

## United States District Court, Northern District of Illinois

<b>Name of Assigned Judge or Magistrate Judge</b>	James F. Holderman	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	06 C 6606	<b>DATE</b>	7/30/2007
<b>CASE TITLE</b>	Allen vs. Destiny's Child, et al.		

### DOCKET ENTRY TEXT

For reasons set forth in the statement section of this order, certain defendants' Motion to Dismiss Under Rule 12(b)(6), Alternative Motion to Strike Punitive Damages Request Under Rule 12(f) and Alternative Motion for More Definite Statement Under Rule 12(e) [24] is granted in part and denied in part.

Defendants' Motion to dismiss is granted insofar as all claims against defendant McDonald's Corporation are dismissed without prejudice. As pertaining to all other defendants, the Motion to Dismiss is denied. Defendants' Alternative Motion for More Definite Statement Under Rule 12(e) is denied. Defendants' Motion to Strike Punitive Damages Request Under Rule 12(f) is granted and the court strikes the plaintiff's request for punitive damages insofar as it relates to the defendants bringing this motion.

To the extent plaintiff Rickey Allen's state law claims appear to have been alleged against any defendant other than Andrea Murray, Robert Morrison, and Maurice Joshua, these claims are dismissed with prejudice.

Defendants Destiny's Child, Destiny's Child, Inc., Beyoncé Knowles, Beyoncé Publishing, Kelendria Rowland, Kelendria Music Publishing, Michelle Williams, MW Publishing, SONY BMG Music Entertainment, Sony Urban Music/Columbia CK, Sony/ATV Tunes LLC, Rodney Roy Jenkins, Rodney Jenkins Productions, Inc., and EMI Blackwood Music, Inc. are to file their respective answers on or before 8/17/2007. The parties are to prepare and file a Form 35 by 8/20/2007. Status hearing set for 8/28/2007 at 9:00 a.m.

Plaintiff Rickey Allen is granted leave to file a First Amended Complaint on or before 8/9/2007, for purposes of repleading his claim against defendant McDonald's Corporation. All parties are encouraged to consider settlement.

■ [ For further details see text below.]

Notices mailed.

### STATEMENT

Plaintiff Rickey Allen ("Allen") brings this lawsuit against numerous defendants, alleging copyright infringement, misappropriation, fraud, breach of fiduciary duty, and breach of contract in connection with an original song allegedly written by Allen, called "Cater 2 U." Before the court is certain defendants' Motion to Dismiss Under Rule 12(b)(6), Alternative Motion to Strike Punitive Damages Request Under Rule 12(f) and Alternative Motion for More Definite Statement Under Rule 12(e). (Dkt. No. 24).

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This motion was originally filed by defendants Destiny's Child, Destiny's Child, Inc., Beyoncé Knowles (individually and d/b/a Beyoncé Publishing), Kelendria Rowland (individually and d/b/a Kelendria Music Publishing), Michelle Williams (individually and d/b/a MW Publishing), SONY BMG Music Entertainment (for itself and incorrectly sued as Sony Urban Music/Columbia CK), Sony/ATV Tunes LLC, and McDonald's Corporation (collectively "the Destiny's Child Defendants"), and was later joined by defendants Rodney Roy Jenkins, Rodney Jenkins Productions, Inc. ("the Jerkins Defendants") and defendant EMI Blackwood Music, Inc. The Destiny's Child Defendants, the Jerkins Defendants and defendant EMI Blackwood Music, Inc. together will be referred to as "Defendants" for purposes of this motion.

In the time since the parties' initial briefing on Defendants' Motion, the U.S. Supreme Court issued *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (May 21, 2007), which "retired" the well known standard for 12(b)(6) motions originally set forth in *Conley v. Gibson*, 355 U.S. 41 (1957). The parties have subsequently filed supplemental briefs before the court addressing this intervening caselaw.

Under the Federal Rules of Civil Procedure, a complaint generally need not contain more than "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In other words, the complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 127 S. Ct. at 1969 (quoting *Conley v. Gibson*, 355 U.S. at 47). "The purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits." *Weiler v. Household Finance Corp.*, 101 F.3d 519, 524 n.1 (7th Cir. 1996) (quoting *Triad Assocs., Inc. v. Chicago Hous. Auth.*, 892 F.2d 583, 586 (7th Cir. 1989)).

In conducting its analysis, the court assumes that all well-pleaded allegations in the complaint are true. *Twombly*, 127 S. Ct. at 1965. As long as the factual allegations in the complaint "raise a right to relief above the speculative level," the complaint will withstand a 12(b)(6) challenge. *Twombly*, 127 S. Ct. at 1965; see also *In re Ocwen Loan Servicing, LLC Mortg. Servicing Litigation*, No. 06-3132, 2007 WL 1791004, at \*8 (7th Cir. June 22, 2007). On the other hand, "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S. Ct. at 1965 (citations omitted). The allegations of the complaint must include "enough facts to state a claim to relief that is plausible on its face." *Id.* at 1974.

In Count I of his Complaint, Allen alleges that all defendants are liable for copyright infringement, having copied Allen's registered work, performed Allen's registered work, and made and distributed infringing work that substantially utilized Allen's registered work. (Compl. ¶¶ 83-85). To establish copyright infringement, a plaintiff must prove "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

Allen alleges that the song he wrote and publically performed ("Cater 2 U") was registered with the United States Copyright Office and was issued four different copyright numbers, of which he is the owner. (Compl. ¶¶ 26-36). In their reply brief, Defendants point out that one of these copyrights (originally identified as PAU-255-971 (Compl. ¶ 34) and later identified as PAU-561-418 (Prayer for Relief ¶ 2)) is not registered to Allen. "In ruling on a 12(b)(6) motion, a district court may take judicial notice of matters of public record without converting the 12(b)(6) motion into a motion for summary judgment." *Anderson v. Simon*, 217 F.3d 472, 474-75 (7th Cir. 2000). A search of the copyright records publically available online at [www.copyright.gov](http://www.copyright.gov) reveals that Allen is not the owner of either copyright PAU-255-971 or copyright PAU-561-418. Allen therefore cannot base his claims for relief on his alleged ownership of these two copyrights. On the other hand, Allen has sufficiently alleged ownership of copyrights SRU-301-444, PAU-2-255-971, and

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SRu-349-159.

On the question of copying, Defendants argue that Allen has failed to plead his cause of action with sufficient particularity. In cases in which there is no direct evidence of copying, copying can be proven indirectly through evidence demonstrating that “the defendant had access to the copyrighted work and the accused work is substantially similar to the copyrighted work.” *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910, 915 (7th Cir. 2007). Direct evidence of access includes sending the work “directly to the defendant (whether a musician or a publishing company) or a close associate of the defendant.” *Selle v. Gibb*, 741 F.2d 896, 901 (7th Cir. 1984).

In this case, Allen has alleged that he provided “several professional and studio recorded demonstration tape versions of his song CATER 2 U” to defendant Andrea Murray (“Murray”), as well as providing copies to defendant Maurice Joshua (“Joshua”), and that defendant Murray and defendant Robert Morrison (“Morrison”) met with Allen in Chicago, Illinois sometime in 2000 to listen to him perform and record his song “Cater 2 U.” (Compl. ¶¶ 54-58, 66). Allen alleges that Murray provided defendant Rodney Roy Jerkins (“Jerkins”) with access to Allen’s song “Cater 2 U.” (Compl. ¶¶ 62-63), and that Jerkins, Joshua, Murray, and Morrison all provided defendant Destiny’s Child with access to the copyrighted work. (Compl. ¶¶ 63, 69, 71). Allen also alleges that Destiny’s Child’s infringing work is “musically similar,” “lyrically similar,” and “composed similar” to Allen’s registered work entitled “Cater 2 U.” (Compl. ¶¶ 73-75).

The court finds that Allen has sufficiently set forth a cause of action for copyright infringement, with enough facts to give Defendants fair notice of the grounds for his copyright infringement claims. Copyright infringement is not a claim that is subject to the heightened pleading requirements of Rule 9 of the Federal Rules of Civil Procedure. *See Mid America Title Co. v. Kirk*, 991 F.2d 417, 421 n.8 (7th Cir. 1993) (“Complaints [for copyright infringement] simply alleging present ownership by plaintiff, registration in compliance with the applicable statute, and infringement by defendant, have been held sufficient under the rules.”) (citation omitted). In this case, Allen has alleged “more than labels and conclusions,” setting forth “sufficient facts to raise his claim above the speculative level.” *Twombly*, 127 S. Ct. at 1965. No more is required of him at this stage in the proceedings.

Defendants argue a need for more specificity as to the nature of Allen’s work and how the infringing work is alleged to be “musically similar,” “lyrically similar,” and “composed similar.” Specifically, Defendants want to know whether Allen is alleging infringement of a “musical work” or a “sound recording,” and whether Allen alleges infringement of each of his copyrights, or merely a single element that is common to all four versions. Federal Rule of Civil Procedure 12(e) allows parties to move for a more definite statement before filing an answer, if the initial complaint “is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.” Fed. R. Civ. P. 12(e). The court does not find that Allen’s Complaint is so vague as to affect Defendants’ ability to affirm or deny Allen’s allegations. Rather, the type of information sought by Defendants is properly obtained through the discovery process. Defendants’ Alternative Motion for More Definite Statement Under Rule 12(e) is therefore denied.

Defendants further argue that Allen has failed to state a valid claim for relief against defendant SONY BMG Music Entertainment, defendant Sony/ATV Tunes LLC, and defendant McDonald’s Corporation (collectively “the Corporate Defendants”). The only allegations Allen sets forth against these defendants is that they “received financial gain” from producing and distributing the infringing work, or from sponsoring a tour that featured the infringing work. (Compl. ¶¶ 77, 79, 82). Although Allen has not alleged that these defendants were directly involved in copyright infringement, the doctrines of contributory and vicarious

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infringement “are well established in the law.” *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930-31 (U.S. 2005).

To state a claim for contributory copyright infringement, Allen must demonstrate that the Corporate Defendants (i) had knowledge of the act of infringement; and (ii) induced, caused, or materially contributed to that infringement. *In re Aimster Copyright Litigation*, 252 F. Supp. 2d 634, 649 (N.D. Ill. 2002) (citations omitted). In order to state a claim for vicarious copyright infringement, on the other hand, Allen must demonstrate that the Corporate Defendants (i) had the right and the authority to supervise the infringing activity of another; and (ii) had an obvious and direct financial interest in exploitation of the copyrighted materials. *Hard Rock Café Licensing Corp. v. Concession Services, Inc.*, 955 F.2d 1143, 1150 (7th Cir. 1992).

The court is skeptical that defendant McDonald’s Corporation was in a position to either contribute to any alleged copyright infringement or to be properly vicariously liable for such infringement. In other words, the court is not convinced that Allen has “nudged [his] claims across the line from conceivable to plausible.” *Twombly*, 127 S. Ct. at 1974. McDonald’s Corporation is in the quick-service restaurant business and is not well known (or alleged) to have been involved with the music industry in a manner that would lead the court to believe that McDonald’s Corporation was in a position to “induce, cause or materially contribute” to known acts of infringement, or to have had supervisory authority over the alleged copyright infringers. Although McDonald’s Corporation is alleged to have sponsored Destiny’s Child’s Cater 2 U tour, and to have profited therefrom, these allegations – even if true – would not put defendant McDonald’s Corporation in a position to be secondarily liable for any copyright infringement. The court thus dismisses Allen’s claims against defendant McDonald’s Corporation; however, because the *Twombly* pleading standard was not articulated at the time Allen filed his Complaint, this dismissal is without prejudice. Allen is granted permission to file a First Amended Complaint with the court, should he desire to do so, clarifying McDonald’s alleged role in his copyright infringement claims.

On the other hand, defendants SONY/BMG Music Entertainment and Sony/ATV Tunes LLC are both involved in the music industry and may have been in a position to be held secondarily liable for the infringing acts of others. Allen has alleged that these defendants produced and/or distributed the song “Cater 2 U” and received financial gains from their actions. Although it seems unlikely that these defendants were in an authoritative position to supervise the infringing works of others, SONY/BMG Music Entertainment and Sony/ATV Tunes LLC certainly could have “induced, caused, or materially contributed to” the known infringement of others. At this point in the proceedings, Allen’s Complaint “does not need detailed factual allegations” explaining exactly how SONY/BMG Music Entertainment and Sony/ATV Tunes LLC were involved in the alleged infringement. *Twombly*, 127 S. Ct. at 1964. The court finds that Allen has stated sufficient facts to put defendants SONY/BMG Music Entertainment and Sony/ATV Tunes LLC on notice of his alleged grounds for relief. No more is required of him at this point in the proceedings.

Defendants’ Motion to Dismiss is granted insofar as the claims against McDonald’s Corporation are dismissed without prejudice. As pertaining to all other claims, Defendants’ Motion to Dismiss is denied.

Defendants also ask that the court strike Allen’s claim for punitive damages under Federal Rule of Procedure 12(f), on the grounds that punitive damages are not a permissible form of recovery under the Copyright Act. Rule 12(f) permits courts to strike “redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). In his Complaint, Allen requests both actual and statutory damages. Because punitive damages are not available under federal law in copyright infringement lawsuits, *JCW Investments, Inc.*, 482 F.3d at 918, the court finds Allen’s request for punitive damages to be immaterial to his claims

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against Defendants. The court grants Defendants' Motion to Strike Punitive Damages Request Under Rule 12(f), and Allen's request for punitive damages is stricken as alleged against Defendants.

Finally, in his response to Defendants' Motion, Allen clarifies that his state law claims for misappropriation, fraud, breach of fiduciary duty, and breach of contract are not alleged against the Destiny's Child Defendants, the Jerkins Defendants, or defendant EMI Blackwood Music, Inc. To the extent that Allen's state law claims appear to have been alleged against any of the Defendants, these claims are dismissed with prejudice.