

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRYAN MARSHALL BRATT,
Plaintiff,
v.
MGA ENTERTAINMENT et al.,
Defendants.

Case No.: 23-cv-1467-RSH-VET

**ORDER DENYING MOTION TO
SET ASIDE DISMISSAL AND FOR
LEAVE TO AMEND**

[ECF No. 38]

This is the second of two substantially similar lawsuits for copyright infringement that Plaintiff, proceeding pro se, filed against Defendant MGA Entertainment, Inc., and others. Plaintiff filed his first lawsuit, *Bratt v. MGA Entertainment, Inc.*, No. 22-cv-1984-RSH-WVG (S.D. Cal.) (“*Bratt I*”), on December 14, 2022. On July 6, 2023, the Court granted Defendant’s motion to dismiss for failure to state a claim and dismissed the first action without prejudice.

Approximately two months later, on August 10, 2023, Plaintiff filed this instant lawsuit (“*Bratt II*”). ECF No. 1. On January 22, 2024, the Court granted Defendant’s motion to dismiss for failure to state a claim, based on Plaintiff’s failure to plausibly allege substantial similarities between the protectable elements of his work and MGA’s work.

1 The Court dismissed the Complaint with leave to amend. ECF No. 15; *see also* ECF No.
2 31 (amended order).

3 Plaintiff filed his First Amended Complaint (“FAC”) on February 16, 2024. ECF
4 No. 16. On April 5, 2024, the Court granted Defendant’s renewed motion to dismiss. ECF
5 No. 30. The Court “conclude[d], as it did before, that Plaintiff has not plausibly alleged
6 substantial similarities between the protectable elements of Plaintiff’s work and MGA’s
7 works.” *Id.* at 7. This time, the Court dismissed the FAC without leave to amend, on the
8 grounds that “the Amended Complaint largely failed to fix the deficiencies in the Court’s
9 previous order,” and indeed was “less detailed” and “less cogent” than the original
10 complaint. *Id.* at 8.

11 On May 22, 2024, Plaintiff filed a motion to set aside the dismissal pursuant to Rules
12 59(e) and 60(b) of the Federal Rules of Civil Procedure, and for leave to file a Second
13 Amended Complaint. ECF No. 38. Defendant opposes. ECF No. 40. As set forth below,
14 Plaintiff’s motion is denied.

15 **I. DISCUSSION**

16 Rule 60(b) provides that, “[o]n motion and just terms, the court may relieve a party
17 or its legal representative from a final judgment, order, or proceeding for the following
18 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; [and] (2) newly
19 discovered evidence that, with reasonable diligence, could not have been discovered in
20 time to move for a new trial under Rule 59(b).” Rule 60(b) “attempts to strike a proper
21 balance between the conflicting principles that litigation must be brought to an end and that
22 justice should be done.” *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007) (quoting
23 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and
24 Procedure § 2851 (2d ed. 1995)).¹

25
26
27 ¹ Plaintiff also invokes Rule 59(e), which provides that “[a] motion to alter or amend
28 a judgment must be filed no later than 28 days after the entry of the judgment.” Fed. R.
Civ. P. 59(e). Here, the case was dismissed on April 5, 2024, and so Plaintiff’s Rule 59(e)

1 Plaintiff contends that pursuant to Rule 60(b), the Court should set aside the
2 dismissal and grant Plaintiff leave to file a Second Amended Complaint because “Plaintiff
3 presents new evidence and a clearer articulation of the substantial similarities between the
4 copyrighted works involved, demonstrating a manifest error of law in the prior dismissal.”
5 ECF No. 38 at 1.

6 Plaintiff does not identify any new evidence, in the sense of newly discovered factual
7 material. Instead, by new evidence he appears to refer to a new articulation of copying that
8 he is prepared to provide the Court. ECF No. 38 at 9 (“The plaintiff has now detailed
9 precise lyrical phrases and musical compositions that have been directly copied by the
10 defendants.”). Plaintiff does not provide this new articulation. Plaintiff also argues that the
11 Court erred in dismissing his FAC for failure to plead substantial similarity, and states “this
12 was due to an incomplete presentation of the facts regarding the specific elements copied
13 by the defendants.” *Id.* He adds, “[g]iven the new evidence and clearer articulation of the
14 points of similarity, a reevaluation of the substantial similarity between the works is
15 warranted.” *Id.*

16 The Court declines to grant Plaintiff’s Rule 60(b) motion. Plaintiff has not come
17 forward with “newly discovered evidence,” or established that the dismissal was the
18 product of “mistake.” The Court also declines to grant Plaintiff leave to file an amended
19 complaint. In the Court’s order of April 5, 2024, the Court determined that Plaintiff was
20 not entitled to leave to amend. The case has been closed. Additionally, Plaintiff has not
21 shown that a Second Amended Complaint would cure the deficiencies identified by the
22 Court in its previous orders.

23 ///

24 ///

25 ///

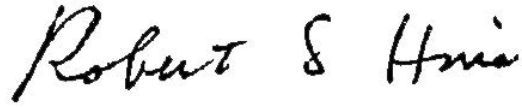
26 _____
27 motion would be untimely. The Court considers Plaintiff’s motion within the framework
28 of Rule 60(b).

1 **II. CONCLUSION**

2 For the foregoing reasons, Plaintiff's motion to set aside dismissal and for leave to
3 amend is **DENIED**.

4 **IT IS SO ORDERED.**

5 Dated: September 25, 2024



6
7
8

Hon. Robert S. Huie
United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28