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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESMÉ BIANCO,

Plaintiff,

v.

BRIAN WARNER a/k/a MARILYN MANSON, individually, MARILYN MANSON RECORDS, INC.,

Defendant.

Case No. 2:21−cv−03677 FLA (MARx)

PLAINTIFF'S RESPONSE TO DEFENDANT BRIAN WARNER a/k/a MARILYN MANSON'S MOTION TO DISMISS

(JURY TRIAL DEMANDED)

Date: July 1, 2022

Time: 1:30 p.m.

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Plaintiff ESMÉ BIANCO; ("Ms. Bianco" or "Plaintiff"), by and through her attorneys, brings this response to Defendant BRIAN WARNER a/k/a MARILYN MANSON'S, individually ("Mr. Warner" or "Defendant") Motion to Dismiss (Dkt. No. 42). In support thereof, Plaintiff submits the following:

I. INTRODUCTION

Defendant Warner's motion should be denied as the Court has supplemental jurisdiction over Plaintiff's adequately plead claims. On April 30, 2021, Plaintiff originally brought claims against Defendant for sexual harassment, sexual battery, and violations of human trafficking laws. (Dkt. No. 1). On October 7, 2021, the Court denied Defendant's Motion to Dismiss. (Dkt. No. 26). Less than six months later, Defendant Manson retaliated against Plaintiff and tortiously interfered with Plaintiff's contract with the Deftones, causing the contract to be breached and Plaintiff to lose out on lucrative opportunities as well as the opportunity to work with a highly sought-after creative director.

Consequently, on April 27, 2022, Plaintiff requested that the Court modify the scheduling order and allow Plaintiff to file a Second Amended Complaint to include claims against Defendant Warner for tortious interference with a contract and tortious interference with a prospective economic advantage. (Dkt. No. 25). Defendants did not oppose this request. The Court granted Plaintiff's Motion and on May 13, 2022, Plaintiff filed her Second Amended Complaint, now including these two new claims.

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(Dkt. No. 40). These allegations were sufficiently plead giving Defendant Warner fair notice of the allegations against him. Additionally, as the retaliation occurred between the Parties involved in the instant litigation, occurred during the pendency of the instant litigation, and likely occurred because of the instant litigation, the new causes of action *ipso facto* share "the same nucleus of common fact" allowing this Court to exercise jurisdiction over the entire related dispute between the parties. The result requested by Defendant Warner would be wildly inefficient and is unsupported by both the facts and the law.

II. FACTUAL STATEMENT

In April 2022, Ms. Bianco entered into a contract to provide the musical group Deftones with images of herself to be used during the band's current tour. (Dkt. No. 40 at ¶ 33). In exchange for these images, Ms. Bianco expected an economic benefit from the significant public exposure of her images during the band's worldwide tour. (*Id.*). Ms. Bianco would also benefit from the opportunity to continue working with the highly sought-after creative director who oversaw the project. (*Id.*). On April 11, 2022, Ms. Bianco performed her end of the contract, by participating in a video shoot for the band and providing the images for the Deftones' use. (*Id.* at ¶ 34). Ms. Bianco received approval from the creative director of the project to post about her collaboration with the Deftones on her Instagram story, which she did at 9:08 a.m. on April 12, 2022. (*Id.*).

Soon thereafter, Defendant Warner learned about Ms. Bianco's involvement

in the project for the Deftones. (*Id.* at ¶ 35). Defendant Warner proceeded to contact the band and confront them over the Deftones' decision to work with Ms. Bianco. (*Id.*). Defendant Warner used his power and influence in the entertainment industry to interfere with Ms. Bianco's ability to continue to work with the Deftones. (*Id.*). Defendant Warner called the Deftones to cause the contract with Ms. Bianco to be breached by the Deftones by convincing them to refuse to utilize Ms. Bianco's images. (*Id.*).

Defendant Warner was successful, and on April 14, 2022, Ms. Bianco was informed that the Deftones would not perform their end of the contract with her because of Defendant Warner's interference. (*Id.* at ¶ 36). Ms. Bianco was told that her images would not be used during the Deftones upcoming tour. (*Id.*). As a consequence, Ms. Bianco has suffered the loss of the opportunity to work with the highly regarded creative director, as well as the loss of exposure of her images being used during the Deftones world tour. (*Id.* at ¶ 37). Ms. Bianco's loss of this professional relationship resulted in reputational damage and a loss of future economic opportunity with the Deftones, as well as the loss of the economic benefit of the public exposure afforded by the Deftones' tour. (*Id.*).

Defendant Warner's interference with her professional reputation and career opportunities is a recent continuation of the previously pled allegations of sexual abuse, assault, and intimidation. Plaintiff's new allegations are a continuation of Defendant Manson's actions to silence Ms. Bianco through threats, intimidation, and

coercion, and all of Plaintiff's claims are part of the same nucleus of facts and based on the same motive: Defendant Manson's intimidation and attempt to control Plaintiff.

III. LEGAL STANDARD

Defendant Warner has moved to dismiss Plaintiff's Fourth and Fifth Causes of Action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Neither are appropriate grounds for dismissal of Plaintiff's claims.

Defendant Warner moves for dismissal under Rule 12(b)(1) arguing that the Court does not have jurisdiction over Plaintiff's newly alleged claims. (Dkt. No. 42-1 at p. 3-6). The burden of proof on a 12(b)(1) motion is on the party asserting jurisdiction. *Flores v. CVS Pharmacy, Inc.,* 2009 WL 10673762 at *1 (C.D. Cal. 2009) (citing *Sopcak v. Northern Mountain Helicopter Serv.,* 52 F.3d 817, 818 (9th Cir. 1995)). This Court has jurisdiction over Plaintiff's Fourth and Fifth Causes of Action pursuant to 28 U.S.C. § 1367(a) because the Court has original jurisdiction over Plaintiff's First, Second and Third Causes of Action and Plaintiff's Fourth and Fifth Causes of Action form part of the same case or controversy.

Defendant Warner also moves for dismissal of Plaintiff's Fourth and Fifth Causes of Action under Federal Rule 12(b)(6), arguing that Plaintiff has not sufficiently plead her claims. However, Plaintiff must only allege "sufficient factual matter…to state a claim to relief that is plausible on its face." *OSU Student Alliance*

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v. Ray, 699 F.3d 1053, 1061 (9th Cir. 2012) (quoting *Pinnacle Armor, Inc. v. United States,* 648 F.3d 708, 721 (9th Cir. 2011). A claim is plausible if the factual content in the pleading allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). In reviewing a motion to dismiss under Rule 12(b)(6), courts accept the well-pleaded factual allegations of the complaint. *Gompper v. VISX, Inc.,* 298 F.3d 893, 895 (9th Cir. 2002). Dismissal is "inappropriate" if Plaintiff has set forth a claim to relief that is plausible. *New Mexico State Investment Council v. Ernst & Young LLP,* 641 F.3d 1089, 1094 (9th Cir. 2011).

IV. ARGUMENT

A. The Court Has Subject Matter Jurisdiction Over All of Plaintiff's Claims

This Court has subject matter jurisdiction over Plaintiff's newly alleged claims because they form part of the same case or controversy as Plaintiff's originally pleaded claims. Pursuant to 28 U.S.C. § 1367 (a), a Court has supplemental jurisdiction "over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Therefore, supplemental jurisdiction requires that there is a "common nucleus of operative fact." *Arroyo v. Rosas,* 19 F.4th 1202 (9th Cir. 2021) (stating that the district court is "required" to assert supplemental jurisdiction over claims deriving from a common

nucleus of operative fact unless a specific exception would apply); *Schafer v. Sea-Land Serv., Inc.,* 2001 WL 638409 (9th Cir. 2001).

While there is no definite test to determine if the claims are so related as to form the same case or controversy, courts should look to whether the facts are related in time, space, origin, or motivation; whether the facts form a "convenient trial unit;" and whether treating the facts as a unit would conform to the parties' expectations. *St. Paul Mercury Ins. Co. v. Del Webb Cal. Corp.,* 2017 WL 7661491 at *3 (C.D. Cal. 2017) (internal citations omitted) (emphasis added). Thus, "[e]ven a loose factual connection between the claims is generally sufficient." *United States Chess Fed'n Inc. v. Polgar,* 2009 WL 981257 at *3 (N.D. Cal. 2009) (quoting *Ammerman v. Sween,* 54 F.3d 423, 424 (7th Cir. 1995)). Finally, in determining whether to exercise supplemental jurisdiction, the court should consider and weigh the values of judicial economy, convenience, and fairness. *Executive Software North America Inc, v. USDC for Cent. Dist. Of Calif.,* 24 F.3d 1545, 1557 (9th Cir. 1994) (internal citations omitted); *Perez v. Wells Fargo Bank, N.A.,* 929 F.Supp. 988, 1001 (N.D. Cal. 2013).

All of Plaintiff's claims against Defendant Warner form a "common nucleus of operative fact." After Plaintiff finally found the strength to break free from Defendant's Warner's threats and abuse and bring claims against Defendant Warner, he then continued his unlawful persecution of Plaintiff by tortiously interfering in her new contract with the Deftones and making sure that Plaintiff would not be able to

profit in any way by this new relationship. These allegations form a common nucleus of fact. *See Schafer v. Sea-Land Serv., Inc.,* 2001 WL 638409 at *1 (9th Cir. 2001) (finding that "allegations of conspiracy and retaliation bring all of [plaintiff's] claims into a common nucleus of operative facts").

Indeed, in the interests of judicial economy and fairness all of Plaintiff's claims against Defendant Warner should be heard in the same action. They all stem from his manipulation, targeted abuse, and threats to Plaintiff. *Cross v. Aerospace Corp.,* 122 F.3d 1070 (9th Cir. 1997) (finding that supplemental jurisdiction over the state law claims was proper even after the federal claims giving the court original jurisdiction were dismissed because the claims arose from a "common nucleus of operative facts"). There is no justification for remanding these claims between the same parties to a different court.

Nor are Defendant Warner's cases applicable, where here the claims are between the same two parties and stem from the same motive and origin: Defendant Warner's unlawful controlling and abusive behavior towards Plaintiff. *See e.g., Goel v. Shah,* 2014 WL 460867 (N.D. Cal. 2014) (declining to exercise supplemental jurisdiction over state law claims against a different defendant); *Kellwood Apparel LLC v. Protrend Ltd.,* 2020 WL 8474701 at *2 (C.D. Cal. 2020) (declining to exercise supplemental jurisdiction where the plaintiff failed to identify "any legal element or operative fact which overlaps"); *White v. Deloitte & Touche, LLP,* 2013 WL 12222421 (C.D. Cal. 2013) (refusing to exercise supplemental jurisdiction over state

law claims against a different defendant involving "completely different allegations"); *Toll CA, L.P. v. American Safety Indemnity Co.,* 2017 WL 2628059 at *3-4 (S.D. Cal. 2017) (refusing to exercise supplemental jurisdiction over new claims arising from a different event against a new defendant and finding that Rule 19 applies). Defendant's Motion to dismiss under Rule 12(b)(1) should be denied.

B. Plaintiff Has Successfully Stated a Claim for Tortious Interference with a Contract

1. Plaintiff Has Plead a Valid and Enforceable Contract

Defendant Warner argues that Plaintiff failed to plead a valid and enforceable contract in her Second Amended Complaint. This argument fails. To survive a motion to dismiss, "a complaint must state a claim to relief that is plausible on its face" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A particular claim is said to have facial probability "when the plaintiff pleads factual content that *allows the court to draw reasonable inferences* that the defendant is liable for the misconduct alleged." *Id.* (emphasis added). 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." *Id.* at 679. To survive a 12(b)(6) motion to dismiss, a plaintiff must only plead those facts required to place Defendant "sufficiently on notice to defend themselves from the claim of causing the breach." *Orchard Supply Hardware LLC v. Home Depot USA, Inc.* 939 F. Supp.2d 1002 (N. D. Cal. 2013).

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Defendant argues that Plaintiff failed to allege the terms of the contract and mutual assent. (Defendant's Motion at p. 6-7). However, Plaintiff plead sufficient facts that a contractual relationship existed between Plaintiff and the Deftones, and that the Deftones consented to the terms of the agreement. Plaintiff pleaded that the contract between herself and the Deftones required that she provide her images to the Deftones, and that they would use those images on their upcoming tour, providing plaintiff with exposure and an opportunity to work with the creative director in charge of the tour. (Dkt. No. 40 at ¶ 33). Plaintiff and the Deftones agreed to this arrangement, and Plaintiff performed her end of the contract by providing her images to the Deftones. *Id*. Thus, the argument that Plaintiff failed to allege the details of the agreement or that the Deftones consented to the agreement is mistaken, as the terms of the agreement are stated on the face of the Second Amended Complaint. Furthermore, not only did Plaintiff adequately plead an agreement made between the two parties, but Plaintiff specified that the contract was partially performed by the time Defendant Warner's interference began. (*Id.* at ¶ 34-35) Accordingly, Plaintiff effectively plead the existence of a contractual relationship between herself and the Deftones.

2. <u>Plaintiff Sufficiently Plead Knowledge of the Contract by Defendant Warner</u>

The argument that Plaintiff failed to plead knowledge of the contract by Defendant Warner also fails. Plaintiff alleged that Defendant Warner began

interfering with her contractual relationship with the Deftones when *he discovered* that she was involved. (Dkt. No. 40 at ¶ 35) (emphasis added). Plaintiff established prior to the "participation in the project" language that Defendant Manson finds conclusory that the project at issue was in fact the contractual relationship between herself and the Deftones. (Dkt. No. 40 at ¶ 33-34). Plaintiff alleges that Defendant Warner was made aware of the contract and decided to confront the Deftones about it. (Dkt. No. 40 at ¶ 35).

Additionally, the alleged actions of Defendant Warner reveal his knowledge of the contractual relationship between Plaintiff and the Deftones. Had Defendant Warner not been aware of the contractual relationship between Plaintiff and the Deftones, he would not have had reason to confront the Deftones about their work with Plaintiff and ultimately convince them to breach the contractual relationship they had formed with Plaintiff. Far from being conclusory, the facts as alleged show that Plaintiff effectively pleaded that Defendant Warner had direct knowledge of the contractual relationship and purposefully interfered with it to the detriment of Plaintiff. Thus, Plaintiff's claims for tortious interference with a contract should not be dismissed.

C. Plaintiff has Successfully Stated a Claim for Tortious Interference with Prospective Economic Relationship

1. Plaintiff Sufficiently Alleged the Probability of Future Economic Benefit and Defendant Warner's Knowledge of Such a Relationship

Defendant Warner argues that Plaintiff failed to allege the probability of future

economic benefit and knowledge thereof. This argument fails. The tort of intentional interference with a prospective economic advantage requires (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. *Vascular Imaging Professionals, Inc.* 401 F. Supp. 3d 1005, 1012 (S. D. Cal. 2019); *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008); *Korea Supply Co. v. Lockheed Martin Corp.* 29 Cal.4th 1134, 1153 (Cal. 2003). Plaintiff successfully alleged each element of the tort of interference with a prospective economic relationship.

Plaintiff alleged in the Second Amended Complaint that because of the contract with the Deftones, she expected the future economic benefit of "continu[ed] [work] with the highly-sought after creative director" and that the use of her images would bring "similar social media opportunities in the future." (Dkt. No. 40 at ¶ 33-34). Defendant's argument that these expected benefits are not appropriately economic in nature is unfounded. Plaintiff is an entertainer, a well-known actress and model. The opportunity to work with creative directors provides exposure for the artist and the opportunities for future work - both with that particular director and with others within that director's network. The entertainment industry is heavily dependent on word-of-mouth recommendations for talent sourcing, and as an actress

and entertainer, Plaintiff's livelihood is directly dependent on her reputation and others' willingness to hire her for their projects. Plaintiff knew that working with this creative director would lead to future economic benefit, as the director was well-known and highly sought after for many different projects throughout the industry. But for Defendant Warner's interference, Plaintiff would have received significant future economic benefit from the partnership, thus making the relationship an economic as well as a creative one. Accordingly, by pleading that Defendant Warner interfered with her relationship with the Deftones and the creative director, Plaintiff effectively pleaded a plausible interference with a future economic benefit.

Plaintiff further effectively plead that Defendant Warner had knowledge of the future economic benefit he interfered with. Defendant Warner is "a musician and CEO of [a] record label." (Dkt. No. 40 at ¶ 11). The Second Amended Complaint mentions several times throughout that Defendant Warner has engaged in video shoots and movie planning and was familiar with the process of hiring entertainment talent, including his multiple attempts to "hire" Plaintiff for nonexistent projects. (Dkt. No. 40 at ¶¶ 14, 17, 19, 20, 26, 27, 28, & 29). Defendant's argument that Plaintiff failed to plead the knowledge element of tortuous interference with future economic benefit is unfounded. Defendant Manson is an experienced industry insider and fully understands exactly the kind of influence he wields. Thus, Plaintiff's claim for tortious interference with future economic benefit should not be dismissed.

2. Plaintiff Effectively Alleged an Independently Wrongful Act

Defendant Warner argues that Plaintiff failed to allege an independently wrongful act within the Second Amended Complaint. This argument also fails. A plaintiff seeking to recover for tortious interference with a future economic benefit must plead that the defendant engaged in an independently wrongful act in disrupting the relationship. *Reeves v. Hanlon*, 33 Cal.4th 1140, 1152 (Cal. 2004). An act is independently wrongful if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard. *Id.* (quoting *Korea Supply Co. v. Lockheed Martin Corp.* 29 Cal.4th 1134, 1153 (Cal. 2003)). Plaintiff's Second Amended Complaint is not required to make "detailed factual allegations" to survive a motion to dismiss. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Sanjuan v. American Bd. Of Psychiatry and Neurology Inc.*, 40 F.3d 247, 251 (C.A.7 1994)). Plaintiff's claims are simply required to be plausible on their face based on the facts pleaded to survive a motion to dismiss under Rule 12(b)(6). *Iqbal*, 556 U.S. 662 at 678.

Plaintiff alleged that Defendant Warner "used his power and influence in the entertainment industry" to induce the breach of contract by the Deftones. (Dkt. No. 40 at ¶ 35). This alleged fact, in addition to the previously alleged history of Defendant Warner's illegal actions towards Plaintiff, indicates that Defendant Warner utilized some sort of threat or other illegal action to induce the Deftones's breach and the subsequent loss of the future economic benefit that Plaintiff's

1 participation in the project would have brought. Plaintiff is unable to plead the exact
2 words or actions used by Defendant Warner to interfere in the Second Amended
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4 Complaint because she is not at this time aware of what exactly was said, just that
5 the Deftones breached their agreement due to Defendant Warner's threats. (Dkt. No.
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7 40 at 35-36). This evidence will be established through discovery, but at the pleading
8 stage, the allegations are enough. Plaintiff has successfully pleaded that Defendant
9 Warner plausibly committed an independently wrongful act in order to interfere with
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11 her future economic benefit, and thus Defendant Warner's Motion should be denied.
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13 **V. CONCLUSION**

14 For all the foregoing reasons, Defendant's Motion to Dismiss should be
15 denied. In the alternative, Plaintiff respectfully requests the Court grant Plaintiff
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17 leave to submit a Third Amended Complaint.
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19 Dated: June 10, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2022 all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

*/s/ Jay D. Ellwanger*_____
Jay D. Ellwanger