IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUAN PABLO CHAVEZ, Plaintiff, v. BERTELSMANN SE & CO. KGaA, *et al.*, Defendants.	: : : : : : : : : : :	CIVIL ACTION NO. 1:18-CV-0356-AT

ORDER

The Magistrate Judge has granted Plaintiff's request to proceed *in forma pauperis*. Therefore, this matter is before the Court on a review pursuant to 28 U.S.C. § 1915(e)(2).

I. Factual Allegations in the Complaint

Plaintiff Juan Pablo Chavez ("Chavez") is a musician and entrepreneur who "reside[s] in . . . California in the winters and . . . New York in summers . . . ." (*See* Statement of Facts, Doc. 4-2 at 21-25.) In late 2010, Chavez created a musical persona, or, "work series", called "Johnny Arco." (*Id.* at 21.) He did so "to separate a salsa music career from an Alternative Rock music career . . . ." (*Id.*) Chavez formed an LLC in conjunction with this work series called TSE Management, LLC "to organize [his] assets and limit liability." (*Id.* at 23.) TSE Management, LLC conducted business under the following d/b/a (doing business

as) names: GRBK Music Group, and Johnny Arco.[1] (*Id.* at 23-24.) Chavez's LLC claimed exclusive rights to Johnny Arco. (Invoice, Doc. 4-2 at 6.)

Although the details are not clearly presented, it appears as if Chavez, d/b/a Johnny Arco, signed a contract to be "a participant in Season XIV of the television series entitled 'AMERICAN IDOL'." (American Idol Contract, Doc. 4-2 at 15.) Plaintiff attached that contract to his Complaint. (*Id.*) According to the American Idol Contract, Johnny Arco granted to American Idol the right to record him in any fashion as well as ownership rights to the resulting recordings. (*Id.* ¶ 1.) In addition, Johnny Arco released the rights to "any original material on the Program written or otherwise controlled by [Plaintiff] (for example, music, choreography, videos, photography, lyrics, clothing, etc. . . .)" (*Id.* ¶ 5.) Specifically, Johnny Arco granted to American Idol

> the rights necessary to perform and/or display [his original material] on the Program and the rights required to exploit the Program and the ancillary rights therein, inclusive of the Material, in any and all media now known or hereafter devised, and for any other purpose, throughout the universe in perpetuity with written consent.

(*Id.*) Finally, the American Idol Contract contains an arbitration clause stating that any dispute "arising out of or relating to" Johnny Arco's "participation in or connection with" American Idol should first be resolved informally, via discussions. (*Id.* ¶ 13.) If informal discussions fail to resolve the dispute, the agreement then requires mediation and then binding arbitration. (*Id.*)

[1] There is also some indication that a distinct LLC named Johnny Arco, LLC exists in conjunction with the Johnny Arco Persona, (*see* Invoice, Doc. 4-2 at 3), but it is unclear from Plaintiff's filings whether Johnny Arco is a d/b/a or a separate artificial entity.

The Defendants are numerous businesses and individuals involved in the production of the show American Idol. (*See* Statement of Facts, Doc. 4-2 at 21-22.) Specifically, Chavez alleges that Defendants "copied" some of his performances, recordings, and an arrangement. (*Id.* at 21.) He alleges that Defendant's copying of his work "appeared on [Defendant] BERTELSMANN'S tv series American Idol" without securing permission from him personally or purchasing licenses from TSE Management, LLC. (*Id.* at 21-22.) The heart of Chavez's copyright allegations is laid out in his attached statement of facts:

> [t]he defendants labeled my mark in their A/V series with A/V recording of my body/image and Johnny Arco™ brand on a FOX Primetime broadcast unjustly enriched by my original work that is causing confusion as to the origin and sponsorship of defendants goods, and is deceiving as to the affiliation of JOHNNY ARCO™'s and Bertelsmann's works.
>
> I and JOHNNY ARCO™ do not approve of Bertlesmann's works, and we do not sponsor their goods, services and commercial activities including their Billion Dollar Scale commercial advertising and promotion that misrepresents JOHNNY ARCO's and my nature, characteristics & qualities.

(Statement of Facts, Doc. 4-2 at 21-22.)

In response to this allegedly unauthorized broadcast, Chavez sent an itemized invoice through his LLC to several Defendants seeking $1,654,672,902.00. (Invoice, Doc. 4-2 at 3.) Upon the apparent failure of Defendants to pay that invoice, Chavez appears to have sought representation through a union, SAGAFTRA – the Screen Actors Guild American Federation of Television and Radio Artists. (*See* Email from Chavez to Billy Murphy and David Besbris, Doc. 4-2 at 8.) However, Chavez ultimately brought an action in this

Court alleging copyright violations by Defendants. (Statement of Facts, Doc. 21-24.)

II. Standard of Review

Title 28 U.S.C. § 1915(e)(2) requires a federal court to dismiss an action if it (1) is frivolous or malicious, or (2) fails to state a claim upon which relief may be granted. The purpose of Section 1915(e)(2) is "to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). A dismissal pursuant to Section 1915(e)(2) may be made *sua sponte* by the Court prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering frivolous complaints. *Id.* at 324.

A claim is frivolous "where it lacks an arguable basis either in law or in fact." *Id.* at 325. In other words, a complaint is frivolous when it "has little or no chance of success" — for example, when it appears "from the face of the complaint that the factual allegations are clearly baseless[,] the legal theories are indisputably meritless," or "seeks to enforce a right that clearly does not exist." *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (internal quotations omitted); *see also Neitzke v. Williams*, 490 U.S. at 327. In the context of a frivolity determination, the Court's authority to "'pierce the veil of the complaint's factual allegations' means that a court is not bound, as it usually is when making

a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." *Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (quoting *Neitzke v. Williams*, 490 U.S. at 325).

A complaint fails to state a claim when it does not include "enough factual matter (taken as true)" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007) (noting that "[f]actual allegations must be enough to raise a right to relief above the speculative level," and complaint "must contain something more . . . than . . . statement of facts that merely creates a suspicion [of] a legally cognizable right of action"); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 680-685 (2009); *Oxford Asset Mgmt. v. Jaharis*, 297 F.3d 1182, 1187-88 (11th Cir. 2002) (stating that "conclusory allegations, unwarranted deductions of facts[,] or legal conclusions masquerading as facts will not prevent dismissal"). While the Federal Rules do not require specific facts to be pled for every element of a claim or that claims be pled with precision, "it is still necessary that a complaint 'contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.'" *Fin. Sec. Assurance, Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1282-83 (11th Cir. 2007). A plaintiff is required to present "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" and "'naked assertion[s]' devoid of 'further factual enhancement'" do not suffice. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

The Court recognizes that Plaintiff is appearing *pro se* at this juncture. Thus, his Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with threshold requirements of the Federal Rules of Civil Procedure. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1998), *cert. denied*, 493 U.S. 863 (1989). Nor does this leniency require or allow courts "to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action." *GJR Invs., Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998).

III. Discussion

Upon review, the Court concludes that Plaintiff is not entitled to proceed *in forma pauperis* for two reasons: (1) because Plaintiff, Chavez, is not the real party in interest for the claims he asserts; and (2) because the real party in interest, Plaintiff's LLC, cannot legally proceed *in forma pauperis* under 28 U.S.C. § 1915. Plaintiff's Complaint must therefore be dismissed.

First, Plaintiff Chavez, as an individual, is not the real party in interest to the claims he asserts. "An action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a)(1). Whether a party is the real party in interest is governed by the controlling substantive law. *See Infodek, Inc. v. Meredith-Webb Printing Co.*, 830 F. Supp. 614, 619 (N.D. Ga. 1993) (citing

Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc., 630 F.2d 250, 256-57 (5th Cir. 1980)). "Copyright infringement is controlled by the federal copyright law, which provides that '[t]he legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it." *Infodek*, 830 F. Supp. at 619–20 (quoting 17 U.S.C. § 501(b)) (footnotes omitted).

As mentioned above, in Plaintiff's attached statement of facts, he notes that he formed TSE Management LLC & GRBK Music Group "to organize [his] assets and limit liability." (Statement of Facts, Doc. 4-2 at 23-24.) Plaintiff specifically indicates that he wishes to proceed through those artificial entities. (*See, e.g.*, *id.* at 24 ("I desire to have a corporate veil of TSE Management LLC d/b/a GRBK Music Group d/b/a Johnny Arco PRO SE & IFP . . . .").) Moreover, Plaintiff indicates that even JOHNNY ARCO, the act allegedly used without permission or license, is "an assumed name (DBA) of" his LLC. (*Id.* at 24.) Further, Chavez's attached invoice to Defendants states: "JOHNNY ARCO™ is a trademark & service mark"; and "an exclusive performing and recording artist of GRBK MUSIC GROUP™ . . . ." (Invoice, Doc. 4-2 at 6.) Finally, it was Johnny Arco that entered into the American Idol Contract, not Chavez. (*See* American Idol Contract, Doc. 4-2 at 18.) It is evident, therefore, that Plaintiff's company, TSE

Management, LLC, not Plaintiff as an individual, is the proper party in the asserted claim of copyright infringement.[2]

In addition, the real party in interest, TSE Management, LLC, may not proceed *in forma pauperis* because it is an artificial entity excluded from 28 U.S.C. § 1915. As a limited liability company (LLC), the real party in interest is an artificial entity. However, "the IFP statute only allows a 'person' to proceed [*in forma pauperis*], not an artificial entity such as an LLC or a corporation." *LH Properties II, LLC v. Absolute Med. Weight Loss*, No. 118CV01051CAPAJB, 2018 WL 1833253, at *2 (N.D. Ga. Mar. 14, 2018), *report and recommendation adopted*, No. 1:18-CV-1051-CAP, 2018 WL 1858262 (N.D. Ga. Mar. 29, 2018). In other words, only *natural* persons may proceed under the statute. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–02 (1993) (holding that inmate association may not proceed *in forma pauperis* because the statute applies only to natural persons). Therefore, even if Plaintiff substituted the real party in interest, the claim could not proceed under § 1915(a) because that option is not legally available to the LLC.[3]

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[2] The Court notes that it in addition, Plaintiff attempts to include some form of constitutional challenge to the U.S. copyright law framework. (*See* Statement of Facts, Doc. 4-2 at 23.) However, Plaintiff has failed to include enough specific information for the Court to consider this claim. *See GJR Invs., Inc., supra*, 132 F.3d 1369 (a court, in its leniency, may not rewrite a deficient complaint).

[3] Further, even if Plaintiff abandons his attempt to proceed *in forma pauperis*, proceeds as the real party in interest, and pays the filing fee, TSE Management, LLC must still be represented by counsel. "It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel." *Rowland*, 506 U.S. at 201–02 (citing *Osborn v. President of Bank of United States*, 9 Wheat. 738, 829 (1824)). Thus, Plaintiff's LLC, the proper party, may only proceed both by paying the filing fee and with licensed counsel.

Because Plaintiff seeks to prosecute this claim as an artificial entity, he can only proceed with counsel, and he must pay the filing fee.

IV. Conclusion

For the reasons stated above, the Court **DISMISSES** this action **WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915A.[4]

IT IS SO ORDERED this 20th day of June, 2018.

Amy Totenberg
United States District Judge

[4] In order to maximize judicial efficiency, the Court also notes that even without this procedural hurdle, Plaintiff's Complaint may be frivolous, as it "seeks to enforce a right that clearly does not exist." *See Carroll*, *supra*, 984 F.2d at 393. In particular, it appears that Plaintiff, acting as Johnny Arco, expressly waived all of the rights he now seeks to enforce when he signed the American Idol Contract. (*See* Doc. 4-2 ¶¶ 1, 5, 13.)