UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 14-5577-MWF(MRWx) **Date: February 13, 2015**
Title: Douglas Jordan-Benel -*v*- Universal City Studios, Inc., et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Cheryl Wynn	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER GRANTING DEFENDANT UTA'S MOTION TO DISMISS [18]

Before the Court is Defendant United Talent Agency, Inc.'s ("UTA") Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b)(6) (the "Motion") filed on November 25, 2014. (Docket No. 18). Plaintiff Douglas Jordan-Benel filed an Opposition to Defendant United Talent Agency, Inc.'s Motion to Dismiss Pursuant to Fed. R. Civ. Procedure 12(b)(6) (the "Opposition") on December 15, 2014. (Docket No. 20). UTA filed a Reply to Plaintiff's Opposition to Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b)(6) (the "Reply") on December 22, 2014. (Docket No. 21).

The Court held a hearing on January 5, 2015. For the reasons set forth below, the Court **GRANTS** the Motion. Under the well-known rule of *Desny*, Benel has failed to allege any facts establishing either an explicit or implicit agreement to pay for his idea. Rather, he appears to be the classic "idea man", to whom the California Supreme Court denied relief as a matter of law.

Background

In his First Amended Complaint ("FAC"), Benel alleges that the feature film "*The Purge*" is based in substantial part on a screenplay he wrote for a movie called "*Settler's Day*." Benel alleges that he wrote the screenplay for *Settler's Day* in early 2011. In July 2011, Adam Peck, Benel's manager, sent *Settler's Day* to David Kramer and Emerson Davis, both of UTA. A week later Davis indicated in an email, copied to

Kramer, that he intended to "pass" on the screenplay because he had a difficult time "buying into the premise." (Complaint ¶ 19).

In July 2013, other Defendants released a feature film called "*The Purge*." Benel claims that *The Purge* is based in substantial part on *Settler's Day* and alleges various copyright claims not presently at issue against Defendants Universal City Studios, Inc., Blumhouse Productions, LLC, Overlord Productions, LLC, Platinum Dunes Productions, Why Not Productions, Inc., and James DeMonaco, the writer and director of *The Purge* (collectively "the Production Defendants").

Benel alleges that UTA is DeMonaco's agency and he obtained the *Settler's Day* screenplay through UTA. Specifically, Benel alleges that Kramer at UTA oversaw Davis as well as DeMonaco's agent, Charlie Ferraro. Benel alleges that someone at UTA gave DeMonaco the screenplay for *Settler's Day* and he copied substantial portions of it, including its premise, when writing and directing *The Purge*.

In addition to the copyright claims against the Production Defendants, Benel alleges that he is owed payment by all Defendants under a breach of an implied contract theory for providing the idea of *Settler's Day*. In this Motion, UTA asks that this claim be dismissed as inadequately pleaded against UTA.

Motion to Dismiss

In ruling on the Motion under Rule 12(b)(6), the Court follows *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "All allegations of material fact in the complaint are taken as true and construed in the light most favorable to the plaintiff." *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 937 (9th Cir. 2008) (holding that a plaintiff had plausibly stated that a label referring to a product containing no fruit juice as "fruit juice snacks" may be misleading to a reasonable consumer).

Benel's claim for relief is based on the widely followed California Supreme Court case, *Desny v. Wilder*, 46 Cal. 2d 715, 299 P.2d 257 (1956). In *Desny*, the Court found that Desny stated a contract claim in alleging that Paramount Pictures had taken an idea he submitted that was subsequently turned into a feature film by that studio and director Billy Wilder. In his interaction with representatives from Paramount, and defendant Wilder's secretary in particular, Desny indicated that he only intended to provide the idea if he were to be paid for doing so. *Id*. at 745. The California Supreme Court found that under certain circumstances the law provides protection to those who submit their ideas to others where there is an agreement that the idea is submitted in consideration for a promise of payment for its use. 5 *Nimmer on Copyright* § 19D.05 (2014). However, a legal obligation to pay only derives where there is an agreement between the parties. *Chandler v. Roach*, 156 Cal. App. 2d 435, 440, 319 P.2d 776 (1957) (holding that a work need not be protectable by copyright for recovery provided the elements of a contract are present). The agreement may be express or it may be implied-in-fact. *Id*.; 5 *Nimmer on Copyright* § 19D.05.

Under California law, "for an implied-in-fact contract one must show: that he or she prepared the work; that he or she disclosed the work to the offeree for sale; under all circumstances attending disclosure it can be concluded that the offeree voluntarily accepted the disclosure knowing the conditions on which it was tendered (i.e., the offeree must have the opportunity to reject the attempted disclosure if the conditions were unacceptable); and the reasonable value of the work." *Aliotti v. R. Dakin & Co.*, 831 F.2d 898, 902 (9th Cir. 1987) (finding no implied-in-fact contract where presentation was made to induce purchase of entire business, not licensing of idea presented) (quoting *Faris v. Enberg*, 97 Cal.App.3d 309, 318, 158 Cal. Rptr. 704 (1979) (finding no implied-in-fact contract where disclosure of an idea for a TV show was to induce offeree to participate as host of show, not to sell the idea of show). Indeed, if disclosure occurs before it is known that compensation is a condition of its use, there is no contract implied. *Id*. (citing *Desny*, 46 Cal. 2d at 733).

In his Opposition, Benel argues that he intended to be compensated for his submission. However, he makes no argument or identified no allegations to show that

UTA ever understood that, or agreed to that condition before receiving the idea. Indeed, Peck's email to Kramer and Davis bears a striking resemblance to the "idea man" hypothetical articulated in *Desny*. The Court in *Desny* stated that "[t]he idea man who blurts out his idea without having first made his bargain has no one but himself to blame for the loss of his bargaining power." 46 Cal. 2d at 739. The Court continued to state that "[t]he law will not imply a promise to pay for an idea from the mere facts that the idea has been conveyed, is valuable, and has been used for profit; this is true even though the conveyance has been made with the hope or expectation that some obligation will ensue." *Id*.

Benel argues that he has met the requirements of *Desny* by alleging that he submitted *Settler's Day* "for consideration of the production of a movie or television series" instead of doing so gratuitously. (FAC ¶¶ 16, 17). While this allegation may be true, and the Court considers it to be so on a Motion to Dismiss, it says nothing of UTA's understanding and fails to allege that Benel and UTA came to any agreement. The only interaction Benel alleges is Peck's email to Kramer and Davis, and Davis' reply a week later declining to use the screenplay.

California Civil Code section 1621 provides that "[a]n implied contract is one, the existence and terms of which are manifested by conduct." The only conduct Benel alleges on the part of UTA or any of the other defendants was after the idea for *Settler's Day* had been conveyed. And as *Desny* makes clear, conveyance of an idea can be consideration to support a legal obligation, "and can be bargained for before it is disclosed to the proposed purchaser, but once it is conveyed . . . it is henceforth his own and he may work with it and use it as he sees fit." 46 Cal. 2d. at 737-38.

Benel is correct that there need not be an express oral or written representation of compensation. *See Gunther-Wahl Prods., Inc. v. Mattel, Inc.*, 104 Cal. App. 4th 27, 43, 128 Cal. Rptr. 2d 50 (2002) (holding that jury instruction requiring a finding that plaintiff "clearly conveyed" request for payment was erroneous under theory of implied-in-fact contract). However, there needs to be more than a unilateral offer and Benel only offers arguments as to his intent, not UTA's understanding or conduct. *See* 5 *Nimmer on Copyright* § 19D.05, ("as [*Desny*] makes clear, far more than mere

submission of an idea is required to create an implied-in-fact contract."). As *Desny* stated, the submitter must have "clearly conditioned his offer to convey the idea upon an obligation to pay for it if it is used" and recipient must "know[] the condition before he knows the idea" and must "voluntarily accept[] its disclosure." *Desny*, 46 Cal. 2d at 739.

In *Montz v Pilgrim Films & Television, Inc*., 649 F.3d 975 (9th Cir. 2011), the Ninth Circuit en banc addressed whether the plaintiffs' *Desny* claim was pre-empted by the Copyright Act. The court explained that while the scope of the claim – protection for fixed ideas – fell within the scope of the Copyright Act, the *Desny* claim had the required "extra element" to make it qualitatively different from the rights protected by federal copyright law and so was not preempted. *Id*. at 979-80. The extra element of the claim was the implied agreement of payment between the parties. Unlike in the present case, the plaintiffs had met a number of times with defendants for the purpose of discussing the idea's use and the en banc Ninth Circuit ruled that Montz had adequately pled the elements of an agreement under *Desny*: the plaintiffs had disclosed their idea for sale; they expected to be compensated for the idea; and defendants knew the conditions on which the idea was offered. *Id*. 649 F.3d at 981. Benel's FAC does not allege that defendant UTA knew and accepted the condition of the submission. The allegations by Benel are that only two exchanges occurred: Peck sent the screenplay, and Davis indicated he'd "pass."

UTA's later alleged use of the idea is not sufficient to show that UTA voluntarily accepted the conveyance on the condition that it had an obligation to pay for it. The facts alleged by Benel would remove any requirement of assent or an agreement that is the heart of the claim he asserts, a proposition specifically rejected by *Desny*, as well as by *Montz* in saving such claims from copyright preemption. *Desny*, 46 Cal. 2d at 739; *Montz* 649 F.3d at 979-80; *see also* 5 *Nimmer on Copyright*, § 19D.05 (explaining that "the recipient's conduct after the submission should not create an inference of [a promise to pay], if the only conduct relied on is the use of the idea.") Benel may feel wronged by the actions of Defendants, but he has alleged nothing to

distinguish himself from the man described by the Court in *Densy* who blurts out his idea before striking his bargain.

Benel also appears to put forward some form of agency argument in his Opposition. In his FAC, Benel alleges that submission to UTA was the same as submission to DeMonaco because UTA was DeMonaco's agent and that Benel need not have given *Settlers' Day* to an end producer for liability to attach. However, this agency argument is not supported by any alleged facts to show that he presented a conditional submission or that this condition was accepted. Even if the circumstances may suggest that the submission was conditioned on an agreement to pay should the idea be used, Benel does not allege that UTA was given the opportunity to reject the submission before the idea was presented to it. Without any implied contract there can be no liability. Further, Benel is unclear how UTA's agency relationship with DeMonaco would imply liability for UTA should DeMonaco be found liable as a principal, with UTA operating as his agent. It seems a dubious "reverse" respondeat superior argument.

Benel's argument as to UTA's liability as co-conspirator also fails. Benel argues that where all parties unite to make a promise in exchange for a benefit, they may be jointly liable for that promise. However, as explained above, nowhere does Benel adequately allege that any promise – explicit or implicit – was made, and so there is no basis for liability.

Conclusion

For the reasons stated above, the Court **GRANTS** UTA's Motion as to Benel's fourth claim for relief ***with leave to amend***. Although the Motion is brought only on behalf of UTA, much of the Court's reasoning applies to all Defendants. Therefore, the fourth claim is dismissed as to all Defendants.

Benel is granted leave to file a Second Amended Complaint by **February 27, 2015**. Any amendments shall be limited to the fourth claim for relief. If Benel prefers

to rest on the FAC, he should notify the Court and Defendants of that intention by the same date.

The remaining Defendants shall file their Answers by **March 9, 2015** should Benel decide to rest on his current pleadings. Should Benel file a Second Amended Complaint, the deadlines outlined in Federal Rule of Civil Procedure 15 for the filing of an Answer to an Amended Complaint will govern.

IT IS SO ORDERED.