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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RAIMA, INC.,

11 Plaintiff,

12 v.

13 MYRIAD FRANCE, SAS,

14 Defendant.

CASE NO. C12-1166JLR

ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO DISMISS

15 This matter comes before the court on a motion to dismiss brought by Defendant
16 Myriad France, SAS (“Myriad”). (Mot. (Dkt. # 22).) This case involves a license
17 agreement between Plaintiff Raima, Inc. (“Raima”), a Seattle-based maker of database
18 management software and Myriad, a French software and app provider in the mobile
19 phone sector. (Compl. (Dkt. # 1) ¶¶ 10-11.) Years after the license agreement between
20 the two companies expired, Myriad used Raima’s software to develop a product for the
21 French government and military. (*Id.* ¶¶ 20-24.) Raima brings this suit alleging
22 copyright infringement, breach of contract, abuse of process, and malicious prosecution.

1 (*Id.* ¶¶ 30-56.) The court examines each cause of action in turn and GRANTS the motion
2 with respect to Raima’s claims for copyright infringement under United States law,
3 malicious prosecution, and abuse of process, GRANTS the motion with respect to
4 Raima’s claim of French copyright infringement under the doctrine of *forum non*
5 *conveniens*, and DENIES the motion with respect to Raima’s claim for breach of
6 contract.

7 I. BACKGROUND

8 In 2004, Myriad entered into a license agreement with Raima’s predecessor in
9 interest, a company called Birdstep Technology, Inc. (*Id.* ¶ 12.) Under the agreement,
10 Myriad obtained the right to license and distribute a copyrighted database management
11 program called RDM Mobile 3.x and integrate it into Myriad’s mobile phone application
12 software. (*Id.* ¶¶ 13-14.) By its terms, the agreement expired on December 30, 2007.
13 (*Id.* ¶ 14.)

14 Nearly four years after the agreement expired, in 2011, Myriad contacted Raima
15 seeking to distribute the RDM Mobile 3.x code to one of its customers, a French
16 Company called Thales Group (“Thales”). (*Id.* ¶ 20.) Thales wanted to use RDM Mobile
17 3.x to develop phone software designed specifically for the French government and
18 military. (Decl. of Cyrille Amar (Dkt. # 24) ¶ 3.) The parties dispute what happened
19 when Myriad contacted Raima: Myriad claims Raima gave assurances that no new
20 license agreement was needed but later changed its mind (Amar Decl. Ex. B), while
21 Raima claims it simply informed Myriad that the license agreement had expired and
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1 required Myriad to cease distribution of the RDM Mobile 3.x code as of December 30,
2 2007. (Compl. ¶ 24.)

3 The parties do not dispute what happened next: Myriad went ahead with its
4 project with Thales and distributed goods containing RDM Mobile 3.x. (*See id.* ¶ 21.)
5 This took place entirely in France. (*Id.* ¶ 23.) Raima advised Myriad that without a
6 license, its actions were illegal (*id.* ¶ 24), after which the parties made some attempt to
7 negotiate a new license agreement (*id.* ¶ 26). When they failed to reach an agreement,
8 Myriad sued Raima in a French court, the Commercial Court of Chambéry, alleging
9 disparagement. (*Id.* ¶ 28.) Not long after, Raima filed this suit in the Western District of
10 Washington, arguing that the dispute must be resolved not in France but here pursuant to
11 a forum selection clause in the licensing agreement. (*See id.* ¶ 16.) The forum selection
12 clause states that any dispute arising out of the agreement must be resolved in
13 Washington:

14 Any dispute arising out of or related to this Agreement will be subject to
15 the exclusive jurisdiction and venue of [state and federal courts in
Washington.]”

16 (*Id.* Ex. A at 3.) Myriad claims that Raima’s lawsuit is baseless and that in any event the
17 dispute should be settled in France (*see Mot.*); Raima makes similar claims about
18 Myriad’s French lawsuit, arguing that it is frivolous and should be resolved in
19 Washington (*see Compl.* ¶¶ 28-29). Accordingly, Raima brings claims for malicious
20 prosecution and abuse of process in addition to its other claims. (*See id.*) This Rule 12
21 motion by Myriad seeks to dismiss some of Raima’s claims for failure to state a claim
22 and to dismiss others under the doctrine of *forum non conveniens*. (*See Mot.*)

II. ANALYSIS

A. Standard on a Motion to Dismiss

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. Pro. 8(a)(2). The purpose of this rule is to “give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Twombly and *Ashcroft v. Iqbal* establish the federal civil pleading standard used to assess Rule 12(b)(6) motions. See *Twombly*, 550 U.S. at 562-63; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Under the *Twombly/Iqbal* standard, it is not enough that a claim to relief be merely “possible” or “conceivable.” Instead, it must be “plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim for relief is plausible on its face when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). This standard is “not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* To cross the line from conceivable to plausible, a complaint must contain a sufficient quantum of “factual matter” alleged with a sufficient level of specificity to raise entitlement to relief above the speculative level. *Twombly*, 550 U.S. at 555. The court is not bound to accept as true labels, conclusions, formulaic recitations of the elements, or legal conclusions couched as factual allegations. *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). As the Supreme

1 Court said in *Iqbal*, a complaint must do more than tender “‘naked assertions’ devoid of
2 ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
3 557).

4 In ruling on a Rule 12(b)(6) motion, a court may consider documents incorporated
5 by reference into the complaint without converting the motion to dismiss into a motion
6 for summary judgment. *See Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002);
7 *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994); 2 JAMES WM. MOORE ET AL.,
8 MOORE’S FEDERAL PRACTICE § 12.34[2] (3d ed. 1999). Even if a document is not
9 attached to the complaint, it may be incorporated by reference into a complaint if the
10 plaintiff refers extensively to it or it forms the basis of the plaintiff’s claim. *See Van*
11 *Buskirk*, 284 F.3d at 980; *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994),
12 *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir.
13 2002). Here, for example, the court can consider the License Agreement between Raima
14 and Myriad because it is mentioned explicitly in the complaint. (Compl. ¶¶ 12, 14.)

15 **B. Raima’s Claims for Copyright Infringement Under United States Law,
16 Malicious Prosecution, and Abuse of Process**

17 Raima does not allege sufficient facts to state a claim for copyright infringement
18 under the Copyright Act, malicious prosecution, or abuse of process. The court examines
19 each of these claims in turn.

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1 1. Copyright Infringement Under the Copyright Act

2 A claim of copyright infringement under the Copyright Act requires, at a
3 minimum, some allegation of infringing acts that took place inside the United States. *Los*
4 *Angeles News Serv. v. Reuters Tele. Int'l Ltd.*, 149 F.3d 987, 990 (9th Cir. 1998) (citing
5 *Subafilms, Ltd. v. MGM-Pathe Commc'ns Co.*, 24 F.3d 1088, 1094 (9th Cir. 1994)). It is
6 settled law that the Copyright Act does not apply unless “at least one alleged
7 infringement [is] completed entirely within the United States.”¹ *Id.* Here, all of the
8 allegedly infringing acts took place not in the United States, but in France. (*See Compl.*
9 ¶¶ 20-23.) Neither side disputes this fact, and Raima’s complaint contains no allegations
10 of any infringing acts inside the United States. (*See Compl.*) This is fatal to Raima’s
11 copyright claims, and as such the court GRANTS with prejudice Myriad’s motion to
12 dismiss this claim. *See Los Angeles News*, 149 F.3d at 990.

13 2. Malicious Prosecution

14 Raima’s malicious prosecution claim is similarly flawed. To state a claim for
15 malicious prosecution in a civil proceeding under Washington law, a plaintiff must allege

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17 ¹ There are two different theories in the federal courts for why this is so: some courts are
18 of the opinion that federal courts lack subject matter jurisdiction over extraterritorial copyright
19 claims, while other courts hold that infringement inside the United States is a basic element of
20 any copyright claim that, if not alleged, defeats the claim. *See Shropshire v. Canning*, 809 F.
21 Supp. 2d 1139, 1143-44 (N.D. Cal. 2011) (explaining both approaches). Under either of these
22 theories, it does not make sense to argue, as Raima does, that a forum selection clause operates
as consent to liability for acts of infringement occurring outside of the United States (*see Resp.*
(Dkt. # 28) at 10-11); this is because parties can neither consent to federal subject matter
jurisdiction nor consent to expanding the reach and scope of an Act of Congress. *Morongo Band*
of Mission Indians v. Cal. State Bd. Of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988)
(parties cannot consent to subject matter jurisdiction); *Kolbe v. Trudel*, 945 F. Supp. 1268, 1270
(D. Ariz. 1996) (forum selection clause does not make extraterritorial infringement actionable
under Copyright Act).

1 that: (1) the defendant initiated or continued a prosecution; (2) there was no probable
2 cause to institute or continue the prosecution; (3) the prosecution was instituted or
3 continued with malice; (4) the proceedings terminated on the merits in favor of the
4 plaintiff, or were abandoned; (5) the plaintiff suffered injury or damage; (6) there was an
5 arrest or seizure of property; and (7) the plaintiff suffered special injury, meaning injury
6 which would not necessarily result from similar causes of action. *Clark v. Baines*, 84
7 P.3d 245, 248-49 (Wash. 2004). Here, Raima simply does not allege (4) or (6): that the
8 proceedings terminated in its favor (the proceedings in question, located in France,
9 appear to be ongoing), or that there was an arrest or seizure of property. (*See Compl.*)
10 Nor does anything else in the parties' submission suggest that either of these things are
11 actually true. Without these allegations, Raima has not stated a claim for malicious
12 prosecution, *Clark*, 84 P.3d at 248-49, and the court GRANTS Myriad's motion to
13 dismiss this claim with prejudice.

14 3. Abuse of Process

15 To state a claim for abuse of process, a plaintiff must allege that: (1) the
16 defendant had an ulterior purpose to accomplish an object not within the proper scope of
17 the process; and (2) the defendant performed an act in the use of legal process not proper
18 in the regular prosecution of proceedings. *Batten v. Abrams*, 626 P.2d 984, 988 (Wash.
19 Ct. App. 1981). Raima alleges that Myriad's ulterior purpose in filing the French lawsuit
20 was to "extort a license from Raima," and that it attempted to accomplished this purpose
21 by using "the existence of the lawsuit to pressure Raima into providing a license for free
22 to Myriad and Thales" (*Compl.* ¶¶ 53-54.) In other words, Raima alleges that

1 Myriad brought a baseless lawsuit and then committed abuse of process by attempting to
2 settle a claim it knew was baseless.

3 Many courts have held that attempts to settle a case, even a frivolous case, cannot
4 form the basis of an abuse of process claim. *E.g.*, *JSJ Ltd. P'ship v. Mehrban*, 141 Cal.
5 Rptr. 3d 338, 346 (Cal. Ct. App. 2012); *Hoffman v. Asseenontv.com, Inc.*, 962 A.2d 532,
6 542 (N.J. Super. A.D. 2009); *Wallace v. Mercantile Cnty. Bank*, 514 F. Supp. 2d 776, 793
7 (D. Md. 2007). These courts have reached this result for different reasons, all of which
8 the court finds persuasive. *E.g.*, *THI of New Mexico at Valle Norte v. Harvey*, 802 F.
9 Supp. 2d 1257 (D.N.M. 2011) (concluding that attempts to settle a case are not acts that
10 are improper in the regular prosecution of proceedings); *Hoffman*, 962 A.2d at 542
11 (concluding that settlement negotiations are not part of the court's "process"); *Wallace*,
12 514 F. Supp. 2d at 793 (explaining that there can be no abuse of process for simply
13 seeing a lawsuit through to its "authorized conclusion," and that attempting to negotiate a
14 settlement is merely carrying a suit through to its "authorized conclusion").

15 The approach of these courts appears to be the majority approach, and there is no
16 authority to suggest Washington would diverge from it. Indeed, although Washington
17 case law has never squarely addressed this question, the little authority that does exist
18 exists suggests Washington would follow the majority position. For example, the
19 Washington Court of Appeals has said that for abuse of process, "there must be an act
20 after filing suit using legal process empowered by that suit." *Saldivar v. Momah*, 186
21 P.3d 1117, 1130 (Wash. Ct. App. 2006). Certainly, an offer of settlement does not match
22 this description. An offer of settlement does not use legal process; moreover, it is

1 available even before filing a suit unlike, say, a subpoena or an interrogatory request.

2 This suggests Washington would follow the majority approach. And while Raima is able
3 to cite one case reaching the opposite result by applying Montana law, *see McCullough v.*
4 *Johnson, Rodenburg & Lauinger*, 637 F.3d 939, 956 (9th Cir. 2011), Raima cites no
5 authority indicating that Washington would take the Montana approach. (*See Resp. (Dkt.*
6 *# 28)* at 29-31.) As such, the court finds that under Washington law, Raima does not
7 state a claim for abuse of process merely by alleging that Myriad offered to settle what
8 Raima regards as a frivolous claim. The court GRANTS Myriad's motion to dismiss this
9 claim with prejudice.

10 **C. Raima's Claim for Copyright Infringement Under French Law**

11 Next, Myriad moves to dismiss Raima's claims for violation of French copyright
12 law under the doctrine of *forum non conveniens*, a doctrine under which federal district
13 courts can dismiss cases that appear unsuitable for resolution in the United States.
14 Specifically, a federal court has discretion to dismiss a case on the ground of *forum non*
15 *conveniens* when an alternative forum has jurisdiction to hear the case, and either
16 (1) "trial in the chosen forum would establish . . . oppressiveness and vexation to a
17 defendant . . . out of all proportion to plaintiff's convenience," or (2) "the chosen forum is
18 inappropriate because of considerations affecting the court's own administrative and legal
19 problems." *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429
20 (2007) (internal quotation marks, alterations, and citations omitted). In determining
21 whether to dismiss an action under *forum non conveniens*, a court must examine two
22 factors: "(1) whether an adequate alternate forum exists, and (2) whether the balance of

1 private and public interest factors favors dismissal.” *Lueck v. Sundstrand Corp.*, 236
2 F.3d 1137, 1142 (9th Cir. 2001).

3 1. Adequate Alternate Forum

4 First, the court finds that there is an adequate alternative forum to resolve this
5 dispute. An alternative forum is adequate when the defendants are amenable to service of
6 process in the foreign forum and the foreign forum provides the plaintiffs with “some
7 remedy” for their wrongs. *Lueck*, 236 F.3d at 1143. “[I]t is only in rare
8 circumstances . . . where the remedy provided by the alternative forum . . . is so clearly
9 inadequate or unsatisfactory, that it is no remedy at all” *Id.* (citation and internal
10 quotation marks omitted).

11 Raima and Myriad do not appear to dispute that France is an adequate alternative
12 forum. Further, Myriad presents evidence that it is amenable to service of process in
13 France (Amar Decl. ¶ 7), and there is no serious dispute that French copyright law is
14 capable of providing an adequate and satisfactory remedy for Raima’s claims. In fact,
15 Raima basically admits this by seeking relief under French copyright law in *this court*.
16 (Compl. ¶¶ 44-51.) Accordingly, the court finds that the first requirement for *forum non*
17 *conveniens* is met.

18 2. Balance of Private and Public Interest Factors

19 Next, the court must balance both private and public interest factors to determine
20 if they favor dismissal in this case. They do.

21 In balancing factors to determine whether to apply *forum non conveniens*, courts
22 consider the following private interest factors:

1 (1) [T]he residence of the parties and witnesses; (2) the forum's
2 convenience to the litigants; (3) access to physical evidence and other
3 sources of proof; (4) whether unwilling witnesses can be compelled to
4 testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of a
5 judgment; and (7) all other practical problems that make trial of a case easy,
6 expeditious and inexpensive.

7 *Lueck*, 236 F.3d at 1145 (internal quotation marks and citation omitted).

8 In this case, most of these private interest factors are neutral, although several
9 slightly favor applying *forum non conveniens*. In either possible forum, France or the
10 Western District of Washington, one of the parties will have to travel to the other's home
11 country. This will cause similar inconvenience to either party, both parties having
12 already hired attorneys in the other forum, and will precipitate similar practical problems
13 for either party. In either case, witnesses will be required to travel, this will cost money,
14 and attorneys will be required to navigate the thicket of Franco-American compulsory
15 process to ensure testimony. Likewise, in either forum, attorneys will be required to
16 journey through the law of inter-country judgment enforcement, although if Raima
17 prevails in France it will likely be relatively easy to enforce a French judgment. It is not
18 known at this time precisely which witnesses will be important to the case because it is
19 not clear to the court at this early stage of litigation what the major issues in the case will
20 be—this depends on how the parties argue the case going forward. It is also not known
21 whether particular pieces of physical evidence (e.g., the allegedly infringing phones and
22 the contract between Thales and the French Government) will be allowed to leave France
or will even be needed in the litigation. (*See* Amar Decl. ¶ 6.) This depends on future
circumstances about which the court has very little information at this time. In sum, the

1 private factors are mostly neutral but slightly favor applying *forum non conveniens* and
2 dismissing Raima's French copyright claims.

3 On the other hand, the public interest factors weigh strongly in favor of applying
4 *forum non conveniens*. Courts generally consider the following public interest factors:
5 (1) the local interest of the lawsuit; (2) the court's familiarity with governing law; (3) the
6 burden on local courts and juries; (4) congestion in the court; and (5) the costs of
7 resolving a dispute unrelated to the forum. *Lueck*, 236 F.3d at 1147.

8 First and foremost, the court has no familiarity with French copyright law.
9 Although the need to apply foreign law is not in and of itself a sufficient reason to
10 dismiss based on *forum non conveniens*, it favors dismissal. *See Piper Aircraft Co. v.*
11 *Reyno*, 454 U.S. 235, 260 n.29 (1981). Moreover, French copyright laws are written to
12 be applied within France's civil law system, not in the common law courts of the United
13 States. It is not clear how the court would effectively administer these laws in a common
14 law court or why it would be worth the time and effort to learn how to do so when there
15 is another forum available that would not have this difficulty and is fully familiar with
16 French copyright law and well-equipped to deal with it. Applying French law would also
17 impose a major burden on the court and on a jury. *See Piper*, 454 U.S. at 259-60 (“[A]
18 trial involving two sets of laws would be confusing to the jury.”). At a minimum, the
19 court would be required to translate French copyright law and attempt to create a judicial
20 environment in which it would make sense to apply it. This could be incredibly costly
21 and time-consuming, not to mention frustrating.

1 France also has a strong interest in this litigation. The dispute involves proprietary
2 French Military and Government property of importance to the French Government as
3 well as a contract between the French Government and a French company. (Amar Decl.
4 ¶ 6.) Further, the alleged infringement was carried out by two French companies and
5 occurred entirely in France. (*Id.* ¶¶ 4-5; Compl. ¶¶ 20-23.) Certainly, the Western
6 District of Washington has an interest in this case given that Raima is a Seattle-based
7 company, but France’s interest is stronger, favoring application of *forum non conveniens*.
8 Based on the above analysis, the court concludes that the public and private interest
9 factors weigh in favor of applying the doctrine and dismissing the case.

10 3. Effect of Forum Selection Clause

11 One final issue remains to be resolved before the court can dismiss the French
12 claims: there is a forum selection clause in the licensing agreement between Raima and
13 Myriad. As it happens, however, this clause has no effect on the court’s *forum non*
14 *conveniens* analysis. (*See* Compl. Ex. A at 4.) Although forum selection clauses are
15 presumptively valid, *M/S Bremen v. Zapata Offshore Co.*, 407 U.S. 1, 10 (1972), they do
16 not generally survive a contract’s expiration.² *Litton Fin. Printing Div. v. N.L.R.B.*, 501
17 U.S. 190, 206 (1991). There are exceptions to this rule, but none of them apply here.

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19 ² The court rejects Raima’s argument that the license agreement’s “survival clause”
20 should impact its analysis. Ordinarily, a survival clause might be relevant. However, here the
21 survival clause in the parties’ contract simply does not apply. The forum selection clause here
22 explicitly says that contract terms only survive “termination” of the contract, not “expiration.”
These two terms are used differently in the contract, (*see* Compl. Ex. A at 4-6) and have different
meanings. The court declines to adopt Raima’s strained reading of the survival clause, which
would treat “expiration” and “termination” as having the same meaning.

1 Under the Supreme Court's decision in *Litton*, a forum selection clause survives after a
2 contract expires only (1) where it involves facts and occurrences that arose before
3 expiration; (2) where an action taken after expiration infringes a right that accrued or
4 vested under the agreement; or (3) where, under normal principles of contract
5 interpretation, the disputed contractual right survives the expiration of the remainder of
6 the agreement. *Id.* The only one of these exceptions that could even potentially apply
7 here is (3), and it does not apply to Raima's copyright claim because it is not based on a
8 disputed contractual right; copyright laws exist wholly independent of the agreement
9 between Raima and Myriad that expired in 2007.³ Thus, the forum selection clause does
10 not affect the court's *forum non conveniens* analysis.

11 Having resolved this final issue, and for the foregoing reasons, the court holds that
12 the balance of public and private interests favors dismissing Raima's French copyright
13 claims so that they can be decided in France, which will provide an adequate alternate
14 forum. Applying *forum non conveniens*, the court GRANTS Myriad's motion and
15 dismisses Count III of Raima's complaint with prejudice.

16 **D. Raima's Claims for Breach of Contract**

17 The only remaining cause of action is for breach of contract. Neither party
18 requests *forum non conveniens* dismissal for this claim, nor would it likely be
19 appropriate.

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22 ³ For a breach of contract claim, the analysis would be different, as explained below.

1 To state a claim for breach of contract under Washington law, a plaintiff must
2 show (1) an agreement between the parties; (2) that the defendant had a duty under the
3 agreement; and (3) that the defendant breached its duty. *E.g., Newmont USA Ltd. v. Am.*
4 *Home Assur. Co.*, 676 F. Supp. 2d 1146, 1154 (E.D. Wash. 2009). There is no dispute
5 that there was a valid agreement between Raima and Myriad. Instead, the parties dispute
6 whether Myriad had a duty under the contract even after it expired, and whether Myriad's
7 actions breached that duty.

8 The court finds that Raima has stated a plausible claim for breach of contract
9 under the federal pleading standard established in *Twombly* and *Iqbal*. First, Raima
10 pleads facts that allow the court to infer that Myriad had a continuing duty under the
11 parties' agreement. The agreement states that Myriad must "immediately cease" use of
12 Raima's products when the agreement expires:

13 [U]pon expiration or termination of a Product and Pricing Addendum,
14 [Myriad France] will (and will cause its Additional Resellers to)
15 immediately cease all use, reproduction, and distribution of the Product
16 identified in the Addendum.

17 (Compl. Ex. A at 5.) This clause is straightforward: it creates a duty for Myriad to stop
18 using Raima's products once the license agreement expires. (*See id.*) Based on this
19 language, the court can reasonably infer that the parties intended the contract to create a
20 continuing contractual duty not to use the RDM Mobile 3.x. It is reasonable to infer that
21 the parties did not intend to allow Myriad to get around its contractual duty simply by
22 ceasing to use the copyrighted material, waiting a while, then using that material again

1 without a new license. Thus, Raima adequately pleads the existence of a contractual
2 duty. *See Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556).

3 Raima also adequately pleads breach of that duty. Raima alleges numerous facts
4 suggesting that Myriad used, reproduced, or distributed the infringing material after the
5 license agreement expired. (*See* Compl. ¶¶ 20-21.) Raima alleges use and distribution of
6 a specific infringing product and incidents of use and distribution under a specific
7 contract at a specific time. (*See id.*) Certainly, this is enough to raise Raima’s claim of
8 breach above the speculative level. *See Twombly*, 550 U.S. at 555. The court rejects
9 Myriad’s arguments to the contrary, all of which are based on technical readings of the
10 contract and on factual matter directly contradicting Raima’s allegations. (*See* Mot. at
11 21-22.) These nuanced, fact-based arguments are not sufficient to defeat a motion to
12 dismiss, where the court must draw all reasonable inferences in favor of the plaintiff and
13 accept the plaintiff’s non-conclusory facts as pleaded. *See Iqbal*, 556 U.S. at 678
14 (quoting *Twombly*, 550 U.S. at 556).

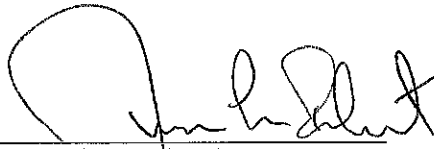
15 The court also rejects Raima’s argument that it lacks personal jurisdiction over
16 Myriad for this claim. A forum selection clause usually operates as consent to personal
17 jurisdiction. *See S.E.C. v. Ross*, 504 F.3d 1130, 1149 (9th Cir. 2007). Here, the forum
18 selection clause in Raima and Myriad’s agreement specifically says that “[a]ny dispute
19 arising out of or related to this Agreement will be subject to the exclusive jurisdiction and
20 venue of [state and federal courts in Washington].” (Compl. Ex. A at 3.) This is
21 sufficient to conclude that Myriad has consented to personal jurisdiction. *Ross*, 504 F.3d
22 at 1149. Ordinarily, a forum selection clause in an expired contract would not control a

1 | dispute between the parties arising after expiration. *Litton*, 501 U.S. at 206. However, as
2 | discussed above, there are exceptions to this rule. One of those exceptions applies here.
3 | The forum selection clause applies because “under normal principles of contract
4 | interpretation, the disputed contractual right survives expiration of the remainder of the
5 | agreement.” *Id.* at 206. Indeed, the disputed contractual right did not even arise until the
6 | agreement expired, (*see* Compl. Ex. A at 5), and under normal principles of contract
7 | interpretation it must continue to have effect even after the agreement expires. Thus, the
8 | court concludes that Myriad consented to personal jurisdiction with respect to the breach
9 | of contract claim and, holding also that Raima states a claim for breach of contract, the
10 | court DENIES Myriad’s motion to dismiss this claim.

11 | **III. CONCLUSION**

12 | For the foregoing reasons, the court GRANTS the motion with respect to Raima’s
13 | claims for copyright infringement under United States law, for malicious prosecution, for
14 | abuse of process, and for copyright infringement under French law and DISMISSES
15 | these claims with prejudice (Dkt. # 22). However, the court DENIES the motion with
16 | respect to Raima’s claim for breach of contract (Dkt. # 22).

17 | Dated this 11th day of December, 2012.

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19 | _____
20 | JAMES L. ROBART
21 | United States District Judge
22 |