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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LEMBERG LAW, LLC,  
  
Plaintiff,  
  
v.  
  
TAMMY HUSSIN, INDIVIDUALLY;  
LAW OFFICE OF TAMMY HUSSIN,  
P.C.,  
  
Defendants.

Case No.: 16cv1727 JM (WVG)

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION TO STRIKE AND DISMISS PORTIONS OF DEFENDANT’S SECOND AMENDED ANSWER**

Plaintiff Lemberg Law, LLC, (“Plaintiff” or “Lemberg”) moves the court to strike and dismiss portions of the second amended answer, affirmative defenses, and counterclaims of Defendants Tammy Hussin and the Law Office of Tammy Hussin P.C. d/b/a Hussin Law (“Defendants” or “Hussin”) under Federal Rule of Civil Procedure 12. (Doc. No. 57.) For the reasons set forth below, the court grants in part and denies in part Plaintiff’s motion.

**BACKGROUND**

Lemberg filed a complaint against Defendants in the District of Connecticut on May 15, 2015. (Doc. No. 1.) The complaint asserts (1) breach of contract, (2) conversion, (3) violation of Connecticut’s Unfair Trade Practices Act (“CUTPA”), (4) violation of Connecticut General Statute section 52-564 for statutory theft, (5) violation

1 of Connecticut's Uniform Trade Secrets Act ("CUTSA"), (6) violation of Connecticut  
2 General Statute section 53a-251 for computer crimes, (7) theft of corporate opportunities,  
3 (8) quantum meruit, and (9) unjust enrichment.

4 On January 7, 2016, Hussin filed a second amended answer. (Doc. No. 48.) In the  
5 second amended answer, Hussin asserts three affirmative defenses: (1) material breach,  
6 (2) unclean hands, and (3) unenforceability of the contract at issue. Hussin also alleges  
7 counterclaims of (1) breach of contract, (2) violation of CUTPA, (3) conversion, (4)  
8 statutory theft under Connecticut law, (5) quantum meruit, (6) unjust enrichment, and (7)  
9 abuse of process.

10 Lemberg alleges that Hussin served as a contract attorney for Lemberg before  
11 establishing her own firm in February 2014. Upon Hussin's decision to open her own  
12 firm, Hussin and Lemberg negotiated a separation agreement in which Lemberg agreed to  
13 continue paying Hussin for cases that settled prior to her separation from the firm, and  
14 Hussin agreed to continue prosecuting cases filed by her for Lemberg's clients. Lemberg  
15 was to collect forty percent of the fees generated from those cases, and Hussin was  
16 permitted to use Lemberg's computer system for her California cases. Lemberg alleges  
17 that Hussin abandoned several of her cases and retained fees for herself rather than  
18 allocating them as required by the separation agreement, improperly accessed Lemberg's  
19 computer system, and marketed herself to Lemberg's current and former clients.

20 In response, Hussin alleges that Lemberg withheld fees to which she was entitled  
21 or paid her reduced fees, deducted unjustified costs from settlement awards, affixed her  
22 signature to settlement agreements without her consent, filed complaints on behalf of  
23 individuals who never agreed to be represented by Lemberg or Hussin, and wrongfully  
24 used Hussin's name to advertise Lemberg to California clients. Hussin also states that  
25 Lemberg authorized her to access Lemberg's computer systems to transfer her files from  
26 Lemberg's database.

27 On Hussin's motion, the District of Connecticut transferred the case to the  
28 Southern District of California pursuant to 28 U.S.C. § 1404(a), (Doc. No. 97,) affirming

1 its decision over Lemberg’s motion for reconsideration, (Doc. No. 121). In the motion  
2 now before the court, originally filed in the District of Connecticut, Lemberg asks the  
3 court to strike portions of the second amended answer under Federal Rule of Civil  
4 Procedure 12(f) and dismiss other portions under Rules 12(b)(1) and 12(b)(6).<sup>1</sup>

## 5 DISCUSSION

### 6 A. Motion to Strike Under Rule 12(f)

7 Lemberg moves to strike, pursuant to Rule 12(f), paragraphs 91–99, 111–113, 123,  
8 and 178 of Hussin’s second amended answer.

#### 9 1. Legal Standards

10 Federal Rule of Civil Procedure 12(f) states that a district court “may strike from a  
11 pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous  
12 matter.” “The function of a 12(f) motion to strike is to avoid the expenditure of time and  
13 money that must arise from litigating spurious issues by dispensing with those issues  
14 prior to trial.” Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)  
15 (internal quotations omitted). “Motions to strike are generally regarded with disfavor  
16 because of the limited importance of pleading in federal practice, and because they are  
17 often used as a delaying tactic.” Varrasso v. Barksdale, No. 13-CV-1982-BAS-JLB,  
18 2016 WL 1375594, at \*1 (S.D. Cal. Apr. 5, 2016) (quoting Neilson v. Union Bank of  
19 California, N.A., 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003)). “The motion should not  
20 be granted unless the matter to be stricken clearly could have no possible bearing on the  
21 subject of the litigation. If there is any doubt the court should deny the motion.” Obesity

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25 <sup>1</sup> In deciding Lemberg’s motions under the Federal Rules of Civil Procedure, the court  
26 follows the circuit in which it sits rather than the transferring circuit. Newton v.  
27 Thomason, 22 F.3d 1455, 1460 (9th Cir. 1994); Hartline v. Sheet Metal Workers’ Nat’l.  
28 Pension Fund, 201 F. Supp. 2d 1, 3-4 (D.D.C. 1999) (citing In re Korean Air Lines  
Disaster of Sept. 1, 1983, 829 F.2d 1171, 1173-76 (D.C. Cir. 1987), aff’d sub nom. Chan  
v. Korean Air Lines, Ltd., 490 U.S. 122 (1989)).

1 Research Inst., LLC v. Fiber Research Int'l, LLC, No. 15-CV-00595-BAS(MDD), 2016  
2 WL 739795, at \*3 (S.D. Cal. Feb. 25, 2016) (internal quotations and alterations omitted).

## 3           **2.     Analysis**

4           Lemberg first urges the court to strike paragraphs 178 and 123 of the second  
5 amended answer, which it declares to be impertinent and scandalous. Impertinent claims  
6 are those that are not responsive or are irrelevant to the issues in the case, and which are  
7 inadmissible as evidence. In re 2TheMart.com, Inc. Sec. Litig., 114 F. Supp. 2d 955, 965  
8 (C.D. Cal. 2000). Scandalous claims are those that “cast a cruelly derogatory light on a  
9 party or other person.” Id.

10           The court finds that the allegations in paragraphs 178 and 123 are neither  
11 impertinent nor scandalous. They go to the heart of Hussin’s claims—that Lemberg  
12 cheated her out of money and business and later filed this action to harass, annoy, and  
13 embarrass her—however harsh those claims may be. Hussin simply presents her  
14 interpretation of the facts, including that Lemberg threatened her with “financial ruin.”  
15 While these allegations may be couched in strong language, they fall short of casting a  
16 “cruelly derogatory light” on Lemberg. See id.

17           Next, Lemberg asks the court to strike paragraphs 91–99 and 111–113 as  
18 irrelevant. Again, the court declines to do so. The paragraphs at issue relate to Hussin’s  
19 allegations that Lemberg did not pay her the full portion of monies owed her, whether  
20 because Lemberg allegedly deducted improper costs before splitting the fee, settled cases  
21 on which Hussin had worked without alerting her, or blocked Hussin from accessing and  
22 evaluating cases she once controlled. Lemberg contends that these allegations, along  
23 with being irrelevant, are also wholly inaccurate, but that argument goes to the merits of  
24 Hussin’s claims and is not for the court to decide at this time.

25           Finally, Lemberg moves to strike paragraphs 8–59 and 96–101 because the  
26 allegations do not pertain to any claim for relief or affirmative defense and do not serve  
27 any legitimate purpose as part of the pleading. For the same reasons stated above, and  
28 recognizing that motions to strike are generally disfavored, the court disagrees and will

1 not strike these paragraphs. See Multimedia Patent Trust v. Microsoft Corp., 525 F.  
2 Supp. 2d 1200, 1211 (S.D. Cal. 2007) (stating that courts must accept nonmoving party’s  
3 allegations and liberally construe the pleadings in their favor in deciding Rule 12(f)  
4 motion to strike).

5 In sum, the court denies Lemberg’s Rule 12(f) motion to strike.

6 **B. Motion to Dismiss Under Rule 12(b)(1)**

7 Lemberg moves the court to dismiss under Rule 12(b)(1) certain counterclaims,  
8 which it terms “claims on behalf of former clients.” Lemberg contends that the court  
9 does not have subject matter jurisdiction over these claims because Hussin does not have  
10 standing to bring them on behalf of third parties.

11 **1. Legal Standards**

12 Federal courts are courts of limited jurisdiction. “Without jurisdiction the court  
13 cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it  
14 ceases to exist, the only function remaining to the court is that of announcing the fact and  
15 dismissing the cause.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94  
16 (1998). A Rule 12(b)(1) motion challenging subject matter jurisdiction may be facial or  
17 factual. See, e.g., Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir.  
18 2003). To resolve a facial challenge, as Lemberg makes here, the court considers  
19 whether “the allegations contained in [the] complaint are insufficient on their face to  
20 invoke federal jurisdiction.” Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th  
21 Cir. 2004). The court must accept Hussin’s allegations and draw all reasonable  
22 inferences in her favor. Wolfe v. Strankman, 392 F.3d 358 (9th Cir. 2004). As the party  
23 putting the claims before the court, Hussin bears the burden of establishing jurisdiction.  
24 Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

25 **2. Analysis**

26 There is no subject matter jurisdiction without standing, and the “irreducible  
27 constitutional minimum” of standing consists of three elements. Lujan v. Defenders of  
28 Wildlife, 504 U.S. 555, 560 (1992). A plaintiff must have (1) suffered an injury in fact,

1 (2) which is fairly traceable to the challenged conduct of the defendant, and (3) which is  
2 likely to be redressed by a favorable judicial decision. Id. at 560–61. As a general rule, a  
3 plaintiff does not have standing to assert the rights of third parties. Kowalski v. Tesmer,  
4 543 U.S. 125, 136 (2004); McCollum v. California Dep’t of Corr. & Rehab., 647 F.3d  
5 870, 878 (9th Cir. 2011).

6 In arguing that Hussin does not have standing to assert the rights of others,  
7 Lemberg misunderstands, or ignores, Hussin’s allegations. It is true that Hussin alleges  
8 that Lemberg improperly deducted costs that would have otherwise gone to third-party  
9 clients in the form of a bigger recovery. But Hussin’s fundamental claim is that a portion  
10 of those costs would have also gone to her in the form of a bigger fee split. Thus, in  
11 making these allegations, Hussin is not simply seeking to vindicate wrongs done to  
12 others. Instead, she is seeking to recover compensation to which she believes she is  
13 entitled. That injury warrants standing. Even if it did not, however, Hussin’s allegations  
14 that Lemberg unlawfully affixed her signature on settlement documentation and then  
15 failed to pay her for those settlements certainly warrants standing, despite the fact that  
16 third parties were involved.

17 Those injuries also distinguish the instant case from those cases that Lemberg cites  
18 to support its argument. For example, in Pony v. County of Los Angeles, 433 F.3d 1138  
19 (9th Cir. 2006), cited by Lemberg, the Ninth Circuit held that because 42 U.S.C.  
20 § 1988 vests the right to seek attorney’s fees in the prevailing party—not its attorney—an  
21 attorney had no standing to pursue attorneys’ fees based on his position as the prevailing  
22 party’s former attorney or under a retainer agreement that called for the client to apply for  
23 attorneys’ fees. Id. at 1141–42. Thus, the rule set forth in Pony simply does not weigh  
24 on the question currently before the court: whether Hussin has standing to pursue claims  
25 against Lemberg for taking actions that not only reduced the recovery of third parties, but  
26 also Hussin. Likewise, the Supreme Court’s holding in Kowalski v. Tesmer, 543 U.S.  
27 125, 134 (2004)—that attorneys lack third-party standing to bring an action on behalf of  
28 hypothetical future clients—does not impact this case.

1           Accordingly, the court denies Lemberg’s Rule 12(b)(1) motion based on lack of  
2 standing.

3           **C.     Motion to Dismiss Under Rule 12(b)(6)**

4           Lemberg next moves the court to strike two of Hussin’s three affirmative defenses  
5 and six of her seven counterclaims under Rule 12(b)(6).

6           **1.     Legal Standards**

7           A Rule 12(b)(6) motion to dismiss for failure to state a claim challenges the legal  
8 sufficiency of the pleadings. To overcome such a motion, the complaint—or  
9 counterclaim in this case—must contain “enough facts to state a claim to relief that is  
10 plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim  
11 has facial plausibility when the plaintiff pleads factual content that allows the court to  
12 draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
13 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Facts merely consistent with a defendant’s  
14 liability are insufficient to survive a motion to dismiss because they establish only that  
15 the allegations are possible rather than plausible. Id. at 678–79. The court must accept as  
16 true the facts alleged in a well-pleaded complaint, although mere legal conclusions are  
17 not entitled to an assumption of truth. Id. Finally, the court must construe the pleading in  
18 the light most favorable to the plaintiff. Concha v. London, 62 F.3d 1493, 1500 (9th Cir.  
19 1995).

20           The court evaluates a motion to dismiss affirmative defenses under a different  
21 standard, however. In that circumstance, “the fair notice required by the pleading  
22 standards only requires describing [an affirmative] defense in general terms.” Kohler v.  
23 Flava Enterprises, Inc., 779 F.3d 1016, 1019 (9th Cir. 2015); see also Weintraub v. Law  
24 Office of Patenaude & Felix, A.P.C., 299 F.R.D. 661, 664 (S.D. Cal. 2014) (declining to  
25 extend Twombly pleading standards to affirmative defenses (citing Simmons v. Navajo  
26 Cty., Ariz., 609 F.3d 1011, 1023 (9th Cir. 2010)); Fed. R. Civ. P. 8 (requiring litigants to  
27 “show[.]” they are entitled to relief under Rule 8(a) but only “affirmatively state” their  
28 defenses under Rule 8(c)).

1                   **2. Analysis**

2                   **a. Affirmative Defenses**

3           Lemberg argues that the court must dismiss Hussin’s first and second affirmative  
4 defenses, for material breach and unclean hands, respectively. As to the first defense,  
5 Lemberg argues that Hussin failed to show that any breach on Lemberg’s part was  
6 material. But Hussin is not required to make that showing now. For now, Hussin must  
7 only give Lemberg fair notice of the defense. She is not required to make her case on the  
8 merits, or even comply with the more stringent Twombly/Iqbal pleading standard. See  
9 Polk v. Legal Recovery Law Offices, 291 F.R.D. 485, 490 (S.D. Cal. 2013) (finding  
10 persuasive District of Colorado’s logic that “it is reasonable to impose stricter pleading  
11 requirements on a plaintiff who has significantly more time to develop factual support for  
12 his claims than a defendant who is only given twenty days to respond to a complaint and  
13 assert its affirmative defenses”). By stating that Lemberg (a) unlawfully caused Hussin’s  
14 signature to be affixed on settlement documentation, (b) failed to pay Hussin agreed-upon  
15 fees, and (c) failed to pay Hussin for certain settlements, Hussin has met the threshold  
16 requirement of fair notice. (Doc. No. 48 at 8-9.) Similarly, by stating that this same  
17 conduct also constitutes unclean hands, Hussin has provided fair notice to Lemberg of her  
18 second affirmative defense. At this stage, nothing more is required.

19           Accordingly, the court denies Lemberg’s motion to dismiss Hussin’s affirmative  
20 defenses.

21                   **b. Counterclaims**

22           Lemberg also moves to dismiss six of Hussin’s counterclaims,<sup>2</sup> which the court  
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24 <sup>2</sup> The court must determine what law applies to the common law claims in this case.  
25 Following transfers for convenience under 28 U.S.C. § 1404(a), the transferee court in a  
26 diversity case must apply the law of the state in which the action was originally filed.  
27 Van Dusen v. Barrack, 376 U.S. 612, 639 (1964). That does not mean the law of the  
28 transferor state will always apply, however, because in a diversity case, part of the state  
law that would have been applied is the choice of law rules of the forum state, Klaxon  
Company v. Stentor Electric Manufacturing Company, Inc., 313 U.S. 487, 496 (1941),



1 evaluates under the Twombly/Iqbal standard.

2 **i. Count One – Breach of Contract**

3 Under Connecticut law, the elements of breach of contract are “the formation of an  
4 agreement, performance by one party, breach of the agreement by the other party and  
5 damages.” Am. Exp. Centurion Bank v. Head, 115 Conn. App. 10, 15–16 (2009).

6 Lemberg argues that Hussin may not assert a claim for breach of contract because the  
7 parties never formed “an agreement that included within it the terms that are claimed to  
8 have been breached.” But paragraph 31 of Lemberg’s complaint states that “Hussin and  
9 Plaintiff negotiated a separation agreement,” and paragraphs 32 and 33 discuss the fee  
10 split between the parties. While that agreement may not have explicitly addressed  
11 “administrative fees, PrivacyStar fees, conversations with clients, [or] treatment of  
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13 and that state’s choice of law rules may call for application of the law of the transferee  
14 state or some third state. Under Connecticut choice of law rules, for claims “that sound  
15 in tort, namely, civil conspiracy, unjust enrichment and CUTPA, we apply the law of the  
16 state in which the plaintiff was injured, unless to do so would produce an arbitrary or  
17 irrational result.” Macomber v. Travelers Prop. & Cas. Corp., 277 Conn. 617, 640  
18 (2006); see also In re Trilegiant Corp., Inc., 11 F. Supp. 3d 132, 147 (D. Conn. 2014)  
19 (stating that CUTPA may apply where defendant’s place of business is located in  
20 Connecticut and violation is therefore “intimately associated” with the state). For  
21 contract claims, Connecticut employs “the ‘significant relationship’ test, and presume[s]  
22 the application of the law of the state in which the bulk of the transaction took place.”  
23 Macomber, 277 Conn. at 640. Here, the conduct at issue occurred both in Connecticut  
24 and California, as well as places in between. But it is notable that Lemberg, the plaintiff  
25 in this case, brought its claims in Connecticut and under Connecticut law, indicating that  
26 it was injured in that state. See Macomber, 277 Conn. at 640. And Hussin brought her  
27 counterclaims under Connecticut law, indicating the same. Moreover, Connecticut  
28 obviously has a significant relationship to the alleged actions of both parties, and neither  
party has provided the court with any argument that under Connecticut choice of law  
rules, California law must apply. See Pont v. Barker, No. 4002020, 2006 WL 1679738,  
at \*1 (Conn. Super. Ct. May 30, 2006) (refusing to consider application of Rhode Island  
law where defendant had not alleged in its answer or special defenses that  
a choice of law issue existed). For all these reasons, the court determines that  
Connecticut law applies.

1 expenses” as Lemberg contends, the agreement still covered the distribution of client  
2 fees, which is at the heart of Hussin’s allegations.

3 Lemberg also argues that Hussin has failed to allege her own performance or a  
4 legal excuse for nonperformance. It is true, as Lemberg points out, that “[o]ne cannot  
5 recover upon a contract unless he has fully performed his own obligation under it, has  
6 tendered performance, or has some legal excuse for not performing.” Auto. Ins. Co. v.  
7 Model Family Laundries, 133 Conn. 433, 437 (1947). But it is also true that “a material  
8 breach by one party discharges the other party’s subsequent duty to perform on the  
9 contract.” Weiss v. Smulders, 313 Conn. 227, 263 (2014). Here, Hussin provides  
10 sufficient facts that she performed her end of the agreement until Lemberg allegedly  
11 breached that agreement, stating that she prosecuted and settled joint cases until she  
12 began to distrust Lemberg’s manner of distributing proceeds. (Doc. No. 48 at 25–26.)  
13 Construing the claims in Hussin’s favor, as the court must, Hussin has asserted sufficient  
14 facts to sustain a breach of contract claim. See GDS Contracting Corp. v. Sacred Heart  
15 Univ., Inc., No. CV156030191, 2016 WL 673361, at \*2 (Conn. Super. Ct. Jan. 21, 2016)  
16 (refusing to dismiss breach of contract claim under similar circumstances).

17 Thus, the court denies the motion to dismiss Count One.

18 **ii. Count Two – Violation of CUTPA**

19 Connecticut General Statutes section 42-110b(a) provides that “[n]o person shall  
20 engage in unfair methods of competition and unfair or deceptive acts or practices in the  
21 conduct of any trade or commerce.” In determining whether a practice violates CUTPA,  
22 the court considers (1) whether the practice, without necessarily having been previously  
23 considered unlawful, offends public policy as it has been established by statutes, the  
24 common law, or otherwise—or in other words, whether it is within the “penumbra” of  
25 some common law, statutory, or other established concept of unfairness; (2) whether it is  
26 immoral, unethical, oppressive, or unscrupulous; and (3) whether it causes substantial  
27 injury to consumers, competitors, or other business persons. Ulbrich v. Groth, 310 Conn.  
28 375, 409 (2013). “All three criteria do not need to be satisfied to support a finding of

1 unfairness.” Id. “Thus a violation of CUTPA may be established by showing either an  
2 actual deceptive practice or a practice amounting to a violation of public policy.” Id.  
3 CUTPA provides a private cause of action to any person “who suffers any ascertainable  
4 loss of money or property, real or personal, as a result of the use or employment of a  
5 prohibited method, act or practice.” Id. at 409–10 (alterations omitted).

6 While “not every contractual breach rises to the level of a CUTPA violation,”  
7 Hudson United Bank v. Cinnamon Ridge Corp., 81 Conn. App. 557, 571 (2004), a breach  
8 of contract may form the basis of a CUTPA claim “when the defendant’s contractual  
9 breach [is] accompanied by aggravating circumstances,” Ulbrich, 310 Conn. at 411. As  
10 alleged, those aggravating circumstances exist in this case. Hussin has pled ample facts  
11 to demonstrate that Lemberg engaged in some manner of unfair, “immoral, unethical,  
12 oppressive, or unscrupulous” behavior that injured Hussin. See id. at 409.

13 Lemberg directs the court to Haynes v. Yale-New Haven Hospital, 243 Conn. 17,  
14 34 (1997), in support of its argument that CUTPA does not cover this case, but Haynes  
15 merely holds that “professional negligence—that is, malpractice—does not fall under  
16 CUTPA.” Id. As the Haynes court notes, CUTPA does indeed cover “the  
17 entrepreneurial or commercial aspects of the profession of law,” which include  
18 Lemberg’s behavior vis-à-vis Hussin here. Id. at 34–35.

19 Thus, the court denies the motion to dismiss Count Two.

### 20 **iii. Count Three – Conversion**

21 The Supreme Court of Connecticut has “defined conversion as an unauthorized  
22 assumption and exercise of the right of ownership over goods belonging to another, to the  
23 exclusion of the owner’s rights.” Macomber v. Travelers Prop. & Cas. Corp., 261 Conn.  
24 620, 649 (2002). “It is some unauthorized act which deprives another of his property  
25 permanently or for an indefinite time . . . .” Id. To be sure, money can be subject to  
26 conversion. Deming v. Nationwide Mut. Ins. Co., 279 Conn. 745, 771 (2006). But for  
27 Hussin’s conversion claim to survive a motion to dismiss, she must plausibly allege how  
28 the money that Lemberg allegedly retained for itself was her property.

1 In Macomber, the Supreme Court of Connecticut cited National Union Fire Ins.  
2 Co. v. Wilkins-Lowe & Co., 29 F.3d 337, 340 (7th Cir. 1994), for the proposition that an  
3 action for conversion of funds “may not be maintained to satisfy a mere obligation to pay  
4 money. It must be shown that the money claimed, or its equivalent, at all times *belonged*  
5 *to the plaintiff* and that the defendant converted it to his own use.” 261 Conn. at 650  
6 (emphasis in original and alterations omitted). Because the agreement between Hussin  
7 and Lemberg called for Lemberg to receive the fees before distributing them to Hussin,  
8 (Doc. 48 at 25), Hussin cannot allege that the money at issue ever belonged to her, or that  
9 she ever owned or was in possession of the same. Her claim for conversion is therefore  
10 more appropriately viewed as a breach of contract claim.

11 Thus, the court grants the motion to dismiss Count Three without leave to amend.

12 **iv. Count Four – Statutory Theft**

13 Statutory theft under Connecticut General Statutes section 52-564 is synonymous  
14 with larceny, which occurs when, “with intent to deprive another of property or to  
15 appropriate the same to himself or a third person, [an individual] wrongfully takes,  
16 obtains or withholds such property from an owner.” Deming, 279 Conn. at 771.  
17 “Therefore, statutory theft requires a plaintiff to prove the additional element of intent  
18 over and above what he or she must demonstrate to prove conversion.” Id. As with  
19 conversion, money can be the subject of statutory theft, but Hussin must plead legal  
20 ownership or the right to possession of specifically identifiable funds. Id. at 771–72.

21 The court in Deming applied this rule in concluding that the plaintiffs’ claims of  
22 conversion and statutory theft failed because they did not allege “that they ever possessed  
23 or owned legal title to these funds. At best, the defendants merely are obligated to pay  
24 the money.” Id. at 773. The court held as much even though the funds at issue were held  
25 in separate accounts designated for each plaintiff. Id. Thus, for those reasons discussed  
26 in the previous section, the court grants the motion to dismiss Count Four without leave  
27 to amend.

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