

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Yellowcake, Inc. v. Hyphy Music, Inc.

Yellowcake · No. 1:20-CV-00988-JLT-BAM · Decided August 1, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 YELLOWCAKE, INC., a California Case No. 1:20-CV-00988-JLT-BAM
corporation, 12 Plaintiff, ORDER GRANTING COUNTER- 13 DEFENDANT JESUS CHAVEZ
MOTION v. FOR SUMMARY JUDGMENT 14 HYPHY MUSIC, INC., (Doc. 83) 15 Defendant.
16 17 HYPHY MUSIC, INC., 18 Counterclaimant, 19 v. 20 YELLOCAKE, INC., COLONIZE 21
MEDIA, INC., JOSE DAVID HERNANDEZ, and JESUS CHAVEZ SR., 22 Counter-Defendants.

23 24 /// 25 /// 26 /// 27 /// 28 1 The pending motion for summary judgment arises from the on-
going copyright 2 infringement dispute initiated by Yellowcake, Inc. against Hyphy Music Inc: In
filing an answer 3 to Yellowcake’s complaint, Hyphy Music alleged counterclaims against
Yellowcake, Inc., 4 Colonize Media Inc., Jose David Hernandez, and Jesus Chavez Sr. Before the
Court is Counter- 5 Defendant Jesus Chavez’s motion for summary judgment (Doc.

83) on Counterclaimant Hyphy 6 Music’s breach of oral contract counterclaim. For reasons
discussed below, the Court finds 7 summary judgment is warranted and GRANTS Chavez’s
motion. 8 BACKGROUND 9 A. Procedural Posture 10 Yellowcake Inc. (Yellowcake) initiated
suit against Hyphy Music, Inc. (Hyphy) by filing a 11 complaint (Doc. 1) alleging copyright
infringement on July 16, 2020.

Hyphy filed its answer 12 with initial counterclaims against Jesus Chavez Sr. (Chavez), Colonize
Media Inc. (Colonize), 13 Jose David Hernandez (Hernandez), and Yellowcake (collectively
Counter-Defendants) on 14 August 19, 2020 (see Doc. 7), and amended its countercomplaint on
August 28, 2020 (see Doc. 15 15). Hyphy alleged breach of oral contract against Chavez.

(See Doc. 15 at 14-15.) Specifically, 16 Hyphy alleged the following: 17 Counter-defendant
Chavez is the founder and principal of a musical group by the name of Los Originales De San
Juan. Los Originales De 18 San Juan is a popular musical group in the genre of Spanish-language
Regional Mexican music. 19 On February 2013, Counterclaimant Hyphy Music entered into an 20
oral exclusive recording agreements with Jesus Chavez (hereinafter, “Agreement”) whereby
Counterclaimant commissioned Chavez, for 21 a period of five (5) years, to exclusively provide
services as a recording artist in the making of sound and audio-visual recordings 22 embodied in
albums (hereinafter, “Los Originales Albums”).

23 Pursuant to the Agreement, Counterclaimant agreed to: 1) select the musical compositions to be recorded on the Los Originales Albums; 24 2) commission and/or provide the sound engineers and audio visual directors; 2) produce the musical performances to be embodied on 25 the Los Originales Albums; 3) direct the recording and filming of musical and the audio visual performances to be embodied on the 26 Los Originales Albums; and 4) pay Chavez a fixed amount per Los Originales Album.

27 In turn, Chavez agreed to follow Hyphy's artistic direction, perform 28 and record the sound and audiovisual recordings embodying the 1 musical compositions chosen and produced by Hyphy Music, as well as to grant Counterclaimant the non-exclusive right to utilize 2 Counter-defendant Chavez's name and likeness as well as his musical group's name in connection with the exploitation of the Los 3 Originales Albums in perpetuity.

In consideration for the services provided and payment thereto, Chavez agreed that Counterclaimant 4 would be the owner of all title, right, and interest in and to the Los Originales Albums (including without limitation the copyrights and 5 any extensions and renewals thereto) from the inception of the creation of each Los Originales Album. 6 On April 2019, Counter-defendant Chavez breached the agreement 7 by without limitation, purportedly transferring, licensing, selling, and/or authorizing Counter-defendants Yellowcake Colonize to 8 exploit the Los Originales Albums and Cover Art. 9 (Id.)

1 Chavez's counsel filed a stipulation and proposed order for extension of time to respond to 10 the counterclaim (see Doc. 31), and the Court granted an extension (see Doc. 32). On May 4, 11 2021, this case was deemed related to case Yellowcake, Inc. v. Morena Music, Inc., et al, 1:20-cv-12 00787. Chavez filed its answer to Hyphy's first amended countercomplaint on August 17, 2021.

13 (Doc. 48). 14 B. The Court's Prior Order 15 On July 20, 2021, the Court issued an Order (Doc. 41) "generally granting" Yellowcake's 16 "12(b)(6) motion to dismiss six of the seven counterclaims alleged against them." (Id. at 1.)

The 17 Court dismissed Hyphy's "first cause of action for copyright infringement based on an oral 18 transfer agreement between Chavez and Hyphy" without leave to amend; "first cause of action for 19 copyright infringement based on a work for hire" through a special order or commission without 20 leave to amend; "first cause of action for copyright infringement based on a co-author/joint 21 owner, work for hire through an employer-employee relationship, or written transfer agreement" 22 with leave to amend; "third cause of action for preliminary injunction" without prejudice; "fourth 23 cause of action for intentional interference with prospective economic advantage" with leave to 24 amend "only with respect to a claim based on the tangible masters"; "fifth cause of action for 25 intentional interference with contractual relations to the extent that it is based on an oral contract 26 involving the transfer of copyrights in the three

albums” without leave to amend but GRANTED 27 1 Hyphy Music re-alleged and incorporated by reference the allegations set forth in Paragraphs 1 through 28 75.

(See Doc. 15 at 14.) 1 leave to amend “with respect to alleging a claim based on a written transfer from Chavez to 2 Hyphy in the album El Campesino”; “sixth cause of action for Cal. Bus. & Prof. Code § 17200 3 UCL against Yellowcake and Colonize” without leave to amend as preempted; “sixth cause of 4 action for Cal. Bus. & Prof. Code § 17200 UCL against Hernandez based on inducement to 5 breach an oral agreement relating to copyright ownership in the album” without leave to amend 6 but GRANTED leave “with respect to alleging a claim based on a written transfer from Chavez to 7 Hyphy in the album El Campesino”; and “seventh cause of action for conversion based on actions 8 directed against the tangible masters” without leave to amend.

(See Doc. 41 at 35-36.) 9 C. Parties’ Motions for Summary Judgment 10 On May 19, 2023, Hyphy filed a motion for summary judgment (Doc. 78) and Counter- 11 Defendants Colonize, Hernandez, and Yellowcake filed a cross motion for summary judgment 12 (Doc. 82). Counter-defendant Chavez filed a separate motion for summary judgment on Hyphy’s 13 counterclaim for breach of oral contract.

(See Doc. 83.) The Court’s Order only addresses 14 Counter-defendant Chavez motion for summary judgment (Doc. 83) and considers only the 15 Opposition (Doc. 87) and related documents (Docs. 90, 91) filed in response. 16 STANDARD OF DECISION 17 Federal Civil Procedure Rule 56(a) requires the Court to grant summary judgment as to 18 any claim or defense when the movant, by citing to specific materials in the summary judgment 19 record, shows there “is no genuine dispute as to any material fact and the movant is entitled to 20 judgment as a matter of law.” Fed.

R. Civ. P. 56(a), (c); see *Anderson v. Liberty Lobby, Inc.*, 477 21 U.S. 242, 247- 48 (1986). A general dispute exists if a rational factfinder considering the 22 evidence in the record, could find in favor of the non-moving party. *Id.* at 248-9. A fact is 23 material if, under the substantive law governing the claim or defense at issue, the fact might affect 24 the outcome of the case.

Id. at 248. 25 In evaluating a party’s motion for summary judgment, the Court’s role is narrowly limited 26 to assessing the threshold issue of whether a genuine dispute exists as to material facts requiring 27 trial.

The court never weighs evidence or finds facts. See *Anderson*, 477 U.S. at 255. The Court 28 “view[s] the facts and draw reasonable inferences in the light most favorable” to the nonmoving 1 party, without making credibility determinations or weighing conflicting evidence. See *Walls v. 2 Cent. Contra Costa Cnty. Transit Auth.*, 653 F.3d 963, 966 (9th Cir. 2011); see also *Scott v. 3 Harris*, 550 U.S. 372, 378 (2007) (internal quotation marks omitted).

A party is entitled to summary judgment “only if, taking the evidence and all reasonable inferences in the light most favorable to the non-moving party, there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law.” *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1104 (9th Cir. 2020) (quoting *Tauscher v. Phx.*

Bd. of Realtors, Inc., 931 F.3d 959, 962 (9th Cir. 8 2019)). 9 The party moving for summary judgment bears the initial burden of identifying the materials in the summary judgment record, including portions of the pleadings, discovery and disclosures on file, and affidavits, that demonstrate the absence of a genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the non-moving party has the burden of proof at trial, the movant may carry its burden by merely pointing out that there is “an absence of evidence” in support of the non-moving party’s claims or defenses. *Id.* at 325. If the movant carries its initial burden, the burden of going forward shifts to the non-moving party to show a genuine dispute of material fact remains for the factfinder to resolve.

Id. at 324. The non-moving party must go beyond the pleadings and show adequately probative evidence-by its own affidavits or discovery- set forth specific facts creating a genuine issue for trial. *Id.*; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). “[T]here is no issue for trial unless there is sufficient evidence [supporting] the non-moving party” to the extent that a jury could return a verdict in its favor.

Anderson, 477 U.S. at 249. “In determining whether the non-moving party has presented sufficient evidence to proceed to trial, the Court is bound by the traditional allocation of function between judge and jury.” *Id.* at 255. Credibility determinations and the weighing of the evidence are functions of a jury, not a judge. *Id.* If the non-moving party does not produce evidence to show a genuine dispute as to a material fact, the moving party is entitled to summary judgment.

See *Celotex*, 477 U.S. at 323. In ruling on a motion for summary judgment, inferences drawn from the underlying facts are viewed in the light most favorable to the non-moving party. See *Matsushita*, 475 U.S. at 587. 1 Thus, when parties file cross-motions for summary judgment, the Court “evaluate[s] each motion separately, giving the nonmoving party in each instance the benefit of all reasonable inferences.” 3 *A.C.L.U. of Nev. v. City of Las Vegas*, 466 F.3d 784, 790-91 (9th Cir.

2006). The Court considers each party’s cited evidence, “regardless under which motion the evidence is offered.” *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011). 6 A. Judicial Notice 7 The court may take judicial notice of facts not subject to reasonable dispute because they are either: (1) generally known within the trial court’s territorial jurisdiction, or (2)

capable of 9 accurate and ready determination from sources whose accuracy cannot reasonably be questioned.

10 Fed. R. Evid. 201(b). If the content of the document is subject to varying interpretations, then
11 there is no fact “not subject to reasonable dispute,” and the fact does not qualify for judicial 12
notice. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1000 (9th Cir. 2018). 13 FACTUAL
BACKGROUND 14 A. Undisputed Facts 15 In accordance with Civil Procedure Rule 56 and
Eastern District of California Local Rule 16 260, the parties submitted separate statements of
undisputed facts and responses with references 17 to the supporting evidence.

(See Docs. 83, 87, 91.) The parties agreed and indicated the 18 following facts as undisputed (see
generally Docs. 83-4, 87-5): 19 1. Counterclaimant alleges that it entered into an oral, exclusive
recordings agreement (the 20 “Oral Agreement”) with Chavez in or about February 2013. 21 2.
Counterclaimant alleges that, in or about April 2019, Chavez breached the Oral 22 Agreement by
without limitation, purportedly transferring, licensing, selling, and/or 23 authorizing
Counterdefendants Yellowcake, Inc. and Colonize Media, Inc. to exploit the 24 Los Originales
Albums and Cover Art. 25 3.

Counterclaimant admits that Chavez was not an employee of Counterclaimant. 26 4.
Counterclaimant admits that none of the Los Originales band members were employees of 27
Counterclaimant. 28 5. There is no written agreement between Counterclaimant and Chavez
substantiating an 1 alleged work for hire relationship between the parties. 2 6. There is no written
agreement between Counterclaimant and Chavez whereby Chavez 3 agreed that Counterclaimant
would be the owner of all title, right, and interest in the Los 4 Originales Albums.

5 Hyphy Music submitted a “Separate Statement of Undisputed Facts” 2 (see Doc. 87-5) to 6
which Chavez also agreed were undisputed (see generally Doc. 91-1 at 6):3 7 1. Thereafter,
Hyphy obtained copyright registrations for all of such Album Artwork. 8 2.

In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to 9
Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and 10
marketable title” thereto at the time of sale. 11 3. Chavez never obtained signed written
agreements from Flores, Vargas or Hyphy acquiring 12 each party’s respective contributions to,
and rights in, the Albums and sound recordings 13 embodied thereon.

14 4. Hyphy is a record label in the business of collaborating with recording artists to produce, 15
distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled 16 with
artwork. 17 5. Counter-Defendant Jesus Chavez Sr. (“Chavez”) is the lead singer of the Spanish-
18 language musical group Los Originales De San Juan (the “Group”).

19 B. Judicially Noticed Documents 20 Chavez request the Court take judicial notice of the
following: 21 2 In response to Hyphy Music’s undisputed fact, “One of the other two albums

identified in Yellowcake's 22 Complaint, entitled 'Chuy Chavez y Sus Amigos,' has no connection to this dispute and wasn't even recorded by Chavez [;]" Chavez does not appear to dispute the fact but simply states, "Immaterial to the 23 breach of contract claim asserted by Hyphy against Chavez." (See Doc.

91-1 at 8.) 24 3 Chavez replied, "[it] lacks sufficient information to admit to or dispute this 'fact,' however, it is immaterial to the breach of contract claim asserted by Hyphy against Chavez" to the following additional undisputed 25 facts: Plaintiff/Counter-Defendant Yellowcake, Inc. ("Yellowcake") is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. ("Colonize") as its 26 "distribution arm" to release and exploit rights acquired by Yellowcake [; and] Counter-Defendant Jose David Hernandez ("Hernandez"), who is a coowner of both Yellowcake and Colonize, knew that Hyphy 27 only had an oral agreement with the Group, and therefore approached Chavez, in or about March 2019, about selling the Los Originales Albums to Yellowcake" (see Doc.

91-1 at 13-14) (external quotations 28 omitted). 1 Counterclaimant's Counterclaim filed on August 19, 2020 (Ex. A); Counterclaimant's First Amended Counterclaim filed on August 28, 2020 (Ex. B); The July 20, 2021, Order on Counter-Defendants' Motion to Dismiss (Ex. K); Declaration of Jose Martinez in Support 3 of Reply to Counter-Defendants' Challenge to the Validity of Certain Copyright Registrations filed on August 3, 2021 (Ex.

L); Declaration 4 of Hector O. Rosales in Support of Plaintiff and Counter-Defendants' Motion to Dismiss Defendant's Counterclaims and in Support of 5 Supplemental Brief filed on August 10, 2021 (Ex. M); Declaration of Jesus Chavez, Sr. in Support of Plaintiff and Counter-Defendants' 6 Motion to Dismiss Defendant's Counterclaims and Supplemental Brief filed on August 10, 2021 (Ex.

N); 7 Scheduling Order issued by the court on November 30, 2021 (Ex. O); 8 Defendant/Counterclaimant's Ex Parte Application for Leave to Supplement Initial Disclosures and Responses to Requests for 9 Production of Documents filed on October 12, 2022 (Ex. P); [and] copy of the Copyright Assignment Agreement submitted to the court 10 on October 12, 2022 (Ex. Q).

11 (See Doc. 83-2 at 1-2.) The Court takes judicial notice that these documents were filed. 12 C. Evidentiary Objections 13 Pursuant to L.R. 260(a)-(b), both parties filed evidentiary objections and responses in 14 support of, and in opposition to, Chavez's motion for summary judgment (Doc. 83). (See also 15 Docs. 87, 91.)

Before proceeding to the summary judgment arguments, the Court must first 16 evaluate the parties' evidentiary objections. 17 A party may object that the material used to "dispute a fact cannot be presented in a form 18 that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2).

In evaluating the merits of a 19 motion for summary judgment, a court may only consider admissible evidence. Fed. R. Civ. P. 20 56. “A court must rule on material evidentiary objections.” Norse v. City of Santa Cruz, 629 21 F.3d 966, 973 (9th Cir. 2010). At the summary judgment stage, district courts consider evidence 22 with content that would be admissible at trial, even if the form of the evidence would not be 23 admissible at trial.

See Burch v. Regents of the Univ. of Cal., 433 F. Supp. 2d 1110, 1119-20 24 (E.D. Cal. 2006) (even if evidence is presented in form that is currently inadmissible, it may be 25 considered on motion for summary judgment so long as admissibility defects could be cured at 26 trial); Sali Corona Reg’l Med. Ctr., 909 F.3d 996, 1005 (9th Cir. 2018) (“the court must review 27 the evidence in light of what would be admissible before either the court or jury” [citation 28 omitted]).

1 a. Chavez’s Objections 2 Chavez objects to several statements within the Declarations of Begaki, Vargas, Flores, 3 and Martinez on the grounds of “hearsay”; “relevance”; “improper use of interrogatory response. 4.”; “improper use of response to demand for production...”; “testimony speaks for itself; 5 paraphrasing of witness testimony”; “argumentative”; “lacks foundation”; “improper legal 6 opinion”; and “lack of authentication.” (See Doc.

91-2 at 2-19.) 7 The Court does not rely on irrelevant evidence when evaluating motions for summary 8 judgment, and objections premised on relevancy are redundant and “duplicative of the summary 9 judgment standard itself.” Burch, 433 F.Supp.2d at 1119. “A court can award summary 10 judgment only when there is no genuine dispute of material fact. It cannot rely on irrelevant 11 facts,... thus relevance objections are redundant” to the practice of summary judgment and 12 unnecessary to consider in the context summary judgment.

Anderson, 477 U.S. at 248 (“Factual 13 disputes that are irrelevant or unnecessary will not be counted.”); see also US E.E.O.C. v. Placer 14 ARC, 114 F. Supp. 3d 1048, 1052 (E.D. Cal. 2015). Accordingly, Chavez’s objections to 15 evidence on the grounds that it constitutes an improper legal conclusion/opinion are duplicative 16 and improper for summary judgment and cannot be sustained on these grounds.

Burch, 433 17 F.Supp.2d at 1119. These objections are DENIED as MOOT. 18 The Court also declines to consider any objections premised on “improper use of 19 interrogatory response” or “improper use of response to demand for production.” Such objections 20 are guised as “mischaracterization” or “misrepresentation” of the evidence represented and 21 “objections should be directed at the evidence supporting [the] statements.” Hanger Prosthetics 22 & Orthotics, Inc. v. Capstone Orthopedic, Inc., 556 F.Supp.2d 1122, 1126 n.1 (E.D.

Cal. 2008). 23 To the extent Chavez argues any declarant’s statements misstate the evidence, those objections 24 also are OVERRULED as “go[ing] to the weight of the evidence, not the

admissibility of the 25 testimony.” *Galvan v. City of La Habra*, No. SACV 12–2103, 2014 WL 1370747, at *4 (C.D. 26 Cal. 2014); *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F.Supp.2d 1023, 1034 (C.D.

Cal. 2013). 27 “[S]tatements in declarations based on speculation or improper legal conclusions, or 28 argumentative statements, are not facts and likewise will not be considered on a motion for 1 summary judgment.” See *Cherewick v. State Farm Fire & Cas.*, 578 F. Supp. 3d 1136, 1155 2 (S.D. Cal. 2022).

As for Chavez’s hearsay objections, the Court “may not grant a summary 3 judgment motion on the basis of hearsay evidence, but it may deny a summary judgment motion 4 on the basis of hearsay evidence as long as it finds that the hearsay evidence would be admissible 5 at trial.” *Herbalife*, 2024 WL 1158344, at *4 (citing Fed. R. Civ. P. 56(e)); see also *Fraser v. 6 Goodale*, 342 F.3d 1032, 1036–37 (9th Cir.

2003). Chavez’s hearsay objections are 7 OVERRULED. 8 b. Hyphy Music’s Objections 9 Hyphy Music objects to the specific statements contained in Chavez’s Declaration 10 asserting the declaration “makes a number of conclusory allegations unsupported by facts, and 11 which are therefore insufficient to create a genuine issue of material fact.” (Doc. 87-6 at 2.)

12 Specifically, Hyphy Music objects to the following statements from Chavez: “he is ‘the founder 13 and principal of the band Los Originales de San Juan,” on the grounds the statement is 14 contradicted by Chavez’s deposition testimony and conclusory, and “[i]n or around 2013, I 15 entered into an oral distribution agreement with Counterclaimant pursuant to which 16 Counterclaimant agreed to distribute three albums to be recorded by the Band;” “I never entered 17 into a written agreement with Counterclaimant agreeing to sell the entirety of all rights, title, and 18 interest in the Albums to Counterclaimant;” “[i]n or around 2019, I sold the entirety of all rights, 19 title, and interest in the Albums to Counter-Defendant YELLOWCAKE, INC. (“Yellowcake”) 20 pursuant to a written agreement;” and “[d]uring that same time period, I advised Counterclaimant 21 of my sale to Yellowcake to ensure that Counterclaimant would stop distributing the Albums that 22 were subject to our oral agreement” all on the ground of the statements being conclusory.

(Id. at 23 2-4.) “[S]tatements in declarations based on speculation or improper legal conclusions, or 24 argumentative statements, are not facts and likewise will not be considered on a motion for 25 summary judgment.” See *Cherewick*, 578 F. Supp. 3d at 1155. Likewise, Hyphy Music’s 26 objections are OVERRULED. 27 DISCUSSION 28 Chavez moves for summary judgment on Hyphy’s eighth claim for relief alleging breach 1 of oral contract⁴ (see generally Doc.

15 at 14) arguing the “claim is fatally defective, and fails as 2 a matter of undisputed fact and law, because the purported transfer championed by 3 Counterclaimant (the transfer of right, title, and

interest to the albums) could only be effected by way of a written agreement [;]" and "[n]o such written agreement exists...." (Doc. 83 at 5.) Chavez also contends "none of the narrow exceptions" to the "well-settled rule applies" because "(1) the Los Originales Albums are not a work made for hire as Chavez, and the other Band members, were admittedly not employees of Counterclaimant, and (2) Chavez did not have a written work for hire agreement with Counterclaimant." (Id. at 6.)

Hyphy opposes summary judgment contending Chavez "has mischaracterized what is at issue in [its] Eighth Counterclaim for relief." (Doc. 87 at 8.) Hyphy Music does not dispute the underlying law "that an entity suing for copyright infringement must have a valid ownership claim to the copyright at issue." (Id.) Instead, Hyphy argues "the oral contract was breached for reasons not dealing with the copyrights transferred." (Id.)

Hyphy directs the Court to its amended 14 counterclaims (Doc. 15), paragraph 78, stating, "Chavez was not only being commissioned, along with the other members of the Group, to create sound recordings, but also was paid (a) 'to follow Hyphy's artistic direction', and (b) grant Hyphy a non-exclusive right to use his name and likeness 'in perpetuity'." (Doc.

87 at 8.) Accordingly, "[b]y purportedly entering into the subsequent Asset Purchase Agreement with Yellowcake, Chavez denied Hyphy all of the benefits of its bargain with Chavez. Hyphy paid for a right to supervise the creation and promotion of the Albums, but such contractual right has been rendered worthless by Chavez's actions." (Id.) Hyphy asserts, "Chavez may claim he is free to transfer his ownership of the copyrights in the sound recordings embodied on the Albums, but he is not free to breach related arrangements also codified within the Agreement." (Id.)

Hyphy proffers the following "analogy" in support: "if Hyphy had orally agreed to lend Chavez money to create the Albums, Chavez could not argue that Hyphy's loan was unenforceable because it was oral and involved the transfer of copyrights. But that is essentially what Chavez is arguing here...." (Id.) This is the only cause of action asserted against Chavez in the counterclaim.

(Doc. 15) Hyphy also directs the Court to its order (Doc. 41) issued on July 20, 2021, "granting, in part, and dismissing, in part, Counter-Defendants' previous Motion to Dismiss" as supporting its contention that Chavez "mischaracterizes" its breach of oral contract counterclaim as "only involving the transfer of copyrights." (Doc. 87 at 9.) Hyphy explains, "the Court recognized" its fifth counterclaim for intentional interference with contractual relations "essentially complained that '[Yellowcake] induced Chavez to sell rights in the albums that he did not have...' and dismissal of the counterclaim "on the basis that it was supposedly preempted by federal copyright law because it involved copyrights was inappropriate because the claim was 'qualitatively

different from a copyright infringement claim because none of the rights listed in § 106 are the 10 subject [thereof].” (Id.)

Hyphy also requests the Court refer to the arguments raised in its 11 concurrent motion for summary judgment contending, “Hyphy and the other members of the 12 Group (by way of their respective creative contributions to the creation of the Albums) were co- 13 owners who possessed rights that could not be transferred without consent by Chavez via the 14 Asset Purchase Agreement.” (Id.)

Therefore, “the Court must find that Hyphy’s Eighth 15 Counterclaim is ‘qualitatively different’ from a claim involving the simple breach of an 16 agreement to transfer copyrights because it alleges that Chavez breached the Agreement when he 17 transferred ‘all rights’ in the Albums, including the rights of others not listed in § 106.” (Id.) 18 Stated differently, “Chavez’s argument that Hyphy cannot sue him for breach of oral contract 19 because it involves the transfer of copyrights ignores the fact that Hyphy’s Eighth Counterclaim 20 for Breach of Contract is based upon Chavez’s purported transfer of ‘all rights’ – including the 21 rights of others not listed in § 106 that Chavez had no right or permission to transfer.” (Id. at 10.)

22 Alternatively, Hyphy appears to argue “[a]t a minimum, [Chavez’s action in] entering into a 23 subsequent Asset Purchase Agreement with Yellowcake [constitutes] an unmistakable breach of 24 the implied covenant of good faith and fair dealing.” (Id. at 8, citing *Comunale v. Traders & Gen. 25 Ins. Co.* (1958) 50 Cal. 2d 654, 658 (California imposes an implied covenant to every agreement 26 that requires that “neither party will do anything which will injure the right of the other to receive 27 the benefits of the agreement).”) 28 The Court notes Hyphy does not provide the Court specific citations when referencing its 1 concurrent motion for summary judgment and the arguments it intends to incorporate by 2 reference.

Nor does Hyphy provide the Court with page numbers when paraphrasing and quoting 3 the Court’s prior order (Doc. 41) as evidence supporting its Opposition. (See Doc. 87 at 9.) “As 4 the nonmoving party, Hyphy must “identify with reasonable particularity the evidence that 5 precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996).

The district 6 court may limit its review to the documents submitted for purpose of summary judgment and 7 those parts of the record specifically referenced therein.” *Carmen v. S.F. Unified Sch. Dist.*, 237 8 F.3d 1026, 1030 (9th Cir. 2001). “We rely on the nonmoving party to identify with reasonable 9 particularity the evidence that precludes summary judgment.” *Keenan*, 91 F.3d at 1279.

10 Therefore, the court need not “scour the record in search of a genuine issue of triable fact.” *Id.* 11 (citing *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir.1995)). In addition, the Court 12 finds Hyphy’s counterargument incomplete and deficit because it lacks an explanation,

sufficient argument, and evidence of “the harm” it “will have” suffered by “Chavez’s transfer.” (Doc.

87 at 14 8.) Notwithstanding these deficiencies, the Court considers the arguments. 15 A. Breach of Oral Contract 16 In the eighth cause of action in first amended counterclaim, Hyphy alleges that, “On 17 February 2013, Counterclaimant Hyphy Music entered into an oral exclusive recording 18 agreements with Jesus Chavez (hereinafter, “Agreement”) whereby Counterclaimant 19 commissioned Chavez, for a period of five (5) years, to exclusively provide services as a 20 recording artist in the making of sound and audio-visual recordings embodied in albums 21 (hereinafter, “Los Originales Albums”).

(Doc. 15 at 15, ¶ 78, emphasis added) In exchange for 22 Hyphy’s acts toward producing the album and paying Chavez, the oral agreement required, 23 Chavez, in relevant part, to grant Hyphy “the non-exclusive right to utilize... Chavez’s name 24 and likeness as well as his musical group’s name in connection with the exploitation of the Los 25 Originales Albums in perpetuity.” Id. The allegation continues, 26 In consideration for the services provided and payment thereto, Chavez agreed that Counterclaimant would be the owner of all title, right, and interest in and to 27 the Los Originales Albums (including without limitation the copyrights and any extensions and renewals thereto) from the inception of the creation of each 28 Los Originales Album.” 1 Id., emphasis added.

Hyphy alleges that Chavez breached the oral agreement as follows: 2 On April 2019, Counter-defendant Chavez breached the agreement by without limitation, purportedly transferring, licensing, selling, and/or authorizing Counter- 3 defendants Yellowcake Colonize to exploit the Los Originales Albums and Cover Art. 4 5 (Doc. 15 at 15, ¶ 79) The eighth cause of action does not contend that Chavez breached the oral 6 agreement in any other manner.

Id. Rather, the counterclaim limits the breach to acts inconsistent 7 with Hyphy’s ownership of the copyright. Id. 8 i. The oral nature of the agreement is dispositive 9 “Copyright owners may transfer ‘[a]ny exclusive rights comprised in a copyright, 10 including any subdivision of any of the rights specified in [17 U.S.C. § 106],’... so long as the 11 transfer is evidenced by a signed writing.” *Corbello v. Devito*, 777 F.3d 1058, 1062 (9th Cir.

12 2015) (citing 17 U.S.C. §§ 201(d)(2) and 204(a)); see also *Jules Jordan Video, Inv. v. 144942* 13 *Canada, Inc.*, 617 F.3d 1146, 1156 (9th Cir. 2010). The Copyright Act provides that a “transfer of 14 copyright ownership, other than by operation of law, is not valid unless an instrument of 15 conveyance, or a note or memorandum of transfer, is in writing and signed by the owner of the 16 rights conveyed or such owner’s duly authorized agent.” 17 U.S.C. § 204(a). “[S]ection 204 of 17 the Copyright Act invalidates a purported transfer of ownership unless it is in writing.” *Effects 18* *Assocs. v. Cohen*, 908 F.2d 555, 556 (9th Cir.

1990); see *Radio TV Espanola S.A. v. New World 19 Entm't Ltd.*, 183 F.3d 922, 926-27 (9th Cir. 1999); *Konigsberg Int'l, Inc. v. Rice*, 16 F.3d 355, 20 356-57 (9th Cir. 1994). The Act defines “transfer of copyright ownership” as “an assignment, 21 mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright 22 or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or 23 place of effect but not including a nonexclusive license.”⁵ 17 U.S.C. § 101.

24 5 Thus, a nonexclusive license is excluded from the writing requirement of 17 U.S.C. § 204 and can be 25 granted orally or by implication. See *Effects Assocs. v. Cohen*, 908 F.2d 555, 558 (9th Cir. 1990). See also *Foad Consulting Grp., Inc. v. Musil Govan Azzalino*, 270 F.3d 821, 826 (9th Cir. 2001) (“[a] 26 nonexclusive copyright license may be granted orally or by implication”).

The Ninth Circuit has held, “[t]he existence of a nonexclusive license may be implied from the manner in which the parties conducted 27 their relationship if a licensee ‘created work at [the licensor’s] request and handed it over, intending that the [licensor] copy and distribute it.’” *Effects Assoc.*, 908 F.2d at 558-59 (emphasis added; citing *Offley v. 28 Activision, Inc.*, 273 F. App’x 610 (9th Cir.

2008)); see also *ESC-Toy Ltd. v. Sony Interactive Ent. LLC*, 1 It is undisputed that “There is no written agreement between Counterclaimant [Hyphy] 2 and Chavez whereby Chavez agreed that [Hyphy] would be the owner of all title, right, and 3 interest in the Los Originales Albums.” (See generally Docs. 83-4, 87-5) Chavez contends Hyphy 4 Music’s “eighth claim for [breach of oral contract] should be adjudicated” in its favor “because 5 copyright ownership requires a signed writing.” (Doc.

83 at 9.) Chavez argues “[the] claim is 6 fatally defective, and fails as a matter of undisputed fact and law, because the purported... 7 transfer of right, title and interest to the albums... could only be effectuated by way of a written 8 agreement” and “[n]o such written agreement exists.” (Id. at 7.)

Moreover, “none of the narrow 9 exceptions to” 17 U.S.C. § 204(a) writing requirement are applicable because “the Los Originales 10 albums are not a work for hire” and the “alleged co-ownership or co-authorship of the 11 copyrighted albums is both factually and legally infirm.” (Id. at 7-8.)

The allegation of the cause 12 of action and Chavez’s additional showing, demonstrate that Chavez orally agreed transfer 13 ownership of the copyright to the Los Originales Albums to Hyphy without a writing.⁶ 14 a. No Genuine Dispute as to Material Fact 15 Because Chavez carried its initial burden, the burden of going forward shifts to the Hyphy 16 to show a genuine dispute of material fact remains for the factfinder to resolve.

See *Celotex*, 477 17 U.S. at 324. Toward this end, Hyphy contends Chavez “mischaracterize[s] what is at issue” in its 18 breach of oral contract counterclaim because “the oral contract was

breached for reasons not 19 dealing with the copyrights transferred.” (Doc. 87 at 8.)

However, Hyphy fails to proffer the 20 alleged “reasons” or provide the Court an alternate legal standard or rule. Hyphy refers only to its 21 first amended counterclaim (Doc. 15) explaining, “By purportedly entering into the 22 subsequent Asset Purchase Agreement with Yellowcake, Chavez denied Hyphy all of the benefits 23 of its bargain with Chavez. Hyphy paid for a right to supervise the creation and promotion of the 24 Albums, but such contractual right has been rendered worthless by Chavez’s actions.” (Doc.

87 at 25 7-8.) In essence, Hyphy argues its breach of oral contract counterclaim is “qualitatively 26 27 No. 21-CV-00778-EMC, 2021 WL 4817793, at *5 (N.D. Cal. 2021). 6 Because this determines the validity of the eighth cause of action, the Court need no consider the 28 alternate arguments proffered. 1 different” from “a claim involving the simple breach of an agreement to transfer copyrights,” but 2 Hyphy fails to provide a legal argument or evidence demonstrating this contention.

(See 3 generally Doc. 87 at 7-9.) 4 Rather, Hyphy, implicitly and repeatedly, relies upon the oral transfer of the copyright in 5 alleging its breach of oral contract counterclaim: “Chavez... was paid ‘to follow Hyphy’s artistic 6 direction’ and grant Hyphy a non-exclusive right to use his name and likeness ‘in perpetuity [;]’” 7 thus by “entering into the subsequent Asset Purchase Agreement with Yellowcake, Chavez 8 denied Hyphy all of the benefits of its bargain with Chavez.”7 (Doc.

87 at 8.) Hyphy’s argument 9 is premised on the oral transfer of the copyright, but it avoids using the term “breach” in arguing 10 the contention and only uses “breach” when asserting conclusory arguments such as “Chavez may 11 claim he is free to transfer his ownership of the copyrights in the sound recordings embodied on 12 the Albums, but he is not free to breach related arrangements also codified within the 13 Agreement.” (Id.).

14 First, Hyphy fails to cite to any fact or any evidence to support the contention that it 15 provided Chavez “artistic direction,” that Chavez agreed to follow Hyphy’s artistic direction or 16 that Chavez failed to follow Hyphy’s artistic direction.

Second, Hyphy seems to argue that its 17 non-exclusive license to use Chavez’s name and likeness was breached by Chavez, but it does not 18 explain how. Indeed, Hyphy offers no authority for its implied assertion that its non-exclusive 19 license prevented Chavez from allowing Yellowcake—or anyone else—to use his name and 20 likeness or that it prevented him from transferring ownership of the copyright.

Third, assuming 21 arguendo that the oral contract as to the “related arrangements” is valid and enforceable and 22 Chavez breached these arrangements, that is a question not presented in the amended 23 counterclaim.

As noted above, the breach alleged was as to the transfer of the copyright and the 24 associated benefits that ownership of the copyright implies, not a breach of any other obligations. 25 (Doc. 15 at 15, ¶¶ 78-79) 26 Hyphy's creative writing to the contrary, Hyphy cannot defeat summary judgment merely 27 7 Hyphy fails to cite to any fact or any evidence to support the contention that it provided Chavez "artistic 28 direction" or that Chavez agreed to follow Hyphy's artistic direction.

1 by demonstrating "that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Hyphy must go beyond the 3 pleadings and provide evidence—whether in the form of affidavits or discovery—that sets forth 4 specific facts creating a genuine issue for trial. *Id.* at 586-87. Though Hyphy includes 5 declarations and an "Exhibit List" in support of its Opposition (see Doc.

87-8), it fails to 6 incorporate, reference, or cite any of this within its Opposition (Doc. 87). "[T]here is no issue for 7 trial unless there is sufficient evidence [supporting] the non-moving party" to the extent that a 8 jury could return a verdict in its favor. *Anderson*, 477 U.S. at 249; *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ([“Judges are not like pigs hunting for truffles buried in briefs.”]).

If 10 the non-moving party does not produce evidence to show a genuine dispute as to a material fact, 11 the moving party is entitled to summary judgment. See *Celotex*, 477 U.S. at 323. 12 Chavez has "produce[d] evidence negating an essential element of the nonmoving party's 13 claim or defense or show[n] that the nonmoving party does not have enough evidence of an 14 essential element to carry its ultimate burden of persuasion at trial," in that Chavez has 15 demonstrated that the oral agreement cannot give rise to liability on the eighth cause of action.

16 *Nissan Fire*, 210 F.3d at 1102. Hyphy has done no more than make a conclusory allegation of 17 "some metaphysical doubt as to the material facts," and this is insufficient to defeat summary 18 judgment. *Tellone Pro. Ctr., LLC v. Allstate Ins. Co.*, 562 F. Supp. 3d 757, 765 (C.D. Cal. 2022). 19 Thus, Hyphy has failed to "produce admissible evidence to show that a genuine issue of material 20 fact exists." *Bernstein*, 365 F. Supp. 3d at 984 (citing *Nissan Fire*, 210 F.3d at 1102).

Having 21 failed to make this showing, Chavez is entitled to summary judgment. *Id.* (citing *Celotex*, 477 U.S. 317 at 322-23.) 23 As for Hyphy's reliance on the earlier issued order (Doc. 42), Hyphy has misconstrued the 24 Court's reasoning and rationale.

The Court explained: "Section 204(a) not only bars copyright 25 infringement actions but also breach of contract claims based on oral agreements.... Here, 26 Hyphy's IICR claim is based on YCH inducing Chavez to transfer his copyright interests to YCH, 27 even though those transfers were the subject of an oral agreement between Chavez and Hyphy. 28 Therefore, in order for YCH's conduct in inducing the transfer of copyrights from Chavez to YCH 1 to be wrongful, a

valid contract between Hyphy and Chavez for the transfer of those copyrights is 2 an essential element of Hyphy's IICR claim...

However, as explained above, § 204(a) operates to 3 invalidate the oral contract between Hyphy and Chavez to the extent that the oral contract 4 included the transfer of copyright ownership in the albums... That is, through operation of § 5 204(a), there is no valid contract between Chavez and Hyphy for the transfer of Chavez's 6 copyright interests in the albums...

Therefore, any IICR claim based on the purported transfer of 7 Chavez's ownership of the copyrights in the four albums fails because Hyphy cannot establish the 8 first essential element of an IICR claim... Dismissal of the IICR claim is appropriate to the 9 extent that the claim is based on ownership interests or the transfer thereof in the four albums." 10 (See Doc.

42 at 23-24.) (quotations omitted) (internal citations omitted); see also *Yellowcake, Inc. 11 v. Hyphy Music, Inc.*, No. 1:20-CV-0988 AWI BAM, 2021 WL 3052535, at *13 (E.D. Cal. 2021). 12 Thus, the Court found that there was not alleged a "valid contract between Chavez and Hyphy for 13 the transfer of Chavez's copyright interests in the albums...

Therefore, any IICR claim based on 14 the purported transfer of Chavez's ownership of the copyrights in the four albums fails because 15 Hyphy cannot establish the first essential element of an IICR claim... Dismissal of the IICR 16 claim is appropriate to the extent that the claim is based on ownership interests or the transfer 17 thereof in the four albums." (Doc.

42 at 23-24.) As previously stated, Hyphy does not expand 18 upon the Court's reasoning or proffer alternative arguments. For these reasons, the Court 19 GRANTS Chavez's motion for summary judgment. 20 B. Breach of Implied Covenant of Good Faith and Fair Dealing 21 a. No Genuine Dispute as to Material Fact 22 There is a covenant of good faith and fair dealing implied in every California contract.

23 Schertzer, 109 F.4th at 1213 (citing *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 684 (1988). 24 "This duty requires contracting parties to exercise discretion given to them under the contract in a 25 way consistent with the parties' expectations at the time of contracting." *Boland, Inc. v. Rolf C. 26 Hagen (USA) Corp.*, 685 F. Supp. 2d 1094, 1103 (E.D.

Cal. 2010). "A claim for breach of the 27 implied covenant of good faith and fair dealing requires the same elements" as breach of contract, 28 but instead "of showing [the] defendant breached a contractual duty, the plaintiff must show, ... 1 defendant deprived the plaintiff of a benefit conferred by the contract in violation of the parties' 2 expectations at the time of contracting." *Ramsey v. Farmers New World Life Insurance*, No. CV 3 1:19-405, 2024 WL 3967470, at *5 (E.D.

Cal. 2024) (quoting Boland, 685 F. Supp. 2d at 1101 4 (citing Carma Developers, Inc. v. Marathon Development California, Inc., 2 Cal. 4th 342, 372– 5 73, (1992))). Thus, an implied covenant claim goes beyond a breach of contract and involves “a 6 failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad 7 judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the 8 agreed common purposes and disappoints the reasonable expectations of the other party thereby 9 depriving that party of the benefits of the agreement.” Schertzer, 109 F.4th at 1213 (quoting 10 Careau & Co. v. Sec. Pac.

Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1394 (1990)). 11 As to its “alternate counterclaim” of breach of the implied covenant, Hyphy merely states 12 it “paid for a right to supervise the creation and promotion of the Albums, but such contractual 13 right has been rendered worthless by Chavez’s actions. At a minimum, this constitutes an 14 unmistakable breach of the implied covenant of good faith and fair dealing.” (Doc.

87 at 8.) 15 Hyphy cites *Comunale v. Traders & Gen. Ins. Co.* (1958) 50 Cal. 2d 654, 658 quoting “California 16 imposes an implied covenant to every agreement that requires that “neither party will do anything 17 which will injure the right of the other to receive the benefits of the agreement [;]” but fails to 18 provide a legal argument or specific facts establishing a genuine dispute.

Again, Hyphy must go 19 beyond the pleadings and show adequately probative evidence-by its own affidavits or discovery- 20 set forth specific facts creating a genuine issue for trial, and Hyphy has failed to cite to any 21 evidence doing so. *Matsushita*, 475 U.S. at 586-87.

Moreover, Hyphy’s claim is solely 22 predicated on its breach of oral contract claim. Hyphy does not identify what other duty the 23 implied covenant protects. Breach of this covenant involves something beyond breach of the 24 contractual duty. See Schertzer, 109 F.4th at 1213; see also *Nieto v. Blue Shield of Cal. Life & 25 Health Ins. Co.*, 181 Cal.App. 4th 60, 86 (2010).

Thus, any implied covenant claim based upon 26 the same factual assertions must also fail. For these reasons, the Court GRANTS summary 27 judgment on Hyphy’s counterclaim for breach of the implied covenant of good faith and fair 28 dealing in Chavez’s favor. 1 CONCLUSION 2 For reasons discussed, the Court finds Chavez has carried its initial burden in showing no 3 | genuine dispute of material fact exist as to Hyphy’s breach of oral contract counterclaim, but 4 | Hyphy, as the nonmoving party, fails to carry the shifted-burden and show a genuine dispute of 5 | material fact remains for the factfinder to resolve.

Accordingly, Chavez’s motion for summary 6 | judgment is GRANTED. Because this order terminates the counter-complaint in its entirety as to 7 | Chavez, he is entitled to judgment against Hyphy Music, Inc. 8 9 IT IS SO ORDERED. 10 Dated: _ July 31, 2025 Cerin | Tower TED STATES DISTRICT JUDGE 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 20

