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[REDACTED]

Counsel for Defendant Beggars Group, Ltd.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Lo-Fang aka Matthew Jordan Hemerlein,

Plaintiff,

v.

Beggars Group Ltd.,

Defendant.

Case No. 2:25-cv-04132-PHX-MTL

***CORRECTED MOTION TO
DISMISS AND MOTION TO
STRIKE***

Under Federal Rules of Civil Procedure 12(b)(3) and (b)(6), Defendant Beggars Group Limited requests the Court dismiss Counts 2 through 5 of Plaintiff Mr. Hemerlein’s First Amended Complaint (doc. 21) on grounds (1) this is not the proper forum for these contract-related claims, which are premised on a contract with a forum-selection clause setting exclusive jurisdiction in U.K. courts; and (2) the claims fail because Beggars Group is not a party to the subject contract and because they are brought outside the applicable statute of limitations.

Beggars Group further requests the Court strike the First Amended Complaint for failure to comply with the form requirements of LRCiv 7.1.

This Motion is supported by the following Memorandum of Points and Authorities.

J A B U R G W I L K
L A W F I R M

JABURG WILK
LAW FIRM

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF BACKGROUND FACTS

Beggars Group is a U.K.-based music label group. (Doc. 21 ¶ 13). Beggars Group owns Nonparty 4AD Limited, a record label to which Plaintiff Matthew Hemerlein (aka Lo-Fang) was previously signed. (*Id.* ¶¶ 14, 22). On August 9, 2013, Mr. Hemerlein and Nonparty 4AD entered into a recording contract, a copy of which is attached as Exhibit “A” to the First Amended Complaint. (*Id.* ¶ 22; Doc. 21-1). The contract included a provision stating “[t]he Agreement shall be exclusively governed by the laws of England and Wales and exclusively subject to the jurisdiction of the courts of England and Wales.” (Doc. 21-1 at 13 ¶ 30). Defendant Beggars Group was not a party to the recording contract and was not identified in any way in the agreement. (Doc. 21-1).

On November 25, 2014, 4AD sent a termination letter to Mr. Hemerlein’s counsel. (Doc. 21 ¶ 35). Mr. Hemerlein alleges he never received the letter, but that a 4AD representative informed him of the termination letter by email in early December 2014. (*Id.* ¶ 39).

The First Amended Complaint goes on to detail numerous issues Mr. Hemerlein purportedly experienced with 4AD, including the company’s failure to timely exercise a contract option, the company’s late issuance of the termination letter, the company’s failure to clearly communicate the status of the contract directly to him, the company’s failure to get his informed consent before exploiting his recordings and licenses under the contract, the company’s pressure to change lyrics interfering with his artistic expression, the company’s issuance of confusing royalty statements, and suspicions that he was not paid an appropriate royalty under the contract because his attorney purportedly had a conflict of interest. (*Id.* ¶¶ 28-78).

Mr. Hemerlein recently registered the domain name <beggars.ai> (*Id.* ¶ 91). Shortly thereafter, Beggars Group filed a UDRP action with the World Intellectual

1 Property Organization (“WIPO”), challenging Mr. Hemerlein’s registration and use of
 2 the domain name. (*Id.* ¶ 94). The WIPO panel ultimately issued a decision ruling in
 3 Beggars Group’s favor and ordering the domain name be transferred to Beggars Group.
 4 (*Id.* ¶ 95). A true and correct copy of the panel decision *Beggars Group Limited v. Lo*
 5 *Fang (Matthew Jordan Hemerlein)*, No. DAI2025-0046 (WIPO Oct. 27, 2025), is
 6 attached hereto as **Exhibit A**.

7 The WIPO panel found Mr. Hemerlein had both registered and used the domain
 8 name in bad faith in a wrongful attempt to capitalize on Beggars Group’s trademark
 9 rights. *Id.* The WIPO panel rejected Mr. Hemerlein’s First Amendment defense of
 10 having registered the domain name as a gripe site as mere pretext to exploiting Beggars
 11 Group’s trademarks so he could promote his upcoming album release and his AI
 12 artists’ rights company. *Id.* The panel noted the homepage of the website at the domain
 13 name exclusively promoted Mr. Hemerlein’s commercial pursuits and did not include
 14 any criticism until Beggars Group filed the UDRP action. *Id.* Accordingly, the WIPO
 15 panel ordered the transfer of the domain name to Beggars Group. *Id.*

16 Mr. Hemerlein filed the present lawsuit in the District of Arizona¹ to stop the
 17 transfer of the domain name to Beggars Group (Doc. 21 ¶ 97). The original complaint
 18 merely sought relief from the WIPO decision. (Doc. 1). On November 20, 2025, Mr.
 19 Hemerlein filed a First Amended Complaint, drastically expanding the allegations and
 20 asserting six counts, including (1) declaratory relief that the domain name is being
 21 lawfully used; (2) breach of contract; (3) breach of the implied covenant of good faith
 22 and fair dealing; (4) “Equitable Relief-Rescission, Reformation, and Accounting”; (5)
 23 “Declaratory Relief-Conflict of Interest and Attorney Misconduct”; and (6) injunctive

24 _____
 25 ¹ Pursuant to Rules 1 and 3(b)(xii) of ICANN’s Rules for Uniform Domain Name
 26 Dispute Resolution Policy, Beggars Group submitted, “with respect to any challenges
 27 to a decision in the administrative proceeding,” to the jurisdiction of the courts at the
 28 location of the principal office of the concerned registrar. The concerned registrar here
 is Namecheap, which is headquartered in Phoenix. A true and correct copy of the
 ICANN Rules are attached as **Exhibit B**.

1 relief restraining transfer of the domain name to Beggars Group. (Doc. 21). Both the
 2 original complaint and the First Amended Complaint identify Mr. Hemerlein’s place
 3 of residence in Portugal. (Doc. 1 at 1; Doc. 21 at 1).

4 **II. COUNTS 2-5 OF THE FIRST AMENDED COMPLAINT SHOULD BE**
 5 **DISMISSED.**

6 **A. The Contract-Related Claims Are Subject to Dismissal for Improper**
 7 **Forum Because the Subject Contract Contains an Exclusive Forum-**
 8 **Selection Clause in the U.K.**

9 A motion to dismiss for improper forum under Rule 12(b)(3) is the proper
 10 vehicle to enforce a forum-selection clause. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*,
 11 858 F.2d 509, 512-13 (9th Cir. 1988). When evaluating a motion to dismiss under Rule
 12 12(b)(3), the court need not accept the allegations in the complaint as true and may
 13 consider facts outside the pleadings. *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133,
 14 1137 (9th Cir. 2004).

15 “[T]he Supreme Court has established a strong policy in favor of the
 16 enforcement of forum selection clauses.” *E. & J. Gallo Winery v. Andina Licores S.A.*,
 17 446 F.3d 984, 992 (9th Cir. 2006) (citations omitted). Courts presume the validity of
 18 forum-selection clauses and any challenge to the clause is subject to “a heavy burden.”
 19 *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009) (citing *M/S Bremen v. Zapata*
 20 *Off-Shore Co.*, 407 U.S. 1, 17, 92 S.Ct. 1907 (1972)). Forum selection clauses “should
 21 be honored ‘absent some compelling and countervailing reason.’” *Murphy*, 362 F.3d
 22 at 1140 (citing *M/S Bremen*, 407 U.S. at 12, 92 S.Ct. 1907).

23 Counts 2 through 5 of the First Amended Complaint are premised on Mr.
 24 Hemerlein’s recording contract. (See Doc. 21 ¶ 110) (**Count 2** Breach of Contract:
 25 “The Recording Contract is a valid and enforceable contract between Plaintiff and
 26 4AD”); (*Id.* ¶ 115) (**Count 3** Implied Covenant of Good Faith and Fair Dealing: “The
 27 Recording Contract contained an implied covenant of good faith and fair dealing”);
 28 (*Id.* ¶ 120) (**Count 4** “Rescission, Reformation, and Accounting”: “Plaintiff seeks
 equitable relief, including rescission or partial rescission of the Recording Contract”);

1 (*Id.* ¶ 27) (**Count 5** “Conflict of Interest and Attorney Misconduct”: “Plaintiff
2 contends that the conflict of interest and related attorney misconduct tainted the
3 Recording Contract”).

4 Mr. Hemerlein attached the subject recording contract as Exhibit “A” to the
5 First Amended Complaint. (Doc. 21-1). Paragraph 30 of the recording contract
6 provides that “[t]he Agreement shall be exclusively governed by the laws of England
7 and Wales and exclusively subject to the jurisdiction of the courts of England and
8 Wales.” (Doc. 21-1 at 13 ¶ 30).

9 As this provision requires the exclusive application of U.K. law and that the
10 contract be subject to the exclusive jurisdiction of U.K. courts, this is the improper
11 forum for Counts 2 through 5 of the Amended Complaint. Accordingly, Counts 2
12 through 5 should be dismissed for improper forum.

13 **B. The Contract-Related Claims Are Subject to Dismissal for Failure**
14 **to State a Claim Because Defendant Is Not a Party to the Contract**
15 **and the Claims Are Brought Outside the Applicable Statute of**
16 **Limitations.**

17 Under Rule 12(b)(6), the Court may dismiss a complaint on grounds it lacks a
18 cognizable legal theory or if there are insufficient facts to support a cognizable legal
19 claim. *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011). When
20 evaluating a Rule 12(b)(6) motion, the Court must take all facts in the complaint as
21 true and construe the pleadings in the light most favorable to the nonmovant. *Bates v.*
22 *Mortg. Elec. Registration Sys., Inc.*, 694 F.3d 1076, 1080 (9th Cir. 2012). However,
23 legal conclusions couched as facts are not presumed true and “conclusory allegations
24 of law and unwarranted inferences are not sufficient to defeat a motion to
25 dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). To survive such a
26 motion, the complaint must plausibly demonstrate the plaintiff is entitled to relief.
27 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Ashcroft v. Iqbal*,
28 556 U.S. 662, 678, 129 S.Ct. 1937 (2009)).

1 While the scope of review on a Rule 12(b)(6) motion is generally limited to
 2 contents of the complaint, the Court may “consider certain materials—documents
 3 attached to the complaint, documents incorporated by reference in the complaint, or
 4 matters of judicial notice—without converting the motion to dismiss into a motion for
 5 summary judgment.” *Bond v. Wells Fargo Bank NA*, 782 F. Supp. 3d 743, 750 (D.
 6 Ariz. 2025) (citing *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)).
 7 Moreover, a document not physically attached to the complaint may also be considered
 8 when it is referenced in the complaint and its authenticity is not reasonably questioned.
 9 *Cooper v. Pickett*, 137 F.3d 616, 623 (9th Cir. 1997) (quoting *Branch v. Tunnell*, 14
 10 F.3d 449, 453 (9th Cir. 1994)).

11 A motion to dismiss based on a statute-of-limitations defense may be granted if
 12 the running of the statute is apparent from the face of the complaint. *Huynh v. Chase*
 13 *Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006).

14 **Beggars Group is not a party to the contract underlying Counts 2-5.** The
 15 recording agreement that forms the basis for Counts 2-5 is attached as Exhibit “A” to
 16 the First Amended Complaint. (Doc. 21-1). The recording agreement is between
 17 Plaintiff Mr. Hemerlein and his former record label, Nonparty 4AD Limited. (Doc. 21
 18 ¶ 22; Doc. 21-1 at 1, 20). Defendant Beggars Group does not appear anywhere in the
 19 agreement. (Doc. 21-1). Nevertheless, the First Amended Complaint asserts these
 20 contract-related claims against Beggars Group, apparently on grounds it owns 4AD
 21 Limited. (Doc. 21 ¶ 14).

22 But a parent corporation’s ownership of a subsidiary does not subject the parent
 23 to liability for the subsidiary’s conduct. “As a general principle, corporate separateness
 24 insulates a parent corporation from liability created by its subsidiary, notwithstanding
 25 the parent’s ownership of the subsidiary.” *Cox v. CoinMarketCap OPCO, LLC*, 112
 26 F.4th 822, 835 (9th Cir. 2024) (quoting *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070 (9th
 27 Cir. 2015)); *see also Dole Food Co. v. Patrickson*, 538 U.S. 468, 474, 123 S.Ct. 1655
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1 (2003) (“A basic tenet of American corporate law is that the corporation and its
 2 shareholders are distinct entities.”); *United States v. Bestfoods*, 524 U.S. 51, 61, 118
 3 S.Ct. 1876 (1998) (“Ordinarily, a corporation which chooses to facilitate the operation
 4 of its business by employment of another corporation as a subsidiary will not be
 5 penalized by a judicial determination of liability for the legal obligations of the
 6 subsidiary.”); *Anderson v. Abbott*, 321 U.S. 349, 362, 64 S.Ct. 531 (1944) (“Limited
 7 liability is the rule, not the exception.”).

8 Mr. Hemerlein cannot hold Beggars Group liable for the acts of Nonparty 4AD.
 9 That is precisely what he seeks to do in Counts 2-5 of the First Amended Complaint.
 10 Accordingly, Counts 2-5 should be dismissed for failure to state a claim.

11 **The applicable statute of limitation has run on Counts 2-5.** The recording
 12 contract underlying Counts 2-5 provides that it “shall be exclusively governed by the
 13 laws of England and Wales.” (Doc. 21-1 at 13 ¶ 30). In the U.K., actions founded on
 14 a contract must be brought within 6 years of the date the cause of action arises.
 15 Section 5 Limitation Act 1980 (c.58). Likewise, actions founded on tort must be
 16 brought within 6 years of the date of accrual. Section 2 Limitation Act 1980 (c.58).

17 Mr. Hemerlein filed the present action on November 5, 2025, which means his
 18 claims could not have accrued any earlier than November 6, 2019. The recording
 19 contract underlying Counts 2-5 was entered into more than 12 years ago, in August
 20 2013. (Doc. 21 ¶ 22; Doc. 21-1 at 1). The complained-of conduct is mostly alleged to
 21 have occurred in and around the term of the agreement in 2013 and 2014. (Doc. 21 ¶¶
 22 17, 22, 28-29, 35, 39, 52-53, 63, 72, 82). There are additional allegations concerning
 23 2017 emails Mr. Hemerlein exchanged with his attorney concerning her interpretation
 24 of the contract. (*Id.* ¶¶ 56, 83). But there is no other conduct alleged thereafter, and
 25 certainly no other conduct that states a claim against Beggars Group.

26 Accordingly, Counts 2-5 of the First Amended Complaint are brought beyond
 27 the applicable statutes of limitation, and should be dismissed for failure to state a claim.

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JABURG WILK
LAW FIRM

1 **III. THE FIRST AMENDED COMPLAINT SHOULD BE STRICKEN FOR**
2 **FAILURE TO COMPLY WITH LRCIV 7.1(B).**

3 Beggars Group further seeks to strike the First Amended Complaint (the
4 “FAC”) on grounds it fails to comply with the form requirements of LRCiv 7.1(b),
5 including, *inter alia*, that pleadings must be double-spaced (the FAC is single-spaced),
6 shall not exceed 28 lines per page (the FAC exceeds 50), shall use a font size no smaller
7 than 13 point (the FAC’s font appears to be 10 or less), must leave a left margin no
8 less than 1.5 inches (the FAC leaves one inch), and must have numbered pages (the
9 FAC is not numbered). *See Rosenbaum v. Bank of Am. NA, CV-22-02072-PHX-JAT,*
10 *2024 WL 1485966, at *1 (D. Ariz. Apr. 5, 2024) (granting a motion to strike complaint*
11 *for failing to conform to LRCiv. 7.1(b)).*

12 The First Amended Complaint contains more than 130 dense and lengthy
13 single-spaced allegations, most of which concern the contract-related claims added in
14 the First Amended Complaint. Accordingly, Beggars Group respectfully requests the
15 Court strike the pleading in its entirety with instructions to comply with the local rules
16 when refileing an amended complaint focused solely on its allegations and claims
17 related to the UDRP decision.

18 **IV. CONCLUSION**

19 Due to the foregoing, Defendant Beggars Group Limited requests the Court
20 dismiss Counts 2-5 of the First Amended Complaint for improper venue and failure to
21 state a claim. Beggars Group further requests the Court strike the First Amended
22 Complaint in its entirety for failure to comply with LRCiv. 7.1.

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JABURG WILK
LAW FIRM

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DATED this 11th day of December, 2025.

Jaburg & Wilk, P.C.

/s/ Aaron K. Haar _____

Aaron K. Haar

Maria Crimi S. eth

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[Redacted]

Attorneys for Defendant Beggars Group Ltd.

Certificate of Service

I hereby certify that on 11th day of December 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Lo-Fang [Redacted] emerlein

[Redacted]

Pro Se Plaintiff

/s/ Aaron K. Haar _____

Certificate of Good Faith Consultation

I hereby certify that I consulted with Plaintiff concerning the issues I intended to assert in this motion, and the parties were unable to agree that Plaintiff would amend to cure the issues raised herein.

/s/ Aaron K. Haar _____