

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 21-1406-MWF (JPR)

Date: November 4, 2022

Title: MMAS Research LLC, et al v. The Charité, et al

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

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers): **ORDER GRANTING MOTION TO DISMISS FIRST AMENDED COMPLAINT [37]**

Before the Court is Defendant The Charité – Universitätsmedizin Berlin (“Charité”)’s Motion to Dismiss First Amended Complaint (the “Motion”), filed on September 9, 2022. (Docket No. 37). Plaintiff MMAS Research LLC filed an Opposition on September 26, 2022. (Docket No. 39). Defendant filed a Reply on October 3, 2022. (Docket No. 40).

Defendant also filed a Request for Judicial Notice (“RJN”) on September 9, 2022. (Docket No. 37-5). No opposition was filed.

The Court has read and considered the papers filed in connection with the Motion and held a hearing on **October 25, 2022**.

The unopposed RJN is **GRANTED**.

The Motion is **GRANTED *with leave to amend***. Plaintiff does not meet its burden to prove that the copyright claim should be in federal court, failing to establish standing to sue for copyright infringement and the Court’s jurisdiction over alleged infringements that occurred entirely outside of the United States. Without a federal claim, the Court declines to exercise supplemental jurisdiction to Plaintiff’s remaining state law claims.

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I. BACKGROUND

Plaintiff, MMAS Research LLC (“MMAS”), a Washington limited liability company, commenced this action on February 16, 2021. (Complaint (Docket No. 1)). The First Amended Complaint (“FAC”) was filed on August 22, 2022. (Docket No. 31).

Dr. Donald E. Morisky is named in the caption of the FAC but is never identified as a plaintiff in the body of the FAC. (*See generally* FAC). The three claims for relief alleged in the FAC are only brought by Plaintiff MMAS. (*See id.* at 9–16). Dr. Morisky is the owner of the copyright registrations for the Morisky Medication Adherence Scale (4-item) (“MMAS-4”) and the Morisky Medication Adherence Scale (8-item) (“MMAS-8”) (Complaint at 1–2).

As alleged, Plaintiff MMAS owns the MMAS Research Widget Code (the “Morisky Widget”), registered under United States Copyright Registration No. TX 8-816-517. (FAC at 1–2). The Morisky Widget is an electronic diagnostic assessment protocol to measure and identify medication adherence behaviors and includes registered translations of the widely used MMAS-8 and MMAS-4 tests. (*Id.* at 2). MMAS “has been, and still is, the author and exclusive holder of all rights, title, and interest in and to the copyrights to the Morisky Widget.” (*Id.* at 5). MMAS licenses use of the Morisky Widget to pharmaceutical firms, hospitals, and universities. (*Id.*). All Morisky licensees are required to score and code diagnostic assessments, including MMAS-4 and MMAS-8, in the Morisky widget and to be trained and certified to use the Morisky Widget before administering it on patients. (*Id.* at 6).

Plaintiff alleges that on or about June 25, 2017, MMAS Research and Charité entered into the first Morisky Widget license (the “First Widget License”). (*Id.* at 7). Plaintiff asserts that Charité falsely represented to MMAS Research that the only use being made of the MMAS-8 was with regard to the three studies which were the subject of the expiring license. (*Id.* at 7). Plaintiff alleges that Charité conducted multiple MMAS-8 studies for the development and validation of a phone app known as MyTherapy, which is owned by Defendant Smartpatient GmbH, without a license or

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other permission to use the MMAS-8 for validation of the MyTherapy app. (*Id.*). Similarly, Plaintiff alleges that Defendants appeared in an advertisement for the app describing the use of the MMAS-8 for MyTherapy. (*Id.*).

Plaintiff further alleges that while Plaintiff's representatives were providing training to Charité in Berlin, Charité doctor Fabian Halleck advised Plaintiff that he administered 888 MMAS-8 tests with regard to a Smartpatient study involving kidney transplant patients and requested a retroactive license. (*Id.* at 7–8). On or about September 2, 2017, a retroactive license was entered into to authorize the Halleck Smartpatient Study for a cost of seven thousand euros and the requirement that all MMAS tests administered in the Halleck Smartpatient Study be rescored in the Morisky Widget. (*Id.* at 8). Plaintiff alleges that Charité never rescored or recoded the MMAS tests. (*Id.*). Plaintiff further alleges that Defendants prepared and published an article based on the study which used the MMAS-8 tests. (*Id.*). Plaintiffs allege that Charité is carrying out another study, by Dr. Andreas Meisel, which uses MMAS-8 without authorization or permission from Plaintiff. (*Id.*).

Plaintiff's First Amended Complaint asserts three claims for relief against Defendants Charité and Smartpatient GmbH: (1) breach of contract, against Charité only, (2) copyright infringement under 17 U.S.C. § 101 *et seq.*, and (3) unfair competition under California Business and Professions code section 17200 *et seq.* (*Id.* at 9-14).

II. LEGAL STANDARD**A. Rule 12(b)(1)**

“Although the defendant is the moving party in a motion to dismiss brought under Rule 12(b)(1), the plaintiff is the party invoking the court's jurisdiction. As a result, the plaintiff bears the burden of proving that the case is properly in federal court.” *Brooke v. Kashl Corp.*, 362 F. Supp. 3d 864, 871 (S.D. Cal. 2019) (citing *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001)).

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A jurisdictional attack under Rule 12(b)(1) may be “facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, the complaint’s allegations must be accepted as true. *Id.* “[I]n a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Id.* “In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.” *Id.* “The court need not presume the truthfulness of the plaintiff’s allegations under a factual attack.” *Brooke v. Superb Hosp., LLC*, No. 1:20-CV-0103 AWI SAB, 2021 WL 1173208, at *4 (E.D. Cal. Mar. 29, 2021) (citing *Wood v. City of San Diego*, 678 F.3d 1075, 1083 n.2 (9th Cir. 2011)).

B. 12(b)(6)

In ruling on the Motion under Rule 12(b)(6), the Court follows *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and their Ninth Circuit progeny.

“Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory.” *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). “To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to ‘state a claim for relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court must disregard allegations that are legal conclusions, even when disguised as facts. *See id.* at 681 (“It is the conclusory nature of respondent’s allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.”); *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014). “Although ‘a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof is improbable,’ plaintiffs must include sufficient ‘factual enhancement’ to cross ‘the line between possibility and plausibility.’” *Eclectic Props.*, 751 F.3d at 995 (quoting *Twombly*, 550 U.S. at 556-57) (internal citations omitted).

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The Court must then determine whether, based on the allegations that remain and all reasonable inferences that may be drawn therefrom, the complaint alleges a plausible claim for relief. *See Iqbal*, 556 U.S. at 679; *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 (9th Cir. 2011). “Determining whether a complaint states a plausible claim for relief is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679). Where the facts as pleaded in the complaint indicate that there are two alternative explanations, only one of which would result in liability, “plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent with the alternative explanation. Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true, in order to render plaintiffs’ allegations plausible.” *Eclectic Props.*, 751 F.3d at 996-97; *see also Somers*, 729 F.3d at 960.

III. DISCUSSION

Through the Motion, Defendant Charité argues that Plaintiff’s second cause of action (“the Copyright Claim”) fails as a matter of law because (1) MMAS lacks standing to sue for copyright infringement; (2) MMAS cannot maintain a claim for copyright infringement that occurred entirely outside the United States; and (3) the Copyright Claim is barred by the statute of limitations. (Motion (“Mot.”) at 7–8).

Additionally, Charité argues that MMAS’s contract and unfair competition claims fail as a matter of law because (1) the Court should not exercise supplemental jurisdiction over the claims and (2) the claims are preempted by the Copyright Act. (Mot. at 22, 24).

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A. Copyright Infringement**1. Standing**

Charité argues that MMAS lacks standing to sue because MMAS does not own any of the intellectual property allegedly infringed. (Mot. at 8). Charité points out that Plaintiff entered into a licensing agreement with Dr. Morisky to exploit Dr. Morisky’s MMAS-4 and MMAS-8 copyrights and create the Morisky Widget. (*Id.*; RJN, Ex. B at 2:8–17). The licensing agreement provided that Dr. Morisky would “at all times remain the owner of the MMAS-8 and any associated intellectual property, patents, copyrights or derivatives derived from the use of the MMAS-8.” (Motion at 9; RJN, Ex. B at 2:13-17). Dr. Morisky and MMAS sued each other in a separate action and reached a written settlement agreement (the “Settlement Agreement”) which provides that “MMAS Research, LLC will forego any claims it has to and will acknowledge that Donald Morisky is the sole and exclusive owner of the federal copyrights in and to the MMAS-4 and the MMAS-8, together with any related trademarks, copyrights, derivatives to the same or other intellectual property rights associated with the Morisky Medication Adherence scales or protocols.” (Mot. at 9–10, RJN, Ex. A § II.1). Further, the Settlement Agreement provides that “MMAS Research, LLC will assign the Morisky Widget and any related copyrights, trademarks and related intellectual property rights . . . to Donald Morisky.” (*Id.*). Charité argues that Plaintiff has voluntarily waived any right it had to the relevant copyrights pursuant to the settlement agreement. (Mot. at 10).

Plaintiff argues that its hold of the registration and control of the Morisky Widget was recently acknowledged by the United States District Court for the Western District of Washington. (Opposition (“Opp.”) at 7 (citing Report and Recommendation, 21-CV-1301-RSM0DWC (Docket No. 48) (finding that MMAS currently held the copyright registration to the Morisky Widget and, pursuant to the Settlement Agreement, will assign it to Dr. Morisky at the expiration of the “transition period”). The Court notes that the expiration date appears to be 120 days after the December signing of the Settlement Agreement. (*See* RJN, ex. B). Plaintiff further

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argues that Dr. Morisky authorized Plaintiff to represent his rights and litigate any claim he has for infringement of his claims related to MMAS-4, MMAS-8, or the Morisky Widget accruing before December 3, 2020. (Opp. at 7, Ex. M (“Authorization Agreement”).

Charité argues that despite MMAS’s contentions, Dr. Morisky is not a plaintiff as evidenced by the pleadings in the FAC which do not identify Dr. Morisky or make allegations on behalf of any party besides MMAS. (*See Reply at 4*). Further, Charité contends Plaintiff conflates physical possession and control with legal ownership, arguing that regardless of whether MMAS held and was exploiting control over the Morisky Widget, the Settlement Agreement still unambiguously required MMAS to “forego any claims” it had to the MMAS-4, MMAS-8, and Morisky Widget. (*Id.* at 5). Charité also argues that the Authorization Agreement cannot confer standing to Plaintiff because it transfers only a bare right to sue, which is invalid. (*Id.* at 6 (citing *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1169 (9th Cir. 2013); *Minden Pictures, Inc. v. Pearson Educ., Inc.*, 929 F.Supp.2d 962 (N.D. Cal. 2013))). Finally, Charité contends that the Authorization Agreement should be disregarded as it was created after the litigation commenced. (*Id.* at 7 (citing *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n. 4 (1992))). Charité also points out that the undated Authorization Agreement was not referenced in the initial complaint and includes meta data suggesting it was created just days after the Motion. (*Id.* at 7–8).

“Under the Copyright Act, only the ‘legal or beneficial owner of an exclusive right under a copyright’ has standing to sue for infringement of that right.” *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1169 (9th Cir. 2013) (quoting 17 U.S.C. § 501(b)); *see also Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881, 890 (9th Cir. 2005) (holding that, under 17 U.S.C. § 501(b), “a party that has no ownership interest has no standing to sue”). If a plaintiff “lacks standing . . . the district court [does] not have subject matter jurisdiction and dismissal [is] appropriate” under Rule 12(b)(1). *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, (9th Cir. 2003) (upholding dismissal of copyright infringement claim under Rule 12(b)(1) where plaintiff lacked standing; *Righthaven*, 716 F.3d at 1172 (same).

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The FAC alleges the infringement of two copyrights: the copyright for the MMAS-8 and the copyright for the Morisky Widget. (FAC at 12–13). Dr. Morisky is the owner of both copyrights. (See RJN, Ex. B). First, the licensing agreement between MMAS and Dr. Morisky states that Dr. Morisky is the “owner of the MMAS-8 . . . copyright[.]” (See *id.* at 2:13-17). Second, the Settlement Agreement makes clear that MMAS assigned “the Morisky Widget and any related copyright” to Dr. Morisky. (See RJN, Ex. A § II.1). Moreover, MMAS appears to have agreed to “forego any claims” it had in the Morisky Widget. (See *id.*). Plaintiff’s citation to a Magistrate Judge’s finding that MMAS “holds the copyright” is unpersuasive for a showing of ownership because the Magistrate Judge was only pointing out that Dr. Morisky did not face irreparable harm from MMAS’s use of the copyright to settle existing claims involving the copyrights, as permitted by the Settlement Agreement. (See RJN, Ex. B). Notably, disputes involving Charité, Dr. Halleck, Dr. Meisel, and Smartpatient GmbH do not appear to be among the claims to be settled in Exhibit 3 of the Settlement Agreement. (See RJN, Ex. A). Accordingly, the Court determines that MMAS is not the owner of either of the relevant copyrights. Further, while Dr. Morisky is listed as a plaintiff, the FAC does not identify him and only makes allegations on behalf of MMAS. (See *generally* FAC). Should Dr. Morisky decide to sue for infringement of his copyrights, he should do so.

Finally, the Court determines that the Authorization Agreement permitting MMAS to sue for infringement on behalf of Dr. Morisky is an invalid attempt to transfer the bare right to sue. Congress did not envision the existence of non-owners of copyrights claiming a bare right to sue. *Silvers v. Sony Pictures Ent., Inc.*, 402 F.3d 881, 886 (9th Cir. 2005) (en banc). In *Silvers*, the Ninth Circuit held that a party “could not assign an accrued claim for copyright infringement to [a party that] had no legal or beneficial interest in the copyright.” *Id.* at 887–890; see also *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1169–70 (9th Cir. 2013) (affirming motion to dismiss where purported transfer of legal title coupled with the transfer of accrued claims did not confer standing because the transaction merely transferred a bare right to sue); *DRK Photo v. McGraw-Hill Education Holdings*, 870 F.3d 978, 985–88 (9th Cir. 2017) (affirming summary judgment against an agent to license and sell where the original

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copyright owner retained exclusive rights to the photograph). Here, the Authorization Agreement permits Plaintiff “to represent [Dr. Morisky’s] interest in pursuing, settling, and litigating any claim [Dr. Morisky] has for infringement” without transferring a corresponding exclusive right in the copyright. (*See Opp.*, Ex. M). Accordingly, the Court determines that the Authorization Agreement transfers only a bare right to sue and is therefore invalid.

The Court concludes that Plaintiff MMAS does not have standing to sue for copyright infringement and therefore has not met its burden of proving that the claim should be in federal court. Accordingly, the Court **GRANTS** the Motion to dismiss the copyright right claim.

2. Extraterritoriality

Charité argues that Plaintiff’s copyright claim must fail because the alleged infringements occurred entirely outside of the United States. (Mot. at 11 (citing *Subafilms, Ltd. V. MGM-Pathe Communications Co.*, 24 F.3d 1088, 1091 (9th Cir. 1994) (“[I]n general, United States copyright laws do not have extraterritorial effect, and therefore, infringing actions that take place entirely outside the United States are not actionable”); *Superama Corporation, Inc. v. Tokyo Broadcasting System Television, Inc.*, 830 Fed.Appx. 821, 823-24 (9th Cir. 2020) (“Dismissal for lack of subject matter jurisdiction was thus proper here, as all alleged infringing activity took place outside of the United States”))). Charité argues that the Court lacks subject matter jurisdiction because the FAC does not allege that any of Charité’s infringing activities take place in the United States. (*Id.* at 12). Charité points out that MMAS could not allege that any infringing activity took place within the United States because its campuses and facilities are in Berlin and the relevant studies had no connection with the United States. (*Id.* at 14–15, Declaration of Thomas Gazlig (“Gazlig Decl.”) ¶¶ 3–10, 12–15).

MMAS argues that the Court can protect its copyright because Germany is a treaty party to the Berne Convention. (*Opp.* at 8). Further, MMAS argues that foreign actors liable for conduct that results in the domestic infringement of copyrights

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effectuates the Act’s guarantees and fully coheres with principles of extraterritoriality. (*Id.* at 8–9 (citing *Spanski Enterprises, Inc. v. Telewizja Polska, S.A.*, 883 F.3d 904, 915 (D.C. Cir. 2018); *Synopsys, Inc. v. Azurengine Technologies, Inc.*, 401 F.Supp.3d 1068 (S.D. Cal. 2019)). MMAS also contends that Defendant’s willful infringement took place in whole or in part on U.S.-based servers. (*Id.*, Exs. A–K).

Charité contends Plaintiff misinterprets *Spanski* and the application of the Berne Convention. (Reply at 9). Charité argues that nothing in *Spanski* or *Synopsys* overruled earlier case law holding that infringements that occur entirely overseas are not actionable in the United States, because both cases involved infringements that took place within the United States. (*Id.* at 9–10). Charité further argues that MMAS fails to meet its burden to establish subject matter jurisdiction because it never alleges that Charité’s infringement occurred in the United States. (*Id.* at 11). Finally, Charité argues that none of the exhibits cited in the Opposition or any Charité publication reproduces, distributes, or otherwise displays MMAS-8 or the Morisky Widget, and therefore cannot form the basis of infringement claims. (*Id.* at 13–14).

The Ninth Circuit has long recognized that “the United States copyright laws do not reach acts of infringement that take place entirely abroad.” *Subafilms, Ltd. v. MGM-Pathe Commc ’ns Co.*, 24 F.3d 1088, 1098 (9th Cir. 1994); see *Blazevska v. Raytheon Aircraft Co.*, 522 F.3d 948, 954 (9th Cir. 2008) (confirming *Subafilms*’ holding that copyright infringement in foreign distribution of films is not actionable in the United States). “[I]n order for U.S. copyright law to apply, at least one alleged infringement must be completed entirely within the United States.” *Allarcom Pay Television, Ltd. v. Gen. Instrument Corp.*, 69 F.3d 381, 387 (9th Cir. 1995).

Because the issue of extraterritoriality concerns the Court’s subject matter jurisdiction over the Copyright Claim, MMAS bears the burden of proving that the case is properly in federal court. See *Superama Corporation, Inc. v. Tokyo Broadcasting System Television, Inc.*, 830 Fed.Appx. 821, 823-24 (9th Cir. 2020) (“Dismissal for lack of subject matter jurisdiction was thus proper here, as all alleged infringing activity took place outside of the United States.”).

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Here, Plaintiff does not meet its burden to demonstrate that Defendants' alleged infringements were completed within the United States. The FAC does not specifically allege that any unauthorized use of MMAS's copyright was completed in the United States. (*See generally* FAC). In its Opposition, MMAS cites 12 publications on U.S. servers related to studies that used Morisky intellectual property. This alone is not enough to establish the infringement in the United States because the publications themselves do not reproduce or otherwise use the Morisky Widget source code that MMAS allegedly owns. (*See Opp.*, Exs. A–K). Moreover, the facts and conclusions presented within the articles, allegedly reached using the copyrights at issue, do not themselves infringe the copyright. *See* 2 PATRY ON COPYRIGHT § 4:9 (“Based on principles similar to those motivating exclusion of rights in facts and historical events, courts have also denied protection to news, data, discoveries, theories, research, ‘sweat of the brow,’ concepts, scientific principles, and even characterizations of life in certain parts of cities”).

Further, MMAS's reliance on *Spanski* and the Berne Convention to suggest that the Copyright Act applies to Charité's alleged infringements in Germany is misplaced. In *Spanski*, the District of Columbia Circuit Court held that an infringing performance that originated abroad but that ultimately reached viewers in the United States was actionable under the Copyright Act. *Spanski Enterprises, Inc.*, 883 F.3d at 913. Here though, no such infringement takes place in the United States, so there is no domestic application of Copyright Act. *See id.* at 914, 918. The Court agrees with Charité that nothing in *Spanski* overrules established precedent that infringements that occur entirely overseas are not actionable in the United States.

The Court determines that Plaintiff fails to meet its burden of proving that the case is properly in federal court. Accordingly, the Motion to dismiss MMAS's copyright claim is **GRANTED**.

MMAS requests that the Court order jurisdictional discovery before any dismissal. (*Opp.* at 10). MMAS contends that such discovery is permissible because Charité's assertion that its alleged acts of infringements occurred in Germany is

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“peculiarly within the knowledge of” Defendant. (*Id.* (citing *Greenpeace, Inc. v. The State of France*, 946 F. Supp. 773, 789 (C.D. Cal. 1996))).

Charité argues that permitting jurisdictional discovery is inappropriate because the request is untimely and unwarranted. (Reply at 14). Charité suggests that MMAS has not raised a reasonable doubt that any infringement occurred outside of Germany. (*Id.* (citing *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) (jurisdictional discovery is appropriate “only if it is possible that the plaintiff can demonstrate the requisite jurisdictional facts if afforded the opportunity”).

The Court agrees that additional discovery would be useless here as MMAS has not meaningfully disputed that all of Charité’s allegedly infringing actions took place outside of the United States. *Cf. Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008) (affirming district court’s denial of the plaintiff’s request for jurisdictional discovery where it “was based on little more than a hunch that it might yield jurisdictionally relevant facts”). Accordingly, the Court will not order jurisdictional discovery.

3. Statute of Limitations

The Court does not address the statute of limitations issue having found two independent bases to grant dismissal of the Copyright Claim.

B. Breach of Contract and Unfair Business Practices

1. Supplemental Jurisdiction

Defendant argues that if the Copyright Claim is dismissed, the Court should decline to exercise supplemental jurisdiction over MMAS’s remaining state law claims. (Mot. at 22, 24 (citing *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (“The Supreme Court has stated, and [the Ninth Circuit] ha[s] often repeated, that ‘in the usual case in which all federal-law claims are eliminated before

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trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims.”). MMAS did not address this argument.

The Court determines that it is appropriate to decline to exercise supplemental jurisdiction over the remaining state law claims. *See* 28 U.S.C. § 1367(c)(3) (“[D]istrict courts may decline to exercise supplemental jurisdiction over a claim” if “the district court has dismissed all claims over which it has original jurisdiction”). Accordingly, the Court **GRANTS** the Motion to dismiss MMAS’s state law claims.

2. Copyright Preemption

The Court does not reach this issue having declined to exercise supplemental jurisdiction and determined that Plaintiff does not have standing to bring a copyright claim.

IV. CONCLUSION

The Motion is **GRANTED**.

MMAS may file a Second Amended Complaint, if any, on or before **December 5, 2022**. Defendant shall respond to the Second Amended Complaint, if any, on or before **January 2, 2023**. While there may be a Second Amended Complaint, there will be no Third. Any future successful motion to dismiss will be granted without leave to amend.

Dr. Morisky may file his own First Amended Complaint on or before **December 5, 2022**. If he fails to do so, the Court welcomes Charité to move to dismiss the case for lack of prosecution.

IT IS SO ORDERED.