UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 14-CV-23057-JLK

JAMES "JAS" PRINCE and
YOUNG EMPIRE MUSIC GROUP, LLC

Plaintiffs,

v.

CASH MONEY RECORDS, INC.

Defendant.
_____/

DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY, AND INCORPORATED MEMORANDUM OF LAW

Defendant, Cash Money Records, Inc. ("CMR"), pursuant to Fed. R. Civ. P. 12(b)(6), hereby files this Motion to Dismiss or, in the Alternative, to Stay, and Incorporated Memorandum of Law.

INTRODUCTION

At its heart, the Complaint filed by Plaintiffs James Prince ("Mr. Prince") and Young Empire Music Group, LLC ("YEMG") accuses CMR of violating an agreement to give Plaintiffs two-thirds of any profits that may have been due to non-party Aspire Music Group, LLC ("Aspire") from revenues generated by the recording artist "Drake." The alleged source of CMR's duty to distribute those monies is a contract between (*inter alia)* Aspire and Plaintiffs (the "Aspire Contract"). That agreement itself includes as "Exhibit A" a "Letter of Direction" from Aspire to CMR (the "Letter of Direction").[1] It is that Letter of Direction that is the source of CMR's involvement in the revenue-sharing deal between Plaintiffs and Aspire set forth in the Aspire Contract.

[1]A true and correct copy of the Aspire Contract is attached as Exhibit 1. "The court may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment if the attached document is (1) central to the plaintiff's claim and (2) undisputed." *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Plaintiffs' repeated reference to the Aspire Contract and its incorporated Letter of Direction makes clear that those elements are satisfied here.

But while the Aspire Contract and the Letter of Direction therefore are plainly central to Plaintiffs' theory of the case, Plaintiffs fail to attach those documents to the Complaint. Presumably Plaintiffs exclude that most obvious source of any true obligation on the part of CMR because the "Letter of Direction" explicitly provides that CMR's "compliance with this authorization will constitute an accommodation to [Aspire] alone and Prince is not a beneficiary of it."[2] That clear language makes it apparent that Plaintiffs' Complaint represents a search for some possible legal duty owed by CMR to Plaintiffs in the absence of any contractual privity between those two parties. The result is a classic "shotgun" pleading of the sort that has long been decried by 11th Circuit, wherein Plaintiffs attempt to concoct seven different contract, quasi-contract, and tort claims from the same murky factual allegations.[3] But in the end Plaintiffs have not stated *any* viable claims, as each count is just another attempt to fit a square peg into a round hole.

Moreover, it is clear that Aspire is an indispensable party to these proceedings because this case directly affects Aspire's rights. Indeed, Plaintiffs have all but acknowledged as much by having previously sued Aspire in state court in New York over what is essentially the identical dispute (the "Aspire Case").[4] Because Plaintiffs' grievance is first and foremost a dispute with Aspire rather than CMR, Aspire should either be named as a party here or, alternatively, this case should be stayed pending a resolution of the first-filed Aspire Case.

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[2]*See* "Letter of Direction," attached (as Exhibit A) to Exhibit 1(the Aspire Contract). Emphasis supplied. All emphasis herein is supplied unless otherwise indicated.

[3]*See, e.g.*, *Byrne v. Nezhat*, 261 F.3d 1075, 1128–34 (11th Cir.2001) ("Shotgun pleadings . . . impede[ ] the due administration of justice and, in a very real sense, amount[ ] to obstruction of justice."); *Anderson v. Dist. Bd. of Trustees of Cent. Fl. Comm. Coll.*, 77 F.3d 364, 366 (11th Cir.1996) ("complaint is a perfect example of 'shotgun' pleading in that it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief").

[4]*See* Stipulation and Order, *Prince at al. v. Sweeney et al., Index No. 652560/12,* Exhibit 2.

ARGUMENT

As argued in Section I below, the entire Complaint is subject to dismissal and/or a stay based on two overarching defects: (1) Plaintiffs' failure to properly allege the Court's jurisdiction; and (2) Plaintiffs' failure to join indispensable parties. And as argued in Section II below, each count of the Complaint also is subject to dismissal based on deficiencies specific to each claim.

I. The Entire Complaint Is Subject to Dismissal

A. Plaintiffs Fail to Plead their Citizenship for Purposes of Diversity Jurisdiction

Plaintiffs' Complaint alleges that this Court's jurisdiction is based on diversity of the parties' citizenship. But Plaintiffs fail to properly plead diversity jurisdiction because the Complaint never alleges the citizenship of either Plaintiff.

With respect to Mr. Prince, Plaintiffs allege that he is a "resident" of Houston, Texas, but do not allege his citizenship.[5] That is insufficient. The Eleventh Circuit has held that "[c]itizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person."[6] With respect to YEMG, Plaintiffs similarly fail to allege citizenship. A "party must list the citizenships of all the members of the limited liability company."[7] Plaintiffs did not do so here as to YEMG, a limited liability company. Rather, Plaintiffs merely allege that Prince is YEMG's "principal" without alleging whether he is the sole member or, again, alleging his citizenship. As such, YEMG "failed to carry its burden of establishing diversity of citizenship."[8]

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[5] *See* Complaint [D.E. 1] at ¶ 3.

[6] *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994).

[7] *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004); *see Emess Capital, LLC v. Rothstein*, 841 F. Supp. 2d 1251, 1256 (S.D. Fla. 2012) ("in order to properly plead diversity jurisdiction the plaintiff must allege diversity based on the citizenship of the LLC's members").

[8] *Rolling Greens MHP, L.P.*, 374 F.3d at 1022.

Because neither Plaintiff pleaded the requisite allegations to establish diversity jurisdiction, the Complaint is subject to dismissal on that ground alone.

B. Plaintiffs Fail to Join an Indispensable Party

Plaintiffs' Complaint suffers from a second overarching defect. Plaintiffs' allegations make clear that this is essentially a dispute about CMR's purported duty to give Plaintiffs two-thirds of any monies that may have been due to Aspire and to account for any such funds. As such, Plaintiffs should have named Aspire as a defendant because Aspire plainly is indispensable to the outcome.

Federal Rule of Civil Procedure 19 "adopts a 'two-part test for determining whether a party is indispensable' to the pending litigation."[9] First, "the court must ascertain under the standards of Rule 19(a) whether the person in question is one who should be joined if feasible."[10] Second, if "the person should be joined but cannot be (because, for example, joinder would divest the court of jurisdiction), then the court must inquire whether, applying the factors enumerated in Rule 19(b), the litigation may continue."[11]

The first prong focuses on whether all rights can be adjudicated without Aspire's participation and the possible prejudice to Aspire if the litigation goes forward without Aspire's participation. Simply put, this is a case seeking to require payment from CMR to Plaintiffs of two-thirds of any monies owed to Aspire. Because this action concerns CMR's duty (*vel non*) to make those payments and amount (if any) of such payments, Aspire would be affected by the outcome. Indeed, an outcome in this action would affect Aspire both in terms of monies that might be paid as

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[9] *EuroSillas, C.A. v. Citigroup, Inc.*, 2012 WL 253227 *1 (S.D. Fla. 2012).

[10] *Challenge Homes, Inc. v. Greater Naples Care Ctr., Inc.*, 669 F.2d 667, 669 (11th Cir. 1982).

[11] *Id.*

a damages remedy (or subject to a constructive trust as Plaintiffs also request) and in terms of financial information that might be provided in an accounting remedy. Simply put, complete relief cannot be afforded to Plaintiffs without impacting Aspire's rights. By way of analogy, it "is well established under Rule 19 that all claimants to a fund must be joined to determine the disposition of that fund.[12] As such, Aspire without question is an indispensable party.

The second prong considers the circumstance where joinder of the other party is not feasible. But there is no reason to believe that Plaintiffs could not join Aspire here if they so desire. Plaintiffs' mere preference to file separate actions against Aspire and CMR based on the same dispute cannot be the basis for concluding that Aspire's joinder is not feasible.

Not only does Aspire's interest in this suit satisfy the indispensable parties test, it also provides an independent basis for staying this action pending resolution of the earlier-filed Aspire Case. It is well-established law that "district courts have inherent, discretionary authority to issue stays."[13] That is, this Court has the "inherent power" to manage its docket and stay these proceedings.[14] It would be appropriate for the Court to use its discretion to stay this matter where Plaintiffs have essentially brought two parts of the same case in two different courts.

As such, either: (1) Plaintiffs' Complaint should be dismissed for failure to join Aspire as a defendant because Aspire is a necessary and indispensable party for the complete adjudication of all interests at issue in this action; or, alternatively (2) this action should be stayed pending resolution of the Aspire Case.

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[12] *In re Torcise*, 116 F.3d 860, 865 (11th Cir. 1997).

[13] *Advanced Bodycare Solutions, LLC v. Thione Intern., Inc.*, 524 F.3d 1235, 1241 (11th Cir. 2008).

[14] *Roblor Marketing Group, Inc. v. GPS Industries, Inc.*, 2008 WL 5210946 *4 (S.D. Fla. Dec. 11, 2008).

II. Each Individual Count of the Complaint Should Be Dismissed

A. Plaintiffs Fail to State a Cause of Action for Unjust Enrichment (Count I)

In Count I, Plaintiffs purport to state a claim for unjust enrichment. To "state a viable Florida claim for unjust enrichment, a plaintiff needs to plead: (1) he conferred a benefit on defendant; (2) defendant knew of the benefit; (3) defendant accepted the benefit conferred; and (4) it was inequitable under the circumstances for the defendant to retain the benefit without paying for it."[15] Here Plaintiffs have failed to state a claim for unjust enrichment.

First, Florida law is clear that the benefit must be conferred directly by Plaintiffs upon the Defendant.[16] Here, Plaintiffs do not allege that either of them conferred a benefit directly on CMR. Rather, Plaintiffs merely allege that CMR did not send Plaintiffs a portion of any monies that may be due to Aspire (which in turn Aspire would owe to Plaintiffs). Indeed, by their very use of the passive voice – "Cash Money has been conferred a benefit upon it [*sic*]" – Plaintiffs effectively acknowledge that they never conferred a benefit directly upon CMR.[17]

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[15] *Circeo-Loudon v. Green Tree Servicing, LLC*, 2014 WL 4219587 *5 (S.D. Fla. 2014).

[16] *See, e.g., Peoples Nat. Bank of Commerce v. First Union Nat. Bank of Florida, N.A.*, 667 So. 2d 876, 879 (Fla. 3d DCA 1996) ("Here, the plaintiff, Peoples National, could not and did not allege that it had directly conferred a benefit on the defendants, the other participant lenders. In actuality, if any benefit was conferred upon each participant lender in the form of overpayments, it could only have been conferred upon them by Southeast, not Peoples National. Because Peoples National failed to allege ultimate facts that support a prima facie case of unjust enrichment, the trial court properly dismissed with prejudice that count against the other participant lenders."); *Extraordinary Title Services, LLC v. Florida Power & Light Co.*, 1 So.3d 400, 404 (Fla. 3d DCA 2009) (affirming dismissal with prejudice a claim for unjust enrichment where defendant had "not conferred a direct benefit"); *W. Coast Life Ins. Co. v. Life Brokerage Partners LLC*, 08-80897-CIV, 2009 WL 2957749 * 11 (S.D. Fla. 2009) ("The benefit conferred must be a direct benefit."); *Swiss Watch Intern., Inc. v. Movado Group, Inc.*, 00-7703-CIV, 2001 WL 36270979 * 4 (S.D. Fla. 2001) ("The plaintiff must allege that it directly conferred a benefit on defendant; an indirect benefit is insufficient.").

[17] Complaint [D.E. 1] at ¶ 45.

Second, Plaintiffs' claim for unjust enrichment also fails because Plaintiffs do not allege lack of an adequate remedy at law. Courts in this District have repeatedly held that a plaintiff must allege that no adequate remedy at law is available to state a claim for unjust enrichment.[18] Here, Plaintiffs make no attempt to do so, nor could they if their grievance could be remedied by a legal claim for money damages.

Third, Plaintiffs' claim for unjust enrichment fails because Plaintiffs allege the existence of an express contract purportedly governing the same subject matter as the claim for unjust enrichment.[19] The law is well established that a claim for unjust enrichment cannot co-exist where a party pleads the existence of an express contract governing the same subject matter.[20] And Plaintiffs do not plead this count as an alternative to their contract claims; they allege within the count for unjust enrichment that the basis of their request for relief is the "Oral Agreement."[21]

B. Plaintiffs Fail to State a Claim for Accounting (Count II)

To state a claim for accounting, a plaintiff must allege the existence of a fiduciary relationship between the parties, that the transaction is complex, and that the party has no adequate

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[18] *See Prohias v. Pfizer, Inc.*, 490 F. Supp. 2d 1228, 1236 (S.D. Fla. 2007) ("claims for unjust enrichment should be dismissed because the plaintiffs do not plead that they lack an adequate legal remedy"); *Martinez v. Weyerhaeuser Mortg. Co.*, 959 F. Supp. 1511, 1518 (S.D. Fla. 1996) ("The Court agrees that in Florida, unjust enrichment is an equitable remedy and is not available where an adequate legal remedy exists . . . To state a claim for unjust enrichment, plaintiffs must make this allegation clear in the complaint."); *see also Am. Honda Motor Co., Inc. v. Motorcycle Info. Network, Inc.*, 390 F. Supp. 2d 1170, 1178 (M.D. Fla. 2005) ("to properly state a claim for unjust enrichment, a party must allege that no adequate legal remedy exists").

[19] *See, e.g.*, Complaint [D.E. 1] at ¶¶ 19-20, 36.

[20] *Validsa, Inc. v. PDVSA Services, Inc.*, 424 Fed. Appx. 862, 873 (11th Cir. 2011) ("we find no error in the district court's decision to dismiss Bariven's counterclaims for unjust enrichment in Counts III and IV on the basis that these claims fail on the showing of an express contract").

[21] Complaint [D.E. 1] at ¶36.

remedy at law.[22] There can be grounds for an equitable accounting only "'where the contract demands between litigants involve extensive or complicated accounts and it is not clear that the remedy at law is as full, adequate and expeditious as it is in equity.'"[23] Plaintiffs' conclusory allegations fail to plead actual facts supporting those elements.

First, Plaintiffs specifically allege that "of the thirty-three and one-third percent (33 1/3%) payable to Aspire, Plaintiffs receive twenty-two (22%) percent and Aspire would receive eleven and one third percent (11 1/3%)."[24] By alleging such specific arithmetic terms, Plaintiffs have not satisfied their obligation of demonstrating that the accounts involved were extensive or complicated.[25]

Second, the source of any alleged obligation to account does not stem from any "fiduciary" relationship between Plaintiff and CMR. As detailed in Section II(D) below, the documents referenced in the Complaint reflect no such a relationship between Plaintiffs and CMR. Rather, the allegations reveal nothing more than a contractual relationship between Plaintiffs and Aspire, with

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[22] *See Validsa, Inc.*, 424 Fed. Appx. at 873 ("We also find no error in the district court's decision to dismiss Bariven's counterclaim for an equitable accounting in Count VII on the grounds that there was no fiduciary relationship between the parties, the transaction was not complex, and Bariven had an adequate remedy at law.").

[23] *Chiron v. Isram Wholesale Tours and Travel, Ltd.*, 519 So.2d 1102, 1103 (Fla. 3d DCA 1988), citing *F.A. Chastain Constr. Inc. v. Pratt*, 146 So.2d 910, 913 (Fla. 3d DCA 1962).

[24] Complaint [D.E. 1] at ¶ 11.

[25] *See, e.g., Managed Care Solutions, Inc. v. Essent Healthcare, Inc.*, 694 F. Supp. 2d 1275, 1280 (S.D. Fla. 2010) ("While it appears MCS' damages for breach of the Agreement would be derived by calculating MCS' expected collections on the aggregation of a large number of receivables, the method for calculating that amount is outlined with specificity in the Agreement and is not complicated. . . MCS' conclusory allegation that the accounts at issue are 'extensive and complicated' cannot trump the factual allegations indicating that a calculation of damages in this action is not a complicated endeavor."); *Chiron*, 519 So.2d at 1103 (upholding dismissal of accounting claim where "the evidentiary facts alleged by Chiron in her complaint show neither complexity nor inadequacy of a legal remedy.")

Aspire instructing CMR to take certain actions.[26] Plaintiffs' conclusory recitation of elements of a fiduciary relationship plainly are belied by the actual allegations of the Complaint.[27]

Third, the Complaint does not reflect that Plaintiffs lack an adequate remedy at law. Plaintiffs' allegations just reflect a claim that payments may be due under a contract.[28] A simple damages action against the party owing any such profits would provide a precise legal remedy to the grievance underlying this Complaint.[29]

C. Plaintiffs Fail to State a Claim for Conversion (Count III)

In Count III, Plaintiffs purport to state a claim for conversion. Under "Florida law, a conversion is 'an unauthorized act which deprives another of his property permanently or for an indefinite time.'"[30] The "law is clear that the mere obligation to pay money will not be enforced by an action for conversion."[31] But of course that is all that Plaintiffs are claiming: an obligation for CMR to pay money pursuant to an alleged oral agreement.

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[26] *See* Complaint [D.E. 1] at ¶ 38.

[27] *See Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) ("the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements"); *see also Court Appointed Receiver of Lancer Offshore, Inc. v. Citco Group Ltd.*, 2011 WL 1233106 * 7(S.D. Fla. 2011) ("'[c]onclusory allegations that a confidential or fiduciary relationship existed, without any supporting factual assertions, are insufficient' to state a claim for breach of an implied fiduciary duty.").

[28] *See, e.g.*, Complaint [D.E. 1] at ¶ 38.

[29] *See Bernardele v. Bonorino*, 608 F. Supp. 2d 1313, 1329 (S.D. Fla. 2009) ("Plaintiffs have failed to show why the legal remedy, in the form of damages in the amount of commissions owed, would be inadequate to make Plaintiffs whole. Plaintiffs therefore fail to state a cause of action for equitable accounting."). *See also Managed Care Solutions, Inc.*, 694 F. Supp. 2d at 1281 (Indeed, a "legal remedy cannot be characterized as inadequate merely because the measure of damages may necessitate a look into [the defendant's] business records."); *Chiron*, 519 So.2d at 1103 (upholding dismissal where no inadequacy of remedy is shown).

[30] *Fogade v. ENB Revocable Trust*, 263 F.3d 1274, 1291 (11th Cir. 2001).

[31] *Indus. Park Dev. Corp. v. Am. Exp. Bank, FSB*, 960 F. Supp. 2d 1363, 1366 (S.D. Fla. 2013).

Moreover, "for money to be an appropriate subject for a conversion claim, there must be an obligation for the receiver to keep intact or deliver the specific money at issue."[32] Here, Plaintiff "has not alleged any facts suggesting the requirement that the transactions at issue involved a specific deposit."[33] Rather, Plaintiffs allege that, on an ongoing basis, a portion of any monies due to Aspire was in turn supposed to be paid to Plaintiffs. But there is no allegation that a specific transaction resulted in specifically identifiable monies – *e.g.*, a bag of coins or funds kept in escrow – that had to be turned over to Plaintiffs. Without such an allegation, the claim for conversion fails.[34]

D. Plaintiffs Fail to State a Claim for Breach of Fiduciary Duty (Count IV)

Count IV purports to state a cause of action for breach of fiduciary duty. But as noted above, Plaintiffs' conclusory recitation of elements of a fiduciary relationship is insufficient to constitute the ultimate facts necessary to support the claim.[35] Here Plaintiffs have cobbled together a series of conclusory allegations that do not establish that CMR owed Plaintiffs a fiduciary duty.

To "establish a fiduciary relationship, a party must allege some degree of dependency on one side and some degree of undertaking on the other side to advise, counsel, and protect the weaker party."[36] But "[w]hen the parties are dealing at arm's length, a fiduciary relationship does not exist

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[32] *Indus. Park Dev. Corp.*, 960 F. Supp. 2d at 1366.

[33] *Id.*

[34] *See Gasparini v. Pordomingo*, 972 So. 2d 1053, 1056 (Fla. 3d DCA 2008) ("For money to be the object of conversion 'there must be an obligation to keep intact or deliver the specific money in question, so that money can be identified.'").

[35] *See Iqbal*, 556 U.S. at 663; *Court Appointed Receiver of Lancer Offshore, Inc.*, 2011 WL 1233106 at * 7.

[36] *Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp.*, 850 So. 2d 536, 540 (Fla. 5th DCA 2003).

because there is no duty imposed on either party to protect or benefit the other."[37]

Here Plaintiffs allege no facts sufficient to establish a fiduciary duty. To begin with, Plaintiffs identify the source of the alleged fiduciary duty as the oral agreement purportedly evidenced by the correspondence attached as Exhibit A to the Complaint. But on its face that letter makes no reference to any such fiduciary duty. Instead, the letter merely references the Letter of Direction and the settlement agreement between Aspire and Plaintiffs. It then specifies that a particular payment is being made. The subject correspondence makes no reference to any "oral agreement" between Plaintiffs and CMR, makes no reference to any accounting obligation owed by CMR, and makes no reference to CMR acting in a fiduciary capacity or owing any fiduciary duties.

The Complaint also attaches a series emails (at Exhibit B) as evidence of an alleged fiduciary duty owed by CMR to Plaintiffs. But those emails also do not reflect CMR agreeing to undertake any fiduciary obligation. Rather, they just reflect Plaintiffs asking for information and CMR providing certain information. Those documents simply do not reflect the existence of any fiduciary obligation.

Nor is there any reason to believe that a fiduciary relationship existed here based on the structure of the arrangement pleaded. Indeed, the Letter of Direction attached to the Aspire Contract explicitly disavows any duty from CMR to Plaintiffs by stating that CMR's "compliance with this authorization will constitute an accommodation to [Aspire] alone and Prince is not a beneficiary of it."[38] If Plaintiffs agreed in writing that they are not even intended to be beneficiaries of the distribution arrangement then how could that same distribution arrangement create an even more robust fiduciary obligation from CMR to Plaintiffs?

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[37] *Taylor*, 850 So. 2d at 540 ("courts have held that, in the usual creditor-debtor relationship, a fiduciary duty does not arise and allegations of superior knowledge of a party's financial condition are generally insufficient to transform the creditor-debtor relationship into a fiduciary relationship").

[38] *See* Exhibit 1.

In sum, the Complaint attaches documents that do not support the allegation that CMR owes Plaintiffs a fiduciary duty and at the same time fails to attach other documents that specifically disavow Plaintiffs' right to claim that CMR owes them a duty. The result is a complete failure to allege facts that would support the existence of a fiduciary obligation.

E. Plaintiffs Fail to State a "Claim" for Constructive Trust (Count V)

In Count V, Plaintiffs purport to state a stand-alone claim for "constructive trust" and seek the imposition of an equitable lien on "proceeds allocable to Plaintiffs."[39] Generally, the "equitable remedy of a constructive trust requires: (1) an express or implied promise, (2) the transfer of property and reliance thereon, and (3) unjust enrichment."[40] In addition, the law also is very clear that where there exists an adequate remedy at law, constructive trust is not an appropriate remedy.[41]

As an initial matter, a "constructive trust ... is not a traditional cause of action; it is more accurately defined as an equitable remedy."[42] Therefore it is not proper for Plaintiffs to assert this remedy as a separate count.[43] Moreover, as argued herein, Plaintiffs fail to state any cause of action to which this remedy *could* attach, and for that reason Count V is subject to dismissal.

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[39]Complaint [D.E. 1] at ¶56.

[40]*Garcia v. Santa Maria Resort, Inc.*, 528 F. Supp. 2d 1283, 1296 (S.D. Fla. 2007).

[41]*See CSC Holdings, Inc. v. Kimtron, Inc.*, 47 F. Supp. 2d 1361, 1365 (S.D. Fla. 1999) ("The imposition of a constructive trust, however, is available only when there is no adequate remedy at law.").

[42]*Swope Rodante, P.A. v. Harmon*, 85 So. 3d 508, 511 (Fla. 2d DCA 2012); *see CSC Holdings, Inc.*, 47 F. Supp. 2d at 1365 ("constructive trust is an equitable remedy").

[43]*See Tews v. Valdeon*, 2013 WL 5333205 * 3 (S.D. Fla. 2013) (" a constructive trust is 'a remedy ... that must be imposed based upon an established cause of action.'"); *Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696, 697 (Fla. 1st DCA 2008) ("a constructive trust is not a traditional cause of action, but an equitable remedy that must be based upon an established cause of action"); *see also Allyn v. CNL Lifestyle Properties, Inc.*, 2013 WL 6439383 * 7 (M.D. Fla. 2013) ("a constructive trust 'must be imposed based on an established cause of action.'").

But even if Plaintiffs had pleaded a sustainable, underlying cause of action, as noted above Plaintiffs cannot show that they lack an adequate remedy law.[44] Plaintiffs have demanded the payment of money damages based upon the breach of an alleged oral contract. Under such circumstances, Plaintiffs are not entitled to the equitable remedy of a constructive trust.[45]

F. Plaintiffs Fail to State a Cause of Action for Tortious Interference (Count VI)

In Count VI, Plaintiffs purport to state a claim for "tortious interference with the contractual advantages business agreements related by [CMR]."[46] While Plaintiffs thus appear to conflate the notions of tortious interference with a contract and tortious interference with an advantageous business relationship, the Complaint fails to plead facts that would support any version of this claim.

First, Plaintiffs repeatedly allege that CMR was itself a party to the relationship (or contract) with which CMR allegedly interfered, *i.e.*, the Aspire Contract or the business relationship between Plaintiffs and Aspire. But "under Florida law . . . 'a cause of action for tortious interference cannot exist against one who is himself a party to the contract.'"[47] Plaintiffs cannot sue CMR for interfering with the very contractual or business relationship to which Plaintiffs allege CMR was a party.

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[44] *See* Section II(B), above.

[45] *See, e.g., Garcia v. Santa Maria Resort, Inc.*, 528 F. Supp. 2d 1283, 1296 (S.D. Fla. 2007) ("Plaintiffs have asserted, though unsuccessfully, an adequate remedy at law: the demand for return of their deposits. Therefore, they are not entitled to seek a constructive trust.").

[46] Complaint [D.E. 1] at p. 12. The title of the count itself is "Tortious Interference with Contractual and Acknowledge Business Relationship."

[47] *Burger King Corp. v. Ashland Equities, Inc.*, 161 F. Supp. 2d 1331, 1336 (S.D. Fla. 2001); *see Hodges v. Buzzeo*, 193 F. Supp. 2d 1279, 1285 (M.D. Fla. 2002) ("a defendant cannot be liable for tortiously interfering with a contract unless the contract is between the plaintiff and a third party"); *see also SIG, Inc. v. AT & T Digital Life, Inc.*, 971 F. Supp.2d 1178, 1199 (S.D. Fla. 2013) ("A tortious-interference claim cannot succeed, though, 'where the alleged interference is directed at a business relationship to which the defendant is a party.'"); *Romika-USA, Inc. v. HSBC Bank USA, N.A.*, 514 F. Supp.2d 1334, 1338 (S.D. Fla. 2007) ("Under Florida law, a claim for tortious interference cannot lie where the alleged interference is directed at a business relationship to which the defendant is a party.").

Second, the facts alleged in the Complaint's "General Allegations" section bear no particular relationship to the tortious interference claim. Indeed, CMR has no idea what Plaintiffs mean by "encouraging and orchestrating the removal of Aspire as an entity tasked with furnishing Drake's services to others for the purpose of creating recordings."[48] There is no discussion of that concept anywhere else in the Complaint beyond the single conclusory statement in Count VI. And CMR's alleged obligation is to give Plaintiffs a percentage of any money owed to Aspire. Nowhere in the Complaint is it alleged that CMR has any obligation to ensure that Aspire makes money in the first place. The conclusory allegations of Count VI also render it subject to dismissal.[49]

G. Plaintiffs Fail to State a Claim for Breach of an Oral Contract (Count VII)

Finally, throughout the Complaint Plaintiffs rely heavily in their various counts on the allegation that the parties had reached an oral agreement. In Count VII they assert a claim for breach of that alleged agreement. But that claim is completely untenable under Florida law.

In "order to form an enforceable oral contract, 'there must be a meeting of the minds on all essential terms and obligations of the contract.'"[50] To ""state a cause of action for breach of an oral contract, a plaintiff is required to allege facts that, if taken as true, demonstrate that the parties mutually assented to 'a certain and definite proposition' and left no essential terms open."[51]

Here, Plaintiffs rely on the two exhibits to the Complaint as proof of the existence of an oral agreement. But Plaintiffs never specify the terms of the alleged oral agreement other than by referencing the attached correspondence. And none of the attached correspondence reflects that the

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[48] Complaint [D.E. 1] at ¶ 59.

[49] *Iqbal*, 556 U.S. at 663.

[50] *Venus Lines Agency, Inc. v. CVG Intern. Am., Inc.*, 234 F.3d 1225, 1229 (11th Cir. 2000).

[51] *Taste Trackers, Inc. v. UTI Transp. Solutions, Inc.*, 2014 WL 129309 * 3 (S.D. Fla. 2014).

parties agreed upon "all essential terms and obligations of" an enforceable contract. Thus Plaintiffs fail to articulate any particular oral agreement, and the documents they rely upon instead are equally devoid of such essential terms.

Indeed, that correspondence does not even hint at terms necessary to constitute an enforceable agreement, *i.e.,* "offer, acceptance, consideration and sufficient specification of essential terms."[52] In the absence of any detailed allegations regarding who made the oral agreement, when, how, or on what terms, only the exhibits could offer any clue as to what duties allegedly flow from that "agreement." But the attached correspondence provides no such information either.

Further, even if Plaintiffs had pleaded the necessary terms for an enforceable contract the claim still would fail for because it is barred by Florida's Statute of Frauds. The Eleventh Circuit has held that "the Florida Statute of Frauds, Fla. Stat.§ 725.01, bars enforcement of an oral contract that was intended by the parties to last longer than a year, even though the contract could have been terminated for cause within a year."[53] Stated differently, "[u]nder well-settled Florida law, the statute of frauds bars the enforcement of a contract when the parties intended and contemplated that performance of the agreement would take longer than one year."[54] Here, Plaintiffs allege the existence of an oral agreement intended to last indefinitely with continuing obligations.[55] Indeed, the oral agreement allegedly was made in 2010 and Plaintiffs contend that the obligations thereof continue to this day. Under those allegations, Plaintiffs' claim for breach of an oral agreement is barred by Florida's Statute of Frauds and should be dismissed.

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[52] *St. Joe Corp. v. McIver*, 875 So. 2d 375, 381 (Fla. 2004).

[53] *All Brand Importers, Inc. v. Tampa Crown Distributors, Inc.*, 864 F.2d 748, 749 (11th Cir. 1989).

[54] *Dwight v. Tobin*, 947 F.2d 455, 459 (11th Cir. 1991).

[55] *See, e.g.*, Complaint [D.E. 1] at ¶29.

CONCLUSION

Plaintiffs apparently believe that they are owed money based on a written contract with Aspire and for that reason they sued Aspire in New York for breach of that agreement. This later-filed action now claims that CMR owes Prince a slew of duties that actually contradict that underlying Aspire Contract. In part because it was born of that inherent flaw the Complaint cannot state any viable cause of action against CMR. And in any event this case should not proceed without Aspire as a party or, alternatively, should not proceed at all before Aspire's rights and obligations are resolved in the Aspire Case.

WHEREFORE, Defendant CMR respectfully requests that this Court: (1) dismiss the Complaint in its entirety or, in the alternative, stay this case pending a final resolution of the Aspire Case; and (2) provide all such other relief as this Court deems just and proper.

Respectfully submitted,

By: /s Scott M. Dimond
Scott M. Dimond
Fla. Bar No.: 995762
SDimond@dkrpa.com
DIMOND KAPLAN & ROTHSTEIN, P.A.
Offices at Grand Bay Plaza
2665 South Bayshore Drive, PH-2B
Miami, Florida 33133
Telephone: (305) 374-1920
Facsimile: (305) 374-1961
Attorneys for Defendant, CMR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 10, 2014, I filed the foregoing document titled: **DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY, AND INCORPORATED MEMORANDUM OF LAW** with the Clerk of the Court via CM/ECF and the CM/ECF system will send a notice of electronic filing to the counsel and parties of record.

By: /s Scott M. Dimond
Scott M. Dimond

EXHIBIT 1

SETTLEMENT AGREEMENT & GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter the "Agreement") is made and entered into this 9th day of July, 2009 by and between Aspire Music Group, LLC ("Aspire"), Laurant Management, LLC ("Laurant") Three Kings, LLC ("Three Kings"), Cortez Bryant ("Bryant"), Gerald Roberson ("Roberson"), and Derrick Lawrence ("Lawrence") (hereinafter collectively referred to as "Aspire Parties"), c/o The Law Offices of Ronald Sweeney, 222 Riverside Drive, PH5A, New York, New York 10025, on the one hand, and Young Empire Music Group, LLC and James Andre Jas Prince (collectively referred to as "Prince") c/o Greenberg Traurig LLP, Metlife Building, 200 Park Avenue, New York, New York 10166, Attn: Paul Schindler, Esq., on the other hand. Each of Aspire and Prince may hereinafter be referred to as "party" and collectively as "parties."

WITNESSETH

WHEREAS, certain disputes and controversies have arisen between the Parties; and

WHEREAS, such disputes and controversies include, but are not limited to, the claims and demands relating to the artist Aubrey Graham professionally known as "Drake" ("Artist"); and

WHEREAS, Aspire has entered into a memorandum of agreement with Young Money Entertainment, LLC/Cash Money Records (hereinafter "YME/CMR") dated June 26, 2009 ("Deal Memo"), pursuant to which Aspire furnishes the exclusive recording services of Artist to YME/CMR (hereinafter the "Recording Agreement"); and

WHEREAS, Aspire and YME/CMR have agreed to execute a long form contract at a future date ("Long Form") in connection with the subject matter of the Deal Memo, which will include, but not be limited to, the terms of the Deal Memo (hereinafter the Deal Memo and Long Form are individually and collectively referred to as the "Recording Agreement"); and

WHEREAS, Bryant, individually and doing business as Laurant and Roberson, individually and doing business as Three Kings, on the one hand, and Artist, on the other hand, are parties to a personal management agreement dated as of December 10, 2008 ("Management Agreement"); and

WHEREAS, the Parties, without any admissions of liability or wrongdoing on the part of anyone, desire to settle and dispose of fully and completely, any and all claims, demands and causes of actions Aspire Parties or Prince have or may have arising out of, connected with or incidental to the dealings between the Parties in with respect to the matter hereof.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, and for other valuable consideration, receipt of which is hereby acknowledged, the Aspire Parties and Prince agree as follows:

ARTICLE I. SETTLEMENT

1. (a) (i) (A) The Parties hereto agree that Prince shall be paid a sum equal to twenty-two (22%) percent of Aspire's thirty-three and one-third (33 1/3%) percent share of Profit Advances, Net Profits and other advances ("Prince's Share") under the Recording Agreement (as such terms are defined in the Recording Agreement), payable pursuant the terms and conditions of the Recording Agreement for the term of the Recording Agreement. Prince shall be paid, reduced, etc the same way that Aspire is under the Recording Agreement. Aspire shall use best efforts to cause YME/CMR to account and pay Prince at the same times and manner as Aspire is paid via a mutually approved letter of direction ("LOD"), which is attached hereto as Exhibit A and deemed incorporated herein by this reference. In the event YME/CMR refuses or fails to send you statements or make payments directly to you, Aspire will account for and pay to you Prince's Share, based on YME/CMR's statements to Aspire, within thirty (30) days following our receipt of such statements and payment, if any. If Aspire accounts directly to Prince, Aspire shall have the absolute right to rely on the accuracy of YME/CMR's statements to Aspire and shall not be liable for any errors or omissions contained therein. If YME/CMR (or Aspire, if YME/CMR does not pay you directly) makes any overpayment to Prince (e.g., by reason of an accounting error or by paying Net Profits on records subsequently returned), Prince shall reimburse YME/CMR (or Aspire, as applicable) for such overpayment, but only to the extent we are unable to then deduct such sums from monies otherwise payable to Prince hereunder. The relevant provisions of the Recording Agreement are attached hereto as Exhibit B and are deemed incorporated herein by this reference.

(B) For the avoidance of doubt, in the event that Aspire elects to terminate the Recording Agreement pursuant to paragraph 7 thereof, it is expressly understood and agreed that Prince shall be entitled to Prince's Share of any and all monies received by Aspire pursuant to any subsequent distribution agreement entered into as between Aspire and any third party in connection with the exclusive recording services of Artist, for the remaining undelivered Albums under the Recording Agreement. For the further avoidance of doubt, Prince shall be entitled to Prince's Share of the Universal Canada Agreement pursuant to paragraph 15 of the Recording Agreement and pursuant to the terms and conditions of the Universal Canada Agreement.

(ii) (A) Prince shall not have the right to examine or audit the books and records of YME/CMR. Prince, at Prince's own expense, may audit Aspire's books and records directly relating to the Recording Agreement and Universal Canada Agreement, as applicable, that report the sales of Records for which Net Profits or other monies are payable hereunder.

Prince may make such audit only for the purpose of verifying the accuracy of statements sent to Prince by YME/CMR or Aspire and only as provided herein. Prince may initiate such audit only by giving notice to Aspire at least thirty (30) days prior to the date Prince intend to commence its audit. Prince's audit will be conducted by a reputable independent certified public accountant experienced in recording industry audits in such a manner so as not to disrupt Aspire's other functions and will be completed promptly. Prince may audit a particular statement only once and only within two and one-half (2 1/2) years after the date such statement is rendered. Prince's audit may be conducted only during Aspire's usual business hours and at the place where it keeps the books and records to be examined. Prince will not be entitled to examine any manufacturing records or any other records that do not specifically report sales of Records or free distribution of Records on which Net Profits are payable hereunder. Prince's auditor will review his tentative written findings with Aspire so as to remedy any factual errors and clarify any issues that may have resulted from misunderstanding. Prince will not have the right to sue Aspire in connection with any royalty accounting, or to sue Aspire for monies due hereunder during the period a Net Profit accounting covers, whether from the sale of Records or otherwise, unless Prince commences the suit within twelve (12) months after commencement of Prince's audit for the applicable period.

(B) In the event that Aspire examines or audits the books and records of YME/CMR relating to any statement(s) rendered to Aspire, Aspire will notify Prince in writing of such examination and Prince will be allowed to participate in such audit at its sole expense. If, as a result of such examination or audit, Aspire receives additional Net Profit payments from YME/CMR in respect of such statement(s), then Aspire will pay to Prince that portion of such additional Net Profit payment to which Prince is entitled hereunder, after first deducting therefrom Prince's pro-rata share of the costs and expenses (including, without limitation reasonable, auditors' and attorneys' fees) incurred in connection with the conduct and settlement of such examination or audit.

(b) Notwithstanding anything to the contrary in Section 1(a)(i) hereinabove, Prince shall also be entitled twenty-two (22%) percent of Aspire's ownership share of the Masters ("Prince's Master Share"), subject to the terms and conditions of the Recording Agreement. Prince hereby agrees that Prince shall not assign, transfer, encumber, license, sell or lease Prince's Master Share and related materials without the prior written consent of Aspire and YME/CMR.

2. (a) (i) The Parties hereto agree that Prince shall also be paid by Manager (as defined in the Management Agreement) from Manager's Commissions (as defined in the Management Agreement) which are actually paid and received by (or credited to) Manager from Artist pursuant to the terms and conditions of the Management Agreement, as follows: (i) a sum equal to five (5%) of the Artist's Gross Compensation (as defined in the Management

Agreement) for Artist's activities in the music industry; (ii) a sum equal to three and three-fourths (3.75%) percent of Artist's Gross Compensation for Artist's activities as an actor; and (iii) Prince shall receive a pro-rata reduced share based on the applicable percentage set forth in Section(s) 2(a)(i) and (ii) above of any Manager's Commission in the Post Term Period (as defined in the Management Agreement)("Prince's Management Share"). Prince's Management Share shall be payable within ten (10) business days of Manager's receipt of Manager's Commission. By way of calculation, in the event that Artist receives Gross Compensation for activities in the music industry in the amount of One Hundred Thousand ($100,000) Dollars, then Prince shall be entitled to Five Thousand ($5,000) Dollars and Manager shall be entitled to Fifteen Thousand ($15,000) Dollars. For the avoidance of doubt, Prince shall not be deemed a management representative of Artist but shall only be entitled to an income participation of the Artist's gross compensation (as defined in the Management Agreement). A true copy of the Management Agreement is attached hereto as Exhibit C and is deemed incorporated herein by this reference.

(ii) Notwithstanding anything to the contrary in Section 2(a)(i) hereinabove, the parties hereto acknowledge and agree that in the event that Manager is a packaging agent for an entertainment program (as set forth in paragraphs 6(c)(ii)(I) and 11(a) of the Management Agreement), Prince shall be entitled to a sum equal to Five (5%) percent of the Artist's Gross Compensation from any arrangement or agreement in which Artist is employed or otherwise engaged by Manager as the packaging agent for an entertainment program; *except* that, in the event that such entertainment program is developed such that Artist is the lead artist, actor, or performer in such entertainment program then Prince shall be entitled to a sum equal to the greater of: (i) Five (5%) percent of the Artist's Gross Compensation; or (ii) a pro-rata share of Manager's fee for Manager's services related to such entertainment program. Such compensation shall be payable to Prince within ten (10) business days of Artist's receipt of the applicable Gross Compensation related to such entertainment program.

(b) Prince, at Prince's own expense, may audit Laurant books and records directly relating to the Management Agreement that report the Manager's Commissions paid pursuant to the Management Agreement. Prince may make such audit only for the purpose of verifying the accuracy payments sent to Prince by Laurant and only as provided herein. Prince may initiate such audit only by giving notice to Laurant at least thirty (30) days prior to the date Prince intends to commence its audit. Prince's audit will be conducted by a reputable independent certified public accountant experienced in recording industry audits in such a manner so as not to disrupt Laurant other functions and will be completed promptly. Prince may audit a particular statement only once and only within two (2) years after the date such statement is rendered. Prince's audit may be conducted only during Laurant's usual business hours and at the place where it keeps the books and records to be examined. Prince's auditor will review his tentative written findings with Laurant so as to remedy any factual errors and clarify any issues that may have resulted from misunderstanding.

3. Aspire Parties and Prince each shall at all times defend, indemnify and respectively hold harmless the other and their respective affiliates from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal expenses and counsel fees, arising out of any alleged breach or breach of this Agreement by either party of any warranty, representation or agreement made by Prince and Aspire Parties herein. The breaching party will reimburse the other party or their Affiliates, on demand, for any payment made at any time after the date hereof in respect of any liability or claim in respect of which Aspire Parties or Aspire Parties' Affiliates, and Prince or Prince's Affiliates are entitled to.

ARTICLE II. GENERAL RELEASE

1. It is the intention of the Aspire Parties and Prince in entering into this Agreement that this Agreement shall be effective as the full and final accord and satisfaction and release of each other with respect to every matter between the Aspire Parties and Prince as referred to herein.

2. **Release of claims by Prince**. Except as to those obligations and covenants specifically set forth herein, Prince hereby forever mutually release, remise and discharge the Aspire Parties, along with their affiliates, subsidiaries, successors, licenses, assigns, agents, attorneys, employees, officers, and directors, from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, debts, sums of money, costs, accounts, reckonings, covenants, contracts, agreements, promises, doings, omissions, damages, executions, obligations, liabilities, and expenses (including attorneys' fees and costs), of every kind and nature, known or unknown, which Prince had or now has against the Aspire Parties by reason of the matter from which the dispute arose.

3. **Release of claims by the Aspire Parties**. Except as to those obligations and covenants specifically set forth herein, Aspire Parties hereby forever mutually release, remise and discharge Prince, along with his affiliates, subsidiaries, successors, licenses, assigns, agents, attorneys, employees, officers, and directors, from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, debts, sums of money, costs, accounts, reckonings, covenants, contracts, agreements, promises, doings, omissions, damages, executions, obligations, liabilities, and expenses (including attorneys' fees and costs), of every kind and nature, known or unknown, which the Aspire Parties had or now has against Prince by reason of the matter from which the dispute arose.

ARTICLE III: WARRANTIES AND REPRESENTATIONS

Each of the parties hereto warrants and represents that:

1. Each party hereto has the full right, power and authority to enter into this Agreement and that each person executing this Agreement has the full right and authority to commit and bind such party to the provisions hereof;

2. With the exception of statements, representations and promises expressly set forth in this Agreement, no party hereto has made any statement or representations to any other party regarding a fact relied upon by the other party in entering into this Agreement, and no party hereto has relied upon any statement, promise of any other party, or of any representative or attorney for any other party, in executing this Agreement or in making the settlement provided herein;

3. No party hereto has assigned or otherwise transferred any interest in any claim which either party may have against the other, and each party agrees to indemnify and hold the other party harmless from any liabilities, claims, demands, costs, expenses, and reasonable attorneys fees incurred by such other party as a result of any person asserting any claims based upon such assignment or transfer of such claims which are the subject of this Agreement.

ARTICLE IV. GENERAL PROVISIONS

1. This Agreement contains the entire understanding of the parties hereto relating to the subject matter hereof and cannot be changed or terminated except by an instrument signed by all of the parties hereto. A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. This Agreement shall be deemed to have been made in the State of New York and its validity, construction, performance and breach shall be governed by the laws of the State of New York applicable to agreements made and to be wholly performed therein. Each party agrees to submit to the jurisdiction of the Federal or State courts located in New York County in any action which may arise out of this Agreement and said courts shall have exclusive jurisdiction over all disputes between the parties pertaining to this Agreement and all matters related thereto. In this regard, any process in any action or proceeding commenced in the courts of the State of New York arising out of any claim, dispute or disagreement under this Agreement may, among other methods, be served upon the appropriate party by delivering or mailing the same, via registered or certified mail, addressed to such party at the address provided herein for notices; any such delivery or mail service shall be deemed to have the same force and effect as personal service within the State of New York. Nothing contained herein shall constitute a waiver of any other remedies available to the parties. This Agreement shall be construed in accordance with the laws of the state of New York governing contracts wholly executed and performed therein, and shall be binding upon and inure to the benefit of the parties' respective heirs, executors, administrators, and successors.

EXHIBIT "A"
Attached to and made a part of the Settlement and Release Agreement Between Aspire Music Group, Inc. and Young Empire Music Group, LLC Dated July 9, 2009

Aspire Music Group, LLC
f/s/o Aubrey Graham p/k/a "Drake"
c/o Law Offices of Ronald E. Sweeney
222 Riverside Drive, PH5A
New York, New York 10025

LETTER OF DIRECTION

July 9, 2009

Cash Money Records, Inc.
c/o Law Office of Edward R. Grauer, P.C.
888 Seventh Avenue, Suite 500
New York, NY 10019

Gentlepersons:

1. Reference is hereby made to that certain memorandum of agreement between Aspire Music Group, LLC (hereinafter "Aspire" or "us") for the services of Aubrey Graham, professionally known as "Drake" ("Artist") and Cash Money Records, Inc/Young Money Entertainment, LLC ("Company") dated June 26, 2009 (hereinafter collectively referred to as "Recording Agreement").

2. With respect to your obligation to pay Profit Advances and Net Profits to us which shall be due and payable to us with respect to all Master Recordings delivered by Artist and commercially released by you, we herby irrevocably request and authorize you to make payments to Young Empire Music Group, LLC for the services of James Andre Jas Prince ("Prince") directly on our behalf as follows:

(a) (i) Prince shall be paid a sum equal to twenty-two (22%) percent of Aspire's share of Profit Advances, other advances to Aspire and Net Profits ("Prince's Share"). Prince shall be paid at the same times and manner as Aspire is paid pursuant to the Recording Agreement. The amount of the Prince's Share will be deducted from all monies payable or

becoming payable to us under the Recording Agreement. For the avoidance of doubt, Prince shall be entitled to Prince's Share of the Universal Canada Agreement pursuant to paragraph 15 of the Recording Agreement and pursuant to the terms and conditions of the Universal Canada Agreement.

(ii) Prince shall also be entitled twenty-two (22%) percent of Aspire's ownership share of the Masters ("Prince's Master Share"). Prince hereby agrees that Prince shall not assign, transfer, encumber, license, sell or lease Prince's Master Share and related materials without the prior written consent of Aspire and YME/CMR.

3. We acknowledge that Prince's Share will not be payable until you have recouped all Profit Advances, other advances to Aspire or any other costs that are recoupable against Aspire pursuant to the Recording Agreement.

4. Your compliance with this authorization will constitute an accommodation to us alone and Prince is not a beneficiary of it. All payments under this authorization will constitute payment to us and you will not have any liability by reason of any erroneous payment or failure to comply with this authorization. We will indemnify and hold you harmless against any claims asserted against you and any damages, losses or expenses you incur by reason of any such payment or otherwise in connection herewith.

5. All monies becoming payable under this authorization will be remitted to Prince at the following address or otherwise as they may direct you in writing:

Young Empire Music Group, LLC
2141 W. Governor Circle
Houston, Texas 77092
Attn: James Andre Jas Prince
EIN#_____ {Please include}

And will be accompanied by statements with respect to such payments. (We understand that royalty payment instructions of this nature are usually placed in effect with respect to the accounting period in which you receive them if they are delivered to you within the first three (3) months of that period, and with respect to the next accounting period if delivered after that time, although administrative factors may result in variations from that procedure).

6. All terms contained herein shall have the same meaning as when used in the Recording Agreement, unless otherwise defined herein.

Very Truly Yours,

Aspire Music Group, LLC

BY: _____
An Authorized Signatory

ACCEPTED AND AGREED TO:

Young Empire Music Group, LLC

By: _____
An Authorized Signatory

EXHIBIT "B"
Attached to and made a part of the Settlement and Release Agreement
Between Aspire Music Group, LLC and Young Empire Music Group, LLC
Dated July 9, 2009

MEMORANDUM OF AGREEMENT

EXHIBIT "C"
Attached to and made a part of the Settlement and Release Agreement
Between Aspire Music Group, LLC and Young Empire Music Group, LLC
Dated July 9, 2009

MANAGEMENT AGREEMENT

EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

JAMES "JAS" PRINCE and YOUNG EMPIRE MUSIC GROUP LLC,

Plaintiffs,

-against-

RONALD E. SWEENEY, CORTEZ BRYANT, ASPIRE MUSIC GROUP LLC, YOUNG MONEY ENTERTAINMENT, LAURANT MANAGEMENT LLC, 3 KINGS LLC, GERALD ROBERSON and DERRICK LAWRENCE,

Defendants.

----------x

Index No. 652560/12

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for the parties herein, as follows:

1. All causes of action asserted by plaintiffs in the Amended Verified Complaint dated October 12, 2012 (the "Amended Complaint") against defendants Laurant Management LLC, 3 Kings LLC, Gerald Roberson and Derrick Lawrence, including but not limited to those claims asserted in the Third, Fourth and Sixth Causes of Action, are hereby dismissed with prejudice and without costs to either side.

2. Pursuant to CPLR 3025(b), the Amended Complaint is amended and replaced with the Second Amended Verified Complaint, a copy of which is annexed hereto as Exhibit A.

3. Defendants shall have until June 17, 2013 to answer or otherwise move with respect to the Second Amended Verified Complaint.

4. The caption of this action shall now be as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

JAMES "JAS" PRINCE and YOUNG EMPIRE MUSIC GROUP LLC, : Index No. 652560/12

Plaintiffs, :

-against- :

RONALD E. SWEENEY, CORTEZ BRYANT, ASPIRE MUSIC GROUP LLC, and YOUNG MONEY ENTERTAINMENT, :

Defendants. :

----------x

5. This Stipulation may be executed in counterparts and a copy of the Stipulation delivered via facsimile or e-mail (pdf) shall have the full force and effect of an original for all purposes.

Dated: New York, New York
May 17, 2013

PROFETA & EISENSTEIN

By: _____

Jethro M. Eisenstein
45 Broadway, Suite 2200
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jethro19@gmail.com

JAMES E. McMILLAN, P.C.
11 West 40th Street, Suite 900
New York, New York 10018
(212) 986-6262
james.mcmillan@jempc.com

– Attorneys for Plaintiff –

PRYOR CASHMAN LLP

By: _____

Philip R. Hoffman, Esq.
Attorneys for Defendants
7 Times Square
New York, New York 10036-6569
(212) 421-4100
phoffman@pryorcashman.com

SO ORDERED:

_____
J.S.C.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------x
JAMES "JAS" PRINCE and YOUNG EMPIRE MUSIC GROUP, LLC

Plaintiffs,

Index No.652560/12

-against-

SECOND AMENDED VERIFIED COMPLAINT

RONALD E. SWEENEY, CORTEZ BRYANT, ASPIRE MUSIC GROUP, LLC, and YOUNG MONEY ENTERTAINMENT, INC.,

Defendants.
----------x

Plaintiff James "Jas" Prince and Young Empire Music Group, LLC, by their attorneys, Profeta & Eisenstein and James E. McMillan, P.C., as and for their second amended verified complaint, state as follows upon information and belief:

Introduction

1. This is an action for conversion, or civil theft, for tortious interference with contract, for breach of contract and for the appointment of a receiver to receive and distribute gross profits from the record sales of Aubrey Graham, the artist professionally known as "Drake".

2. As set forth below, plaintiffs discovered Drake and introduced him to defendants to further his career,

which is now extremely successful. In return, defendants agreed in writing to share with plaintiffs revenue derived from Drake's success. Defendant Ronald Sweeney, with the collusion of defendant Cortez Bryant, then set out to deprive plaintiffs of the benefit of their agreement.

3. As shown below, defendants Sweeney and Bryant, with the knowing assent of the other defendants, used the control they exercised over the entities involved in selling Drake's records to impede and defeat plaintiff's participation rights, and to divert the proceeds of such participation to themselves and others.

4. As demonstrated below, these defendants' control over every link in the distribution chain has enabled them to frustrate plaintiff's demands for an accounting. This makes the appointment of a receiver imperative, to prevent the dissipation or diversion of the profits to which plaintiffs are entitled.

Parties

5. Plaintiff James "Jas" Prince ("Prince") is a resident of Houston, Texas and is the principal of plaintiff Young Empire Music Group, LLC.

6. Plaintiff Young Empire Music Group, LLC ("Young Empire") is a foreign limited liability company with its principal place of business in Houston, Texas. Young Empire is an entertainment company that produces and furnishes the services of performing artists. Prince and Young Empire are hereinafter collectively referred to as "plaintiffs".

7. Defendant Ronald E. Sweeney ("Sweeney") is a California lawyer who maintains a place of business in New York County. Sweeney is not admitted to practice law in New York, but at all relevant times has held himself out, in New York, as the attorney for defendants Aspire Music Group, LLC and Young Money Entertainment, LLC, as hereinafter more fully appears.

8. Defendant Cortez Bryant ("Bryant") is an owner and principal of defendant Aspire Music Group, LLC and of defendant Young Money Entertainment, Inc.

9. Defendant Aspire Music Group, LLC ("Aspire") is a foreign limited liability company that has contracted with Drake to furnish his services to others for recordings. Aspire regularly conducts business in New York.

10. Defendant Young Money Entertainment, LLC is a foreign limited liability company. Defendant Aspire contracted with defendant Young Money Entertainment, LLC

and Cash Money Records (collectively Young Money/Cash Money) to furnish Drake's recording services.

Statement of the Claim

11. In 2007, plaintiffs discovered Drake and brought him to the attention of defendant Bryant to further Drake's entertainment career.

12. Defendant Bryant agreed orally with plaintiffs that he and they would collaborate in the development and exploitation of Drake's entertainment career, and split profits therefrom equally.

13. In derogation of this oral agreement and without advising plaintiffs, Defendants Bryant and Sweeney induced Drake to sign an exclusive artists agreement with defendant Aspire, which they control.

14. Defendants Bryant and Sweeney, acting through defendant Aspire, then entered into an agreement to furnish Drake's services to defendant Young Money, which they also control. Defendant Young Money, in collaboration with Cash Money Records, Inc., produces Drake's recordings for Universal, which distributes them.

15. Drake's gross compensation is paid to Young Money/Cash Money, which is responsible for payments to the artist and to Aspire.

16. In recognition of plaintiffs' services in bringing Drake to their attention, and as recompense for ignoring the oral agreement they had made, defendant Aspire and others, acting through defendants Bryant and Sweeney, entered into a written agreement ("the settlement agreement") to pay to plaintiffs two-thirds of the compensation payable to Aspire under Aspire's provision of services agreement with Young Money/Cash Money.

17. In the settlement agreement, defendants promised to use their "best efforts" to cause Young Money/Cash Money to account to and pay plaintiffs directly and further promised that Aspire would pay plaintiffs if Young Money/Cash Money did not.

18. Aside from certain initial payments, the defendants have neither caused Young Money/Cash Money to pay plaintiffs, nor paid plaintiffs themselves, as required under the settlement agreement.

19. By signing Drake to agreements with companies under common ownership with common representation, defendants Sweeney and Bryant insured that there would be no oversight of the distribution of profits from Drake's

success. These defendants have used their unfettered power over Aspire and Young Money to insure that Aspire will not insist that Young Money/Cash Money account, either to Drake or to plaintiffs.

20. Defendants have also used their unfettered power over Aspire and Young Money to convert funds belonging to plaintiffs for defendants' own benefit and the benefit of others.

21. Under the settlement agreement, plaintiffs are entitled to share in Drake's gross compensation under an agreement for sales in Canada, but defendants, acting through defendant Sweeney, have failed to provide complete information about sales under the Canadian agreement.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS SWEENEY AND YOUNG MONEY FOR TORTIOUS INTERFERENCE WITH CONTRACT

22. Defendants Sweeney and Young Money, with knowledge of the settlement agreement, have intentionally induced the other defendants to breach the settlement agreement or have rendered their performance under the settlement agreement impossible, causing damages to plaintiffs in an amount to be determined at trial, together with punitive damages.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS SWEENEY, YOUNG MONEY AND BRYANT FOR CONVERSION

23. Defendants Sweeney, Young Money and Bryant have engaged in conversion, or civil theft of funds belonging to plaintiffs, for their own benefit and for the benefit of others, causing damage to plaintiff in an amount to be determined at trial, together with punitive damages.

THIRD CAUSE OF ACTION AGAINST ASPIRE AND BRYANT FOR BREACH OF CONTRACT

24. Defendants Aspire and Bryant have breached the settlement agreement with plaintiffs, causing damages to plaintiffs in an amount to be determined at trial.

FOURTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT ASPIRE

25. Defendant Aspire undertook a duty to act for plaintiffs and to secure the compensation due plaintiffs under the settlement agreement.

26. Aspire thereby undertook a duty of loyalty to plaintiffs and the obligations of a fiduciary in relation to them.

27. Aspire has breached its fiduciary obligation to plaintiffs and has thereby caused damage to plaintiffs in an amount to be determined at trial.

FIFTH CAUSE OF ACTION AGAINST DEFENDANT ASPIRE FOR AN ACCOUNTING

28. Defendant Aspire promised to account to plaintiffs under the settlement agreement for the payments due to plaintiff.

29. Defendant Aspire has failed and refused to comply with its obligation to render an accounting to plaintiffs.

30. Plaintiffs are entitled to an accounting from this defendant and have no adequate remedy at law.

SIXTH CAUSE OF ACTION FOR APPOINTMENT OF A RECEIVER

31. The defendants are in control of each entity in the chain through which Drake's compensation is paid. By their joint selection of defendant Sweeney as representative, they have insured that there is and will be no oversight of the process by which Drake's gross compensation, in which plaintiffs are entitled to participate, is distributed. The appointment of a receiver pursuant to CPLR §6401 is necessary and appropriate on the

grounds that there is a danger that identifiable proceeds of Drake's recording efforts belonging to plaintiffs will be removed from the state, lost, materially injured or destroyed.

WHEREFORE, plaintiffs pray for judgment as follows:

a. On their first cause of action for tortious interference, for damages against defendants Sweeney and Young Money in an amount to be determined at trial that exceeds the jurisdictional limits of all lower courts, together with punitive damages.

b. On their second cause of action for conversion or civil theft, for damages against defendants Sweeney, Young Money and Bryant in an amount to be determined at trial that exceeds the jurisdictional limit of all lower courts, together with punitive damages.

c. On their third cause of action for breach of contract against defendants Aspire and Bryant for damages in an amount to be determined at trial which exceeds the jurisdictional limits of all lower courts.

d. On their fourth cause of action for breach of fiduciary duty against defendant Aspire, for damages in an amount to be determined at trial which exceeds the jurisdictional limits of all lower courts.

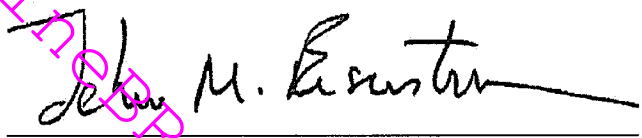
e. On their fifth cause of action against defendant Aspire, for an accounting.

f. On their sixth cause of action, for the appointment of a receiver; together with such other and further relief as to the Court may seem just and proper, as well as the costs and disbursements of this action.

Dated: New York, New York
May 17, 2013

Yours etc.,

PROFETA & EISENSTEIN



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ATTORNEY'S VERIFICATION

Jethro M. Eisenstein, an attorney admitted to practice in the courts of New York State and a member of the firm of Profeta & Eisenstein, hereby affirms under penalty of perjury that: I am attorney for the plaintiffs in the within action; I have read the foregoing second amended complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true based upon documents in the file and investigation. The reason this verification is made by me and not by plaintiffs is because plaintiffs are not in the county where I maintain my office.

Dated: New York, New York
May 17, 2013

Jethro M. Eisenstein

JETHRO M. EISENSTEIN

NYSCEF - New York County Supreme Court

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652560/2012

Documents Received

Doc #	Document Type	Motion #	Date Received
15	PROPOSED STIPULATION TO BE SO ORDERED		05/21/2013 01:38 PM
16	EXHIBIT(S) A		05/21/2013 01:38 PM

Filing User

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