. 813 (1999).

18 The Skinners concede the point. ECF No. 33 at 8. However,
19 the Skinners assert that they are still entitled to a declaratory
20 judgment to apportion blame. Id., at 9. They argue that they
21 are entitled to show that they were "innocent, non-participating
22 parties, without knowledge or consent to the alleged pirating -
23 so their liability can be limited to the minimum amount
24 prescribed by these two statutes." Id.

25 U.S. 506 (2002) and Erickson v. Pardus, 551 U.S. 89 (2007) (per
26 curiam), with the seemingly "higher pleading standard" in Dura
27 Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336 (2005), Twombly and
28 Iqbal), cert. denied, 132 S. Ct. 2101 (2012). See also Cook v.
Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (applying the "no set
of facts" standard to a Section 1983 case).

1 The Skinners do not cite any statute or case that would
2 permit the declaratory judgment action to go forward in light of
3 the absence of any possible indemnity or contribution. The
4 relevant statute, meanwhile, clearly cuts against their argument.
5 The showing that plaintiffs want to make - that they did nothing
6 wrong - is a showing that is a part of the defense against the
7 primary claim against them, and is specifically addressed in the
8 statute:

9 In any case where the court finds that the
10 violator was not aware and had no reason to
11 believe that his acts constituted a violation
12 of this section, the court in its discretion
may reduce the award of damages to a sum of
not less than \$100.

13 47 U.S.C. § 553(c)(3)(B). Also:

14 In any case where the court finds that the
15 violator was not aware and had no reason to
16 believe that his acts constituted a violation
17 of this section, the court in its discretion
may reduce the award of damages to a sum of
not less than \$250.

18 47 U.S.C.A. § 605(e)(3)(C)(iii).

19 Accordingly, there is no need to try the issue in a separate
20 third-party lawsuit.⁵ The first claim of the third-party
21 complaint will therefore be dismissed in its entirety, with
22 prejudice.

23 **B. Claims 2-4 - State Claims.**

24 The remaining third-party claims are purely state claims for
25

26 ⁵ In addition, the primary plaintiff has notified the court that
27 the primary lawsuit has been settled. See ECF No. 43. If so,
28 the Skinners' liability has already been decided, and there is no
reason to try the matter in a third-party lawsuit.

1 "declaratory relief for equitable comparative indemnity,"
2 "implied contractual indemnity," and "tort of another." There is
3 no federal question presented, no diversity jurisdiction, nor are
4 any other grounds for federal jurisdiction apparent.
5 Accordingly, the court declines to exercise supplemental
6 jurisdiction over the state claims, and will dismiss the Second
7 Claim, Third Claim and Fourth claim without prejudice. See 28
8 U.S.C. § 1367(c)(3) (district court may decline to exercise
9 supplemental jurisdiction over state claims when it has
10 "dismissed all claims over which it has original jurisdiction").

11 IV. CONCLUSION

12 For the reasons stated above,

13 1. The First Claim of the third-party complaint is hereby
14 **DISMISSED** with prejudice;

15 2. The court declines to exercise jurisdiction over the
16 Second Claim, Third Claim and Fourth Claim of the third-party
17 complaint, pursuant to 28 U.S.C. § 1367(c)(3), and accordingly,
18 those claims are hereby **DISMISSED** without prejudice;⁶ and

19 3. The Clerk is directed to close this case.

20 IT IS SO ORDERED.

21 DATED: May 27, 2014.

22 
23 LAWRENCE K. KARLTON
24 SENIOR JUDGE
25 UNITED STATES DISTRICT COURT

26 ⁶ The statute of limitations for the state claims have been
27 tolled during the pendency of this lawsuit, by operation of law.
28 28 U.S.C. § 1367(d); see Jinks v. Richland County, S.C., 538 U.S.
456, 460 (2003) (the Section 1367(d) tolling provision is
constitutional).