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ENTERTAINMENT COMPANY
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 DWIGHT YOAKAM, an individual,
12 Plaintiff,

13 vs.

14 WARNER MUSIC GROUP CORP., a
Delaware corporation; WARNER
15 RECORDS INC., a Delaware corporation;
and RHINO ENTERTAINMENT
16 COMPANY, a Delaware corporation,

17 Defendants.
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Case No. 2:21-cv-1165-SVW (MAAx)

**DEFENDANTS WARNER MUSIC
GROUP CORP., WARNER
RECORDS INC., AND RHINO
ENTERTAINMENT COMPANY'S
NOTICE OF MOTION AND
MOTION TO DISMISS PURSUANT
TO FRCP 12(b)(1) AND 12(b)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: May 10, 2021
Hearing Time: 1:30 p.m.
Courtroom: 10A

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 10, 2021, at 1:30 p.m., or at such other
3 time as this Court may order, in the First Street Courthouse, 350 W. 1st Street,
4 Courtroom 10A, 10th Floor, Los Angeles, California 90012, defendants Warner
5 Music Group Corp., Warner Records Inc., and Rhino Entertainment Company will
6 and hereby do move to dismiss in part Plaintiff’s declaratory relief claim pursuant to
7 Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the ground that Plaintiff has
8 failed to satisfy the constitutional or prudential ripeness standards necessary to
9 establish a justiciable case or controversy as to the bulk of that claim, and to dismiss
10 Plaintiff’s copyright infringement claim in part, Plaintiff’s conversion claim in its
11 entirety, and all claims as against Warner Music Group Corp., pursuant to Rule
12 12(b)(6) of the Federal Rules of Civil Procedure, on the ground that the Complaint
13 fails to state a claim upon which relief can be granted.

14 This Motion is based on this Notice of Motion and Motion, the Memorandum
15 of Points and Authorities attached hereto, the Declaration of Melissa Battino
16 submitted concurrently herewith, all pleadings and records on file in this case, and
17 upon such evidence and argument as may be presented at or before the hearing on this
18 Motion.

19 This Motion was made following a conference of counsel pursuant to Local
20 Rule 7-3 that was held on April 5, 2021.

21

22 Dated: April 12, 2021

Respectfully Submitted

23

SIDLEY AUSTIN LLP

24

25

By: /s/ Rollin A. Ransom
Rollin A. Ransom
Attorneys for Defendants
WARNER MUSIC GROUP CORP.,
WARNER RECORDS INC., and
RHINO ENTERTAINMENT
COMPANY

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

INTRODUCTION 1

FACTUAL BACKGROUND.....2

LEGAL STANDARD.....4

ARGUMENT4

I. PLAINTIFF DOES NOT OWN THE COPYRIGHT IN THE SINGLES AND
THUS FAILS TO STATE A CLAIM FOR COPYRIGHT INFRINGEMENT
AS TO THOSE WORKS4

II. PLAINTIFF FAILS TO STATE A CLAIM FOR CONVERSION 10

 A. Plaintiff’s Conversion Claim Is Preempted By The Copyright Act. 10

 B. Plaintiff Fails To State A Claim For Conversion..... 12

III. PLAINTIFF’S DECLARATORY RELIEF CLAIM IS NOT RIPE AS TO THE
MAJORITY OF WORKS LISTED IN THE NOTICES 13

 A. Plaintiff Cannot Establish Constitutional Ripeness. 14

 B. Plaintiff Cannot Establish Prudential Ripeness. 17

 C. This Court Should Exercise Its Discretion To Decline To Hear Plaintiff’s
Declaratory Relief Claim. 19

IV. ALL CLAIMS AGAINST WMGC SHOULD BE DISMISSED20

CONCLUSION.....21

TABLE OF AUTHORITIES

Page(s)

Cases

1
2
3
4 *A&M Records, Inc. v. Napster, Inc.*,
5 239 F.3d 1004 (9th Cir. 2001) 4
6 *Archer v. Coinbase, Inc.*,
7 53 Cal. App. 5th 266 (2020) 13
8 *Ashcroft v. Iqbal*,
9 556 U.S. 662 (2009)..... 4
10 *Bank of New York Mellon v. City of Richmond*,
11 No. C 13-03664 CRB, 2013 WL 5955699 (N.D. Cal. Nov. 6, 2013)..... 17
12 *Brown v. Beatty*,
13 No. CV 16-7666 PA, 2017 WL 6940518 (C.D. Cal. Nov. 9, 2017) 12
14 *Burlesci v. Petersen*,
15 68 Cal. App. 4th 1062 (1998) 12
16 *Chandler v. State Farm Mut. Auto. Ins. Co.*,
17 598 F.3d 1115 (9th Cir. 2010) 4
18 *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*,
19 772 F.2d 505 (9th Cir. 1985) 20
20 *Hallstrom v. Tillamook Cty.*,
21 493 U.S. 20 (1989)..... 10
22 *Johansen v. Sony Music Entertainment Inc.*,
23 No. 19 CIV. 1094 (ER), 2020 WL 1529442 (S.D.N.Y. Mar. 31, 2020)..... 9
24 *Kantemirov v. Goldine*,
25 No. C05-01362 HRL, 2005 WL 1593533 (N.D. Cal. June 29, 2005) 11
26 *Kordich v. Salton, Inc.*,
27 No. 05cv0202-LAB (RBB), 2005 WL 8173161 (S.D. Cal. July 5,
28 2005) 15
Lauren Moshi, LLC v. Fuentes,
No. CV 18-6725-DMG, 2019 WL 8690213 (C.D. Cal. June 25, 2019) 14

1 *Leadsinger, Inc. v. BMG Music Pub.*,
 2 512 F.3d 522 (9th Cir. 2008) 19

3 *Lujan v. Defs. of Wildlife*,
 4 504 U.S. 555 (1992)..... 14

5 *Mana Wai’, Inc. v. Amato Beverly Hills, LLC*,
 6 No. SACV 20-1091 4

7 *McGowan v. Weinstein*,
 8 No. 2:19-cv-09105-ODW, 2020 WL 7210934 (C.D. Cal. Dec. 7,
 2020) 11

9 *Mtume v. Sony Music Entm’t*,
 10 No. 18 Civ. 11747 (ER), 2020 WL 832814 (S.D.N.Y. Feb. 20, 2020).. 17, 18, 19

11 *Naruto v. Slater*,
 12 888 F.3d 418 (9th Cir. 2018) 2

13 *Pacific Gas & Elec. Co. v. U.S.*,
 14 664 F.2d 1133 (9th Cir. 1981) 8

15 *Prince v. Universal Music Corp.*,
 16 No. 209CV1459FMCFFMX, 2009 WL 10672282 (C.D. Cal. May 18,
 2009) 11

17 *Purely Driven Prod., LLC v. Chillovino, LLC*,
 18 171 F. Supp. 3d 1016 (C.D. Cal. 2016)..... 15

19 *Ray Charles Found. v. Robinson*,
 20 795 F.3d 1109 (9th Cir. 2015) 16, 17, 18

21 *Siegel v. Warner Bros. Entm’t Inc.*,
 22 542 F. Supp. 2d 1098 (C.D. Cal. 2008)..... 7, 8, 9

23 *Siegel v. Warner Bros. Entm’t Inc.*,
 24 690 F. Supp. 2d 1048 (C.D. Cal. 2009)..... 9

25 *St. Clair v. City of Chico*,
 26 880 F.2d 199 (9th Cir. 1989) 4, 18

27 *Steckman v. Hart Brewing Inc.*,
 28 143 F.3d 1293 (9th Cir. 1998) 4, 13, 19

1 *Stockroom Inc. v. XR LLC*,
 2 No. SACV 08-01046-JVS, 2009 WL 10671380 (C.D. Cal. July 17,
 3 2009) 11
 4 *Texas v. United States*,
 5 523 U.S. 296 (1998)..... 14
 6 *Thomas v. Anchorage Equal Rights Comm’n*,
 7 220 F.3d 1134 (9th Cir. 2000) 17
 8 *Unicolors, Inc. v. H&M Hennes & Mauritz L.P.*,
 9 No. 16-CV-02322-AB (SKX), 2018 WL 10307045 (C.D. Cal. Aug. 1,
 10 2018) 20
 11 *United States v. Bestfoods*,
 12 524 U.S. 51 (1998)..... 20
 13 *Winebarger v. Pennsylvania Higher Educ. Assistance Agency*,
 14 411 F. Supp. 3d 1070 (C.D. Cal. 2019)..... 17, 19
 15 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*,
 16 433 F.3d 1199 (9th Cir. 2006) 17
 17 **Statutes**
 18 17 U.S.C. § 106..... 4
 19 17 U.S.C. § 114..... 12
 20 17 U.S.C. § 203..... *passim*
 21 17 U.S.C. § 301(a) 11
 22 17 U.S.C. § 304(c)(4)(A) 6, 7
 23 28 U.S.C. § 2201(a) 14
 24 **Other Authorities**
 25 37 C.F.R. § 201.10..... 7
 26 37 C.F.R. § 201.10(e) 7
 27 37 CFR § 201.10(b)(1)(iii)..... 9
 28

1 76 Fed. Reg. 32316, 32319 (June 6, 2011).....8
2 Fed. R. Civ. Proc. 12..... 1, 2, 4, 18
3 Fed. R. Civ. Proc. 15.....4
4 H.R. REP. No. 94-1476 (1976).....5
5 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 11.06
6 (rev. ed. 2019).....8
7
8
9
10
11
12
13
14
15
16
17
18
19
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21
22
23
24
25
26
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants Warner Music Group Corp. (“WMGC”), Warner Records Inc. f/k/a
3 Warner Bros. Records Inc. (“Warner”), and Rhino Entertainment Company (“Rhino,”
4 and together with WMGC and Warner, “Defendants”) respectfully submit this
5 memorandum in support of their motion to dismiss the with respect to the Amended
6 Complaint brought by Plaintiff Dwight Yoakam (“Plaintiff” or “Yoakam”), pursuant
7 to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

8 **INTRODUCTION**

9 This action relates to Section 203 of the Copyright Act of 1976, 17 U.S.C. §
10 203, which permits an author to terminate certain grants of copyright if specific
11 conditions are met. Yoakam is a recording artist who sent Section 203 notices to
12 Warner, purporting to terminate copyright transfers respecting various sound
13 recordings and related music videos. In the Amended Complaint, Yoakam seeks a
14 declaration regarding the validity and effect of his termination notices and asserts
15 claims of copyright infringement and conversion as to certain of the works that are the
16 subject of those notices.

17 Plaintiff’s claims fail for multiple reasons. With respect to two of the works at
18 issue – the singles entitled “Miner’s Prayer” and “Honky Tonk Man” – Yoakam’s
19 assertion that he owns the copyright, which is a predicate to his infringement and
20 conversion claims, fails as a matter of law. By Yoakam’s own admission, his notice
21 of termination respecting those works failed to comply with the statutory timing
22 requirements set by Congress, and his suggestion that this Court can simply disregard
23 his non-compliance as a “harmless scrivener’s error” is legally baseless.

24 Yoakam’s broader claim for conversion is also infirm. As an initial matter, it is
25 axiomatic that conversion claims relating to copyrightable subject matter are
26 preempted by the Copyright Act. For this reason alone, Yoakam’s conversion claim
27 should be dismissed. Nor can Yoakam avoid preemption by asserting that Defendants
28 have exercised some amorphous “control” over the relevant copyrights independent of

1 the allegedly infringing acts. This alternative theory is necessarily premised on
2 Defendants' *inaction* with respect to exploitation of the relevant works, and inaction
3 cannot support a conversion claim.

4 Plaintiff's claim for declaratory relief is premature as to virtually all of the
5 works that are the subject of his termination notices because, as Plaintiff concedes, the
6 alleged termination dates are as far out as 2030. Claims relating to works with
7 termination dates that are a year or more away do not satisfy either the constitutional
8 or prudential ripeness standards necessary to establish a justiciable case or
9 controversy, and thus do not support invocation of this Court's subject matter
10 jurisdiction. The declaratory relief claim should therefore be dismissed as to such
11 works.

12 Finally, there is no basis for Plaintiff's claim against WMGC. Yoakam alleges
13 that WMGC "owns and controls" its subsidiaries Warner and Rhino, but this claim,
14 even if true, is insufficient to support liability against WMGC. On the contrary, the
15 law is clear that a parent corporation is *not* liable for the acts of its subsidiaries merely
16 because of its corporate relationship to those subsidiaries. Likewise, the conclusory
17 allegation that a Rhino employee was "acting at the direction of WMG" in connection
18 with a single e-mail to Yoakam's counsel does not remotely approach the minimum
19 standard necessary to state a claim against WMGC. This Court should therefore
20 dismiss all claims against WMGC.

21 **FACTUAL BACKGROUND**¹

22 Yoakam is a songwriter and recording artist. Beginning in 1986 and for several
23 years thereafter, Warner released sound recordings and music videos featuring
24 Yoakam's performances (collectively, the "Works"). The Amended Complaint
25 alleges that the Works were released pursuant to a recording agreement between

26 ¹ On a motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
27 Procedure, this Court is to accept the well-pleaded allegations of the [Amended?]
28 Complaint as true. *See Naruto v. Slater*, 888 F.3d 418, 421 (9th Cir. 2018). By
reciting Plaintiff's allegations in this motion, Defendants do not admit them or
otherwise concede their accuracy.

1 Warner and Yoakam dated November 22, 1985, and subsequent recording agreements
2 entered into in 1990 and 1996, under which Warner acquired the exclusive rights to
3 manufacture, market, and distribute the Works. Am. Compl. ¶¶ 48-58, 85.

4 By letter dated February 5, 2019, Yoakam’s counsel transmitted two
5 documents entitled “Notice of Termination” to Warner – one for Yoakam’s sound
6 recordings and the other for his music videos (each a “Notice” and collectively with
7 the later-transmitted documents described below, the “Notices”). *Id.* ¶ 60 & Ex. 1.
8 The Notices purported to terminate Warner’s copyright interest in certain of the
9 Works, effective on a specific date in the future as to each of the Works; these
10 “effective date[s] of termination” range from January 31, 2021 to March 23, 2028.
11 *Id.* ¶ 62 & Ex. 1.

12 By a second letter dated March 26, 2021, Yoakam’s counsel transmitted two
13 more documents entitled “Notice of Termination” to Warner – one for additional
14 sound recordings and the other for additional music videos (each also a “Notice”).
15 *Id.* ¶ 72 & Ex. 2. These subsequent Notices also purported to terminate Warner’s
16 copyright in additional Works, with “effective date[s] of termination” ranging from
17 September 13, 2029 to November 3, 2030. *Id.* ¶ 73 & Ex. 2.

18 Plaintiff alleges that the earliest of the termination dates – January 31, 2021 –
19 applies to two sound recordings that were originally released as singles, “Miner’s
20 Prayer” and “Honky Tonk Man” (collectively, the “Singles”). *Id.* ¶ 51 & Ex. 1. On
21 that date, in response to Yoakam’s threat to sue Defendants for copyright
22 infringement, an in-house attorney for Rhino advised Yoakam’s counsel that the
23 Notices were invalid as to the Singles. *Id.* ¶ 69. She further advised Yoakam’s
24 counsel, without prejudice to any argument or defense that Defendants may have, that
25 Rhino had “taken down” the Singles – *i.e.*, had stopped exploiting them – such that
26 there was no basis for an infringement claim. *Id.* And as to the Works other than the
27 Singles, Rhino’s in-house attorney advised that a decision had not yet been made as
28 to how to proceed. *Id.* ¶ 19. Notwithstanding these facts, Yoakam commenced this

1 action on February 9, 2021. Following a Local Rule 7-3 conference respecting
2 Defendants’ planned motion to dismiss, *see* Dkt. No. 15, Yoakam filed the Amended
3 Complaint as of right pursuant to Rule 15 of the Federal Rules of Civil Procedure.

4 **LEGAL STANDARD**

5 A challenge to this Court’s subject matter jurisdiction, including a challenge
6 based on ripeness, is brought under Rule 12(b)(1) of the Federal Rules of Civil
7 Procedure. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989). To survive
8 a motion to dismiss based on Rule 12(b)(1), the party asserting jurisdiction bears the
9 burden of establishing that the claims are ripe for adjudication under the Article III
10 case or controversy requirement. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598
11 F.3d 1115, 1121 (9th Cir. 2010).

12 To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of
13 Civil Procedure, a pleading must contain sufficient facts that, if accepted as true, state
14 a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When
15 ruling on a Rule 12(b)(6) motion, this Court can disregard unreasonable inferences,
16 unwarranted deductions of fact, conclusory allegations, legal assertions or facts
17 contradicted by documents referenced in the complaint. *See Steckman v. Hart*
18 *Brewing Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998).

19 **ARGUMENT**

20 **I. PLAINTIFF DOES NOT OWN THE COPYRIGHT IN THE SINGLES**
21 **AND THUS FAILS TO STATE A CLAIM FOR COPYRIGHT**
22 **INFRINGEMENT AS TO THOSE WORKS**

23 Plaintiff alleges that Defendants have infringed his claimed copyright in those
24 Works as to which the putative “effective date of termination” listed in the Notices has
25 passed. “Plaintiffs must satisfy two requirements to present a prima facie case of
26 direct infringement: (1) they must show ownership of the allegedly infringed material
27 and (2) they must demonstrate that the alleged infringers violate at least one exclusive
28 right granted to copyright holders under 17 U.S.C. § 106.” *A&M Records, Inc. v.*
Napster, Inc., 239 F.3d 1004, 1013 (9th Cir. 2001); *see also Mana Wai’, Inc. v. Amato*

1 *Beverly Hills, LLC*, No. SACV 20-1091 JVS (DFMx), 2020 WL 7247335, at *2 (C.D.
2 Cal. Oct. 26, 2020) (same). While Defendants dispute Plaintiff’s infringement claim
3 as to all such Works, Defendants bring this motion to dismiss solely as to the Singles,
4 because even under the liberal pleading standard of the Federal Rules of Civil
5 Procedure, Yoakam’s claim of ownership of the copyright in the Singles fails as a
6 matter of law. Because Plaintiff cannot satisfy the threshold requirement of
7 ownership, his copyright infringement claim must be dismissed as to the Singles.

8 Yoakam’s allegation that he owns the copyright in the Singles is based on his
9 contention that he validly terminated Warner’s copyright interest in those works
10 pursuant to Section 203 of the Copyright Act. Am. Compl. ¶ 109. However, because
11 the Notice as to the Singles fails to comply with the requirements of Section 203,
12 Yoakam’s purported termination of Warner’s copyright interest – and his
13 corresponding claim of ownership – necessarily fails.

14 Section 203 provides, in part:

15 In the case of any work other than a work made for hire, the exclusive or
16 nonexclusive grant of a transfer or license of copyright or of any right
17 under a copyright, executed by the author on or after January 1, 1978,
otherwise than by will, is subject to termination under [certain specified
conditions].

18 17 U.S.C. § 203(a). However, Congress did not make the termination right self-
19 effectuating; indeed, “[i]nstead of being automatic, . . . the termination of a transfer or
20 license under section 203 would require *the serving of an advance notice within*
21 *specified time limits and under specified conditions.*” H.R. REP. No. 94-1476, at 124
22 (1976) (emphasis added), *available at*

23 https://www.copyright.gov/history/law/clrev_94-1476.pdf. Specifically, an author
24 who seeks to terminate a grant of copyright must, among other things:

- 25 • select an “effective date of termination” that falls within a prescribed statutory
26 window, 17 U.S.C. § 203(a)(3);
- 27 • specify that “effective date of termination” in a notice that complies with the
28 remaining requirements of Section 203, 17 U.S.C. § 203(a)(4); and

- 1 • critically here, serve the notice on the grantee “not less than two or more than
2 ten years before” the effective date of termination that is stated in the notice, 17
3 U.S.C. § 203(a)(4)(A).

4 Here, Yoakam selected January 31, 2021 as the “effective date of termination”
5 for the Singles, and stated that date in the applicable Notice. Am. Compl. Ex. 1 [Dkt.
6 No. 16-1 at 7]. Section 203 thus required Yoakam to serve the Notice at least two
7 years prior to that date, or no later than January 31, 2019. However, Yoakam’s
8 counsel did not transmit the Notice to Warner until February 5, 2019, several days
9 after the latest date on which Yoakam could validly serve a termination notice as to
10 the Singles, in light of the effective date of termination he had selected. Am. Compl.
11 ¶ 60.

12 Plaintiff does not dispute – because he cannot – that he did not comply with the
13 statutory requirements of Section 203. Instead, he offers two arguments in support of
14 the proposition that this Court should override the requirements set by Congress and
15 unilaterally forgive his noncompliance. Neither is supported by law.

16 First, Yoakam alleges that he “waited [an] extra five days” to file this action, as
17 though the statutory notice window is optional or linked to the date a lawsuit is filed.
18 It is not. The two-year service requirement of Section 203 is *expressly* and *exclusively*
19 tied to the date of termination that is recited in the termination notice. Plaintiff’s five-
20 day delay in filing suit does not change the fact that the effective date of termination
21 for the Singles in the Notice is January 31, 2021. Nor does Plaintiff’s five-day delay
22 in filing suit change the fact that the Notice was served less than two years prior to
23 that effective date of termination. As another court noted, in describing a related
24 timing requirement in 17 U.S.C. § 304(c)(4)(A):

25 Once a termination effective date is chosen and listed in the notice, the
26 [statutory timing requirement] is an unbendable rule with an inescapable
27 effect That good cause may have existed for failing to structure the
28 termination notices so as to sweep [certain works] within its reach does
not obviate application of the rule itself.

1 *Siegel v. Warner Bros. Entm't Inc.*, 542 F. Supp. 2d 1098, 1121-22 (C.D. Cal. 2008)
 2 [hereinafter *Siegel I*], *rev'd in part on other grounds sub nom. Larson v. Warner Bros.*
 3 *Entm't*, 504 F. App'x 586 (9th Cir. 2013).² Yoakam's delay in suing did not bend the
 4 "unbendable" rule, and the inescapable effect is that the Notice is invalid as to the
 5 Singles.

6 Plaintiff's alternative argument is that the effective date that he chose and
 7 recited in the Notice was a "harmless scrivener's error" that should simply be ignored
 8 by this Court. Am. Compl. ¶ 70. Plaintiff appears to be invoking regulations adopted
 9 by the Register of Copyright relating to the "form, content, and manner of service" of
 10 termination notices. *See* 17 U.S.C. § 203 (a)(4)(B); 37 C.F.R. § 201.10. Those
 11 regulations include a harmless error provision, which generally states that "[h]armless
 12 errors in a notice [that do] not materially affect the adequacy of the information
 13 required to serve the purposes of [Section 203] shall not render the notice invalid." 37
 14 C.F.R. § 201.10(e).³

15 However, the relevant authorities are in accord that the harmless error doctrine
 16 does *not* apply to a party's failure to comply with the *statutory* requirements of
 17 Section 203. As the Ninth Circuit has long noted, relying on venerable Supreme
 18 Court precedent:

19 It is clear that "regulations, in order to be valid must be consistent with
 20 the statute under which they are promulgated," *United States v.*
Larionoff, 431 U.S. 864, 873, (1977), and the agency's "'interpretation'

21 ² Although *Siegel I* was addressing Section 304 of the Copyright Act (which applies to
 22 transfers executed before 1978, where Section 203 applies to transfers executed in or
 23 after 1978), the language of the relevant statutory sections is identical. *Compare* 17
 24 U.S.C. § 203(a)(4)(A) *with* 17 U.S.C. § 304(c)(4)(A). Similarly, while *Siegel I* was
 25 addressing the five-year window in which a termination may be effective, the five-
 year window requirement appears in the same section – indeed, the same sentence – as
 the two-year service requirement, and there is no basis in the *Siegel I* court's opinion
 to apply a different standard to the two windows.

26 ³ The regulations go on to provide examples of harmless errors, including errors in the
 27 date of execution of the grant being terminated, the date of copyright registration, and
 28 the registration number of the work, "if the errors were made in good faith and
 without any intention to deceive, mislead, or conceal relevant information." 37 C.F.R.
 § 201.10(e). Conspicuously absent is any reference to an error in the effective date of
 termination.

1 of the statute cannot supersede the language chosen by Congress.”
 2 *Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980).
 3 *Pacific Gas & Elec. Co. v. U.S.*, 664 F.2d 1133, 1136 (9th Cir. 1981). Not
 4 surprisingly then, the Copyright Office, copyright scholars, and other courts have
 5 concluded that regulations governing “harmless error” do not – and cannot – overrule
 6 the timing requirements that Congress has adopted.

7 For example, in 2011, in addressing the scope of the “harmless error” doctrine,
 8 the Acting Register of Copyright noted that an error in identifying the date of
 9 execution of a grant may be harmless if the error does not result in a violation of the
 10 timing requirements of the statute. However, “if the wrong date is recited in the
 11 notice and a court subsequently determines that the actual date of execution was at a
 12 time *that places the effective date of termination or the date of service of the notice of*
 13 *termination outside of the statutory windows, the harmless error doctrine will be of no*
 14 *assistance.”* 76 Fed. Reg. 32316, 32319 (June 6, 2011) (emphasis added). Likewise,
 15 the leading copyright treatise, *Nimmer on Copyright*, affirms the inapplicability of the
 16 doctrine to timing errors of the sort at issue here:

17 Because the harmless error doctrine applies only to information regarding
 18 the adequacy of notice, it cannot be invoked to excuse timing errors,
 19 whereby termination is noticed for a date outside the proper five-year
 20 window or *service is effectuated more than ten years or less than two*
years before the date specified in the termination notice. In principle,
even a variance of one day will doom an attempt at termination as
untimely, by analogy to strict application of governing statutes of
 limitation.

21 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 11.06 (rev. ed.
 22 2019) (emphasis added). And the *Siegel I* court, which characterized the statutory
 23 timing requirements as “unbendable rule[s] with an inescapable effect,” specifically
 24 held that compliance with such requirements is “not subject to the harmless error
 25 analysis.” *Siegel I*, 542 F. Supp. 2d at 1118, 1121 (noting inapplicability of harmless
 26 error doctrine, even as to works that fell “just a few days outside the five-year
 27 effective window of plaintiffs’ termination notices”).

1 Plaintiff's interpolation of the word "scrivener" into his "harmless error"
2 argument is likely a reference to *Johansen v. Sony Music Entertainment Inc.*, No. 19
3 CIV. 1094 (ER), 2020 WL 1529442 (S.D.N.Y. Mar. 31, 2020), where the court stated
4 that failure to serve a termination notice at least two years before the effective date of
5 termination might have resulted from a "scrivener's error," and "that the harmless
6 error rule may apply to excuse it." *Id.* at *5. The only authority that the court
7 referenced was *Siegel v. Warner Bros. Entm't Inc.*, 690 F. Supp. 2d 1048, 1052 (C.D.
8 Cal. 2009) [hereinafter *Siegel II*], which the *Johansen* court cited for the proposition
9 that "[t]he harmless error rule applies to . . . simple clerical or typographical errors."
10 *Johansen*, 2020 WL 1529442, at *5.

11 The *Johansen* court's ruling in this regard was clearly incorrect. It ignores
12 established Supreme Court authority that an agency regulation cannot be inconsistent
13 with or supersede statutory requirements imposed by Congress. *See supra* at 9. It
14 ignores the Acting Register of Copyright's express acknowledgement that the
15 harmless error doctrine will be of "no assistance" if an error "places...the date of
16 service of the notice of termination outside of the statutory window[]." *See supra* at 8.
17 It ignores the observation of the leading copyright treatise that "even a variance of one
18 day [from the statutory service requirements] will doom an attempt at termination as
19 untimely." *Id.* And perhaps most notably, it cites the *wrong* opinion in *Siegel*. The
20 issue in *Siegel II*, which the *Johansen* court cited, related to compliance with the
21 *regulatory* requirements under 37 CFR § 201.10(b)(1)(iii). The court in *Siegel II* did
22 not address errors related to the *statutory* timing requirements; that issue was
23 addressed in *Siegel I*, which characterized them as "unbending" and of "inescapable
24 effect." *See supra* at 8, 10. In short, neither *Johansen* nor any other authority upon
25 which Plaintiff may rely supports the notion that a violation of the statutory timing
26 requirements of 17 U.S.C. § 203 can be disregarded on the basis of an alleged
27 "scrivener's error."

28

1 Plaintiff is not left without recourse. He could serve a new putative notice of
 2 termination that complies with the statutory timing requirements (*i.e.*, service between
 3 two and ten years before the effective date of termination stated in the notice). *See*,
 4 *e.g.*, *Hallstrom v. Tillamook Cty.*, 493 U.S. 20, 28, 32 (1989) (requiring “strict
 5 compliance with statutory [notice timing] conditions” because “[a]bsent a clearly
 6 expressed legislative intention to the contrary, the words of the statute are conclusive,”
 7 but noting that plaintiffs “remain free to give notice and file their suit in compliance
 8 with the statute”) (internal quotation omitted). But whatever Plaintiff’s recourse, it is
 9 not presently against Defendants.⁴

10 In sum, Plaintiff did not comply with the requirements of Section 203, and
 11 therefore cannot claim the benefits of or rights under that statute. Because he has not
 12 validly terminated any grant of copyright to Defendants, he is not the owner of the
 13 copyright in the Singles. His infringement claim as to the Singles should therefore be
 14 dismissed.

15 **II. PLAINTIFF FAILS TO STATE A CLAIM FOR CONVERSION**

16 Plaintiff’s claim for conversion fails as a matter of law. First, Plaintiff’s claim
 17 is preempted by the Copyright Act. Second, as to the Singles in particular, Plaintiff is
 18 not the owner of the Works and cannot allege conversion of property he does not own.
 19 Lastly, Plaintiff’s “alternative” theory is based on Defendants’ alleged *non-*
 20 exploitation of the Works, and thus fails to allege that Defendants engaged in a
 21 “wrongful act or disposition of property rights,” as is required to state a claim.

22 **A. Plaintiff’s Conversion Claim Is Preempted By The Copyright Act.**

23 A claim is preempted by the Copyright Act if “(1) the rights asserted under state
 24 law are equivalent to those protected by the Copyright Act; and (2) the work involved

25 ⁴ Plaintiff alleges that Defendants “waited in bad faith until the last possible moment
 26 to reject the Termination Notices for the Singles.” Am. Compl. ¶ 70. While
 27 Defendants vigorously dispute this characterization, it is irrelevant. The statute does
 28 not impose an obligation to respond to putative termination notices in any particular
 time frame (or at all), and Defendants are not in any event responsible to ensure that
 Plaintiff – who is represented by no less than two law firms – complies with statutory
 timing requirements.

1 fall[s] within the subject matter of the Copyright Act.” *McGowan v. Weinstein*, No.
2 2:19-cv-09105-ODW (GJSx), 2020 WL 7210934, at *13 (C.D. Cal. Dec. 7, 2020)
3 (internal quotations omitted); *see also* 17 U.S.C. § 301(a) (preempting “all legal or
4 equitable rights that are equivalent to any of the exclusive rights within the general
5 scope of copyright . . . in works of authorship that are fixed in a tangible medium of
6 expression and come within the subject matter of copyright”).

7 Here, there is no dispute that both of the above elements are satisfied.
8 Numerous courts have held that the rights asserted under a conversion claim are
9 equivalent to those protected under copyright, and that conversion claims are therefore
10 preempted. *See, e.g., Zito v. Steeplechase Films, Inc.*, 267 F. Supp. 2d 1022, 1027
11 (N.D. Cal. 2003) (concluding that plaintiff’s conversion claim was preempted because
12 it was “based on the same facts as his infringement claim”); *Stockroom Inc. v. XR*
13 *LLC*, No. SACV 08-01046-JVS (RNBx), 2009 WL 10671380, at *7 (C.D. Cal. July
14 17, 2009) (finding conversion claim preempted: “[Plaintiff]’s claim for conversion is
15 based on the same facts as the copyright infringement claim.”); *Prince v. Universal*
16 *Music Corp.*, No. 209CV1459FMCFFMX, 2009 WL 10672282, at *4 (C.D. Cal. May
17 18, 2009) (conversion claim preempted: allegation that defendants “wrongfully
18 exercised dominion and control over” plaintiffs’ property was not qualitatively
19 different than infringement claim); *Kantemirov v. Goldine*, No. C05-01362 HRL,
20 2005 WL 1593533, at *5-6 (N.D. Cal. June 29, 2005) (conversion claim based on
21 allegation that defendant “unfairly benefitted from” unauthorized use of plaintiff’s
22 website design preempted by Copyright Act). This is true even to the extent that
23 Plaintiff contends that his right to profit from his claimed works is being compromised
24 (*see* Am. Compl. ¶¶ 131, 134, 135). *See, e.g., Worth v. Universal Pictures, Inc.*, 5 F.
25 Supp. 2d 816, 823 (C.D. Cal. 1997) (a conversion claim seeking profits derived from
26 exploitation of a copyrighted work is “subsumed within federal copyright law” and is
27 thus preempted). As to the second element, Yoakam does not dispute – because he
28

1 cannot – that sound recordings fall within the subject matter of the Copyright Act. *See*
2 17 U.S.C. § 114.

3 Here, the facts purportedly underlying Yoakam’s conversion claim are
4 effectively identical to his copyright claim, as are the rights he seeks to protect. *See*
5 Am. Compl. ¶ 126 (incorporating copyright infringement allegations in conversion
6 claim); *compare* Am. Compl. ¶¶ 130-136 with ¶¶ 119-124. His conversion claim is
7 therefore preempted. *See, e.g., Brown v. Beatty*, No. CV 16-7666 PA (GJSX), 2017
8 WL 6940518, at *6 (C.D. Cal. Nov. 9, 2017) (claim that defendant “hijacked control
9 and ownership” of plaintiff’s creative work and converted it “for her own benefit and
10 gain” preempted).

11 **B. Plaintiff Fails To State A Claim For Conversion.**

12 In an effort to avoid preemption, Plaintiff maintains that he is bringing his
13 conversion claim “in the alternative,” in the event “Defendants’ control over Mr.
14 Yoakam’s copyrights is not covered by the Copyright Act.” But if that alleged
15 “control over Mr. Yoakam’s [alleged] copyrights” is not a violation of copyright law,
16 then it cannot constitute conversion either. Thus, even if Plaintiff’s conversion claim
17 were not preempted, it should be dismissed for failure to state a claim.

18 “The elements of a conversion claim are: (1) the plaintiff’s ownership or right
19 to possession of the property; (2) the defendant’s conversion by a wrongful act or
20 disposition of property rights; and (3) damages.” *Burlesci v. Petersen*, 68 Cal. App.
21 4th 1062, 1066 (1998). As to the Singles, Plaintiff’s claim of ownership is based
22 entirely upon his defective notice of termination as to those Works. *See supra* § I.
23 Because Plaintiff did not comply with the statutory requirements to terminate
24 Warner’s ownership of the copyright in the Singles, Plaintiff’s conversion claim as to
25 those Works necessarily fails as a matter of law.

26 More broadly, however, Plaintiff’s conversion claim should be dismissed
27 because he fails to adequately allege any “wrongful act or disposition of property
28 rights” by Defendants. Plaintiff’s putative conversion claim is replete with conclusory

1 allegations or legal assertions. These include Plaintiff’s conclusory assertion that
 2 Defendants have “claim[ed] ownership of the sound recordings contained within the
 3 First Album” (Am. Compl. ¶ 112), that Defendants have “interfered with [Plaintiff’s]
 4 possession and enforcement of copyrights in the Singles” (*id.* ¶ 130), that Defendants
 5 have “refus[ed] to allow [Plaintiff] to exploit [the Singles and the First Album]
 6 himself” (*id.* ¶ 131), and that Defendants have “prevented [Plaintiff] from accessing
 7 and exploiting his exclusive copyrights” (*id.* ¶ 132). Such allegations are properly
 8 disregarded on a motion to dismiss. *Steckman*, 143 F.3d at 1295-96.

9 But even if these allegations were well-pleaded (which they are not), they do
 10 not state a claim for conversion. It is well-established that “[c]onversion requires
 11 affirmative action to deprive another of property, not a lack of action.” *Archer v.*
 12 *Coinbase, Inc.*, 53 Cal. App. 5th 266, 276-77 (2020) (affirming grant of summary
 13 judgment in favor of defendant that “took no affirmative action to deprive plaintiff of
 14 a property right”) (internal quotations and citation omitted). Plaintiff’s conversion
 15 claim is premised on Defendants’ “removing the Singles and the First Album from
 16 market” *prior* to the putative effective date of termination, Am. Compl. ¶ 131,
 17 followed by Defendants’ alleged “refus[al] to acknowledge” Plaintiff’s claimed rights
 18 in those Works, *id.* at ¶¶ 17, 18, 20, 21, 22, 131. Under the authority cited above,
 19 Defendants’ alleged *lack* of action – their *non*-exploitation and *non*-acknowledgement
 20 of Plaintiff’s alleged rights – does not support a conversion claim. This claim should
 21 therefore be dismissed.

22 **III. PLAINTIFF’S DECLARATORY RELIEF CLAIM IS NOT RIPE AS TO** 23 **THE MAJORITY OF WORKS LISTED IN THE NOTICES**

24 The Notices collectively list twenty-four separate works, each with its own
 25 putative effective date of termination. Four of those works have putative effective
 26 dates of termination in 2021, and the remaining twenty (the “Later Works”) have
 27 putative effective dates of termination ranging from 2022 through 2030. Am. Compl.
 28 Exs. 1 & 2. In his declaratory relief claim, Plaintiff seeks a declaration that the

1 Notices are “effective” as to all the works listed, and that “[t]he copyrights contained
2 within the . . . Notices automatically return to [him] as of each works’ respective
3 effective termination date.” Am. Compl. ¶ 101.

4 In order to invoke this Court’s jurisdiction under the Declaratory Judgment Act,
5 however, Plaintiff must establish that a “case of actual controversy” exists between
6 the parties, 28 U.S.C. § 2201(a). Among other things, a claim for declaratory relief
7 must be “ripe,” which involves both constitutional and prudential considerations.
8 Because Plaintiff cannot establish either “constitutional ripeness” or “prudential
9 ripeness” as to the Later Works, he cannot meet the “actual controversy” requirement.
10 Defendants therefore seek to dismiss Plaintiff’s declaratory claim with respect to
11 works with an alleged “effective date of termination” in or after 2022. *See Lauren*
12 *Moshi, LLC v. Fuentes*, No. CV 18-6725-DMG (JPRx), 2019 WL 8690213, at *4
13 (C.D. Cal. June 25, 2019) (granting motion to dismiss “one aspect of [plaintiff’s]
14 multi-faceted request for declaratory relief” as outside the court’s subject matter
15 jurisdiction, because “[p]ermitting declaratory relief plaintiffs to evade jurisdictional
16 review of nonjusticiable claims by burying those claims beneath other justiciable
17 claims within a single cause of action would undermine federal courts’ ability to
18 police their own jurisdiction”).

19 **A. Plaintiff Cannot Establish Constitutional Ripeness.**

20 Constitutional ripeness requires the “invasion of a legally protected interest
21 which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or
22 hypothetical.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal
23 quotations, citations, and footnote omitted). Phrased differently, “[a] claim is not ripe
24 for adjudication if it rests upon contingent future events that may not occur as
25 anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300
26 (1998) (internal quotations and citations omitted). Judged against this standard,
27 Yoakam’s claims respecting the Later Works are not constitutionally ripe.

28

1 It is undisputed that Warner has not taken a position respecting the validity of
2 the Notices as to the Later Works, Am. Compl. ¶ 19, nor is there any statutory or other
3 requirement that it do so (much less that it do so years before the putative effective
4 date of termination). As courts have routinely recognized in similar contexts, the
5 absence of a present, live dispute between the parties precludes a finding of
6 constitutional ripeness. For example, in *Purely Driven Prod., LLC v. Chillovino, LLC*,
7 171 F. Supp. 3d 1016 (C.D. Cal. 2016), after defendants commenced a proceeding in
8 the United States Patent and Trademark Office opposing plaintiffs’ application to
9 register a given trademark, plaintiffs filed a lawsuit seeking a declaration that the
10 trademark at issue did not infringe defendants’ rights. The court dismissed the lawsuit
11 on constitutional ripeness grounds, noting that defendants had not “threatened to file
12 or filed any infringement claims against Plaintiffs,” and had “disclaimed threatening
13 Plaintiffs with an infringement action.” *Id.* at 1019. Because any dispute between the
14 parties was not “of sufficient immediacy and reality to warrant the issue of a
15 declaratory judgment,” the constitutional standard of an “actual controversy” was not
16 satisfied. *Id.* at 1018, 1019 (internal quotations and citations omitted).

17 Similarly, in *Kordich v. Salton, Inc.*, No. 05cv0202-LAB (RBB), 2005 WL
18 8173161 (S.D. Cal. July 5, 2005), plaintiff claimed that a non-compete clause that he
19 had agreed to as part of the sale of his trademark imposed an “unenforceable
20 hardship” on him and should be invalidated. *Id.* at *4. In finding that plaintiff’s claim
21 was not constitutionally ripe, the court noted that plaintiff “alleges no facts to suggest
22 [the defendant] has already breached the Agreement or will imminently do so” or that
23 any “violative act” of the agreement had yet occurred. *Id.* Because “[n]o course of
24 conduct [was] alleged that w[ould] result in ‘imminent’ and ‘inevitable’ litigation,”
25 plaintiff’s claim was “too speculative” to meet the constitutional standard. *Id.* at *5.
26 The same analysis applies with equal force here – because Warner has not yet taken a
27 position with respect to the enforceability or effect of the Notices as to the Later
28

1 Works, any dispute between the parties is purely speculative and not certain to result
2 in “imminent” and “inevitable” litigation.

3 Plaintiff may seek to rely upon the Ninth Circuit’s decision in *Ray Charles*
4 *Found. v. Robinson*, 795 F.3d 1109 (9th Cir. 2015), another copyright termination
5 case, but that decision is clearly distinguishable. In *Ray Charles*, the court found the
6 constitutional ripeness requirement was satisfied when the party seeking declaratory
7 relief was the *non*-terminating party, which had disputed the validity of the
8 termination notices that it had received. *Id.* at 1111. Because the non-terminating
9 party had affirmatively challenged the validity of the notices, the court found that a
10 live dispute existed between the parties that was “definite and concrete, not
11 hypothetical or abstract.” *See id.* at 1116-17 (internal quotations and citation omitted).
12 Here, in contrast, Defendants have taken no position as to the validity of the Notices
13 as to the Later Works, such that, at present, no actual controversy exists.

14 Plaintiff also alleges that Defendants’ purported “refusal of Mr. Yoakam’s
15 rights” has “thwarted Mr. Yoakam’s ability to shop and sell the rights to his works as
16 of the effective termination date.” Am. Compl. ¶ 96. Setting aside that Warner has
17 not “refus[ed]” Plaintiff’s claimed rights with respect to the Later Works – it simply
18 has not yet taken a position as to those works – Plaintiff is not entitled to “shop and
19 sell” the rights to those works at this time in any event. Section 203(b)(4) of the
20 Copyright Act *precludes* Plaintiff from entering into a further grant, or an agreement
21 to make a further grant, with any party *other than* Warner until after the effective date
22 of termination. *See* 17 U.S.C. § 203(b)(4). Thus, Plaintiff’s allegations that
23 Defendants’ actions are “preventing Mr. Yoakam from selling or otherwise exploiting
24 [the Later Works],” Am. Compl. ¶ 19, that Defendants are causing Plaintiff’s
25 “inability to exploit the [Later Works],” *id.* ¶ 97, and that declaratory relief would
26 allow Yoakam to “finally exploit” the Later Works, *id.* ¶ 21, are simply baseless. It is
27 Section 203 that precludes Plaintiff’s present exploitation of the Later Works, and
28 declaratory relief will not change that fact. In short, Plaintiff’s claimed injury – like

1 his broader declaratory relief claim – is not “real and concrete,” but is instead
 2 “speculative and hypothetical.” *Thomas v. Anchorage Equal Rights Comm’n*, 220
 3 F.3d 1134, 1139 (9th Cir. 2000); *cf. Ray Charles*, 795 F.3d at 1117 (finding
 4 constitutional ripeness satisfied where allegedly invalid termination notices caused
 5 *present* harm to the ability of the current owner to exploit the copyrighted works).
 6 The declaratory relief claim as to the Later Works is therefore not constitutionally
 7 ripe.

8 **B. Plaintiff Cannot Establish Prudential Ripeness.**

9 A claim for declaratory relief is also subject to prudential ripeness
 10 considerations. *See e.g., Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
 11 *L’Antisemitisme*, 433 F.3d 1199, 1211 (9th Cir. 2006) (“Even where jurisdiction is
 12 present in the Article III sense, courts are obliged to dismiss a case when
 13 considerations of prudential ripeness are not satisfied.”). The prudential ripeness
 14 analysis is guided by two considerations: “(1) whether delayed review of the issue
 15 would cause hardship to the parties and (2) whether the issues are fit for judicial
 16 decision or would benefit from further factual development.” *Winebarger v.*
 17 *Pennsylvania Higher Educ. Assistance Agency*, 411 F. Supp. 3d 1070, 1088 (C.D. Cal.
 18 2019) (quoting *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev.*
 19 *Comm’n*, 461 U.S. 190, 201 (1983)); *see also Bank of New York Mellon v. City of*
 20 *Richmond*, No. C 13-03664 CRB, 2013 WL 5955699, at *4–5 (N.D. Cal. Nov. 6,
 21 2013) (concluding that the threat of possible eminent domain was “not fit for review
 22 because the existence of a controversy depend[ed] on a factual scenario that might
 23 never materialize”).

24 The prudential ripeness analysis of the court in *Mtume v. Sony Music Entm’t*,
 25 No. 18 Civ. 11747 (ER), 2020 WL 832814 (S.D.N.Y. Feb. 20, 2020), is directly on
 26 point. In *Mtume*, plaintiff sought a declaration that the termination notice he had sent
 27 to defendant Sony was valid. *Id.* at *3. Sony argued that the request for declaratory
 28 relief was unripe because it had not taken a position as to the validity of the notice. *Id.*

1 While the court found that the plaintiff had met the constitutional ripeness
 2 requirement,⁵ prudential ripeness considerations dictated that “the issue may be better
 3 resolved at a later time, when Sony has had an opportunity to articulate its position
 4 towards the works [in dispute].” *Id.* at *5. As the court noted, “[t]here is . . . no
 5 reason for this Court to prematurely answer questions that may never be raised with
 6 respect to this particular work,” including “[b]ecause further factual development may
 7 inform the Court’s decision.” *Id.* at *6. The court further observed that plaintiff
 8 would not “be significantly harmed by the adjudication of this matter at a later time, if
 9 and when Sony responds to” the notice at issue, in light of the fact – discussed above
 10 – that terminating parties are “prohibited from entering into any binding agreements
 11 regarding the work” before the effective date of termination. *Id.* (citing 17 U.S.C. §
 12 203(b)(4)). For all of these reasons, the court dismissed the declaratory relief claim.

13 This analysis is directly applicable to the present case. Warner has taken a
 14 position on the invalidity of the Notices only as to the Singles, based on facts unique
 15 to those works (*i.e.*, the noncompliance with the statutory timing requirements
 16 respecting service). Unlike Sony in *Mtume*, it has not taken a position on any broader
 17 issue affecting the Later Works. Moreover, Plaintiff implicitly concedes that certain
 18 of the Later Works are governed by a *different* recording agreement than the Singles,
 19 namely, a recording agreement entered into in 1990 (the “1990 Agreement”). *See*
 20 Am. Compl. ¶ 58; *see also* Declaration of Melissa Battino (“Battino Decl.”) ¶¶ 2-3.⁶
 21 While Plaintiff alleges that the agreements contain the “exact same language” in one

22 ⁵ As with *Ray Charles*, the *Mtume* court’s finding regarding constitutional ripeness is
 23 distinguishable from the present case. In *Mtume*, while defendant had not taken a
 24 position with respect to the specific termination notice at issue in the declaratory relief
 25 claim, defendant *had* previously responded to another termination notice involving the
 26 same agreement, and had taken a position as to a key issue relating to that agreement
 27 that was implicated by the declaratory relief claim. *See Mtume* at *4. Thus, unlike
 28 here, there was a specific dispute between the parties that had been joined.

⁶ A court may consider documents outside the pleadings in ruling on a motion brought
 pursuant to Rule 12(b)(1). *See St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir.
 1989). In addition to the 1990 Agreement, Plaintiff also references a “1996
 Agreement”; however, none of the Works identified in the Notices is governed by that
 agreement. Battino Decl. ¶¶ 2-3.

1 respect, the conclusory allegation is *refuted* by the actual language of the 1990
 2 Agreement, which materially differs both as to the specific provision cited by
 3 Plaintiff, as well as in multiple other respects. *See* Battino Decl. ¶¶ 3-4; *see also*
 4 *Steckman*, 143 F.3d at 1295-96 (court may disregard conclusory allegations that are
 5 contradicted by documents referenced in a complaint). Declaratory relief as to the
 6 Later Works recorded under the 1990 Agreement, many years in advance of their
 7 putative effective dates of termination, is therefore particularly premature. In any
 8 event, as to *all* of the Later Works, the words of the court in *Mtume* ring true:

9 Business, legal, or other reasons may counsel that the instant conflict
 10 between Mtume and Sony be resolved without court intervention.
 11 Alternatively, Sony may challenge the validity of the [termination notice
 12 at issue] for completely unrelated reasons, in which case a decision by
 13 this Court now would have done little to resolve the conflict and would
 14 be purely advisory in nature.

15 *Mtume* at 2020 WL 832814, at *5; *see also Winebarger*, 411 F. Supp. 3d at 1088
 16 (concluding that plaintiffs’ concerns about their inability to search for other
 17 employment positions “five to seven years in the future are entirely speculative”
 18 because that possibility depended on contingencies that may or may not happen, and
 19 dismissing declaratory relief claim). For these reasons, Plaintiff’s declaratory relief
 20 claim should be dismissed as to the Later Works.

21 **C. This Court Should Exercise Its Discretion To Decline To Hear**
 22 **Plaintiff’s Declaratory Relief Claim.**

23 Even if this Court finds that the Amended Complaint pleads an actual
 24 controversy, it may still dismiss the declaratory relief claim. It is well established that
 25 “[f]ederal courts do not have a duty to grant declaratory judgment; therefore, it is
 26 within a district court’s discretion to dismiss an action for declaratory judgment.”
 27 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 533 (9th Cir. 2008). The same
 28 ripeness considerations discussed above – even if they satisfy constitutional
 requirements – militate against consideration of Plaintiff’s declaratory relief claim as
 to the Later Works at this time; that claim should therefore be dismissed for this
 reason as well.

1 **IV. ALL CLAIMS AGAINST WMGC SHOULD BE DISMISSED**

2 The claims in this case allegedly stem from recording agreements between
 3 Plaintiff and Warner, Am. Compl. ¶¶ 48, 49, 58, termination notices that Plaintiff sent
 4 to Warner, *id.* ¶¶ 60, 72 & Exs. 1 & 2, and communications between Plaintiff’s
 5 counsel and an in-house attorney at Rhino, *id.* ¶¶ 63-69. WMGC is not a party to the
 6 recording agreements at issue, was not the addressee of the termination notices, and
 7 was not involved in the communications at issue in the Amended Complaint.⁷ On the
 8 contrary, the only allegations directed at WMGC (and the only ostensible bases for
 9 WMGC’s liability) are Plaintiff’s assertions that “[a]ll Defendants appear to share an
 10 office in Los Angeles, California,” that WMGC ostensibly “owns and controls Warner
 11 and Rhino,” and that a Rhino employee was ostensibly acting “at the direction of
 12 WMG[C]” in sending a single e-mail to Plaintiff’s counsel. Am. Compl. ¶¶ 31, 40-41;
 13 *see also id.* ¶ 18 (alleging that WMGC earned money from Plaintiff’s works “through
 14 its subsidiaries Warner and Rhino”).

15 “It is a general principle of corporate law deeply ingrained in our economic and
 16 legal systems that a parent corporation (so-called because of control through
 17 ownership of another corporation’s stock) is not liable for the acts of its subsidiaries.”
 18 *United States v. Bestfoods*, 524 U.S. 51, 61 (1998). Likewise, with respect to claims
 19 for copyright infringement, it is axiomatic that “[a] parent corporation cannot be held
 20 liable for the infringing actions of its subsidiary unless there is a substantial and
 21 continuing connection between the two with respect to the infringing acts.” *Frank*
 22 *Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 519–20 (9th Cir. 1985);
 23 *see also Unicolors, Inc. v. H&M Hennes & Mauritz L.P.*, No. 16-CV-02322-AB
 24 (SKX), 2018 WL 10307045, at *8 (C.D. Cal. Aug. 1, 2018) (“A defendant’s
 25 ownership interest in a separate corporate entity cannot, on its own, establish liability

26 ⁷ Although Plaintiff alleges in passing that the first e-mail response regarding the
 27 Notices came from Patti Coleman, whom he (incorrectly) alleges is with WMGC, Am.
 28 Compl. ¶ 39, he does not quote from or rely upon that communication. Instead, the
 only substantive allegations regarding communication between the parties relate to
 statements made by a representative of Rhino. *See* Am. Compl. ¶¶ 63-69.

1 for the separate entity’s infringement.”), *rev’d on other grounds*, 959 F.3d 1194 (9th
2 Cir. 2020).

3 Judged against these standards, the allegations in the Amended Complaint fail
4 to support imposition of liability against WMGC. Neither a common office address
5 nor the conclusory allegation that WMGC “owns and controls” its subsidiaries is
6 sufficient, and the cursory (and unsupported) assertion that a Rhino employee was
7 “acting at the direction of WMG[C]” in sending a single e-mail to Plaintiff’s counsel,
8 Am. Compl. ¶ 31, falls far short of the “substantial and continuing connection” with
9 respect to “infringing acts” that is necessary to state a claim against WMGC. WMGC
10 does not belong in this case, and all claims against it should be dismissed.

11 **CONCLUSION**

12 For the foregoing reasons, this Court should dismiss (1) the copyright
13 infringement cause of action as to the Singles, (2) the conversion cause of action for
14 failure to state a claim, (3) the declaratory relief claim as to the Later Works for lack
15 of subject matter jurisdiction, and (4) all claims against WMGC.

16
17 Dated: April 12, 2021

Respectfully Submitted

18 SIDLEY AUSTIN LLP

19
20 By: /s/ Rollin A. Ransom
21 Rollin A. Ransom
22 Attorneys for Defendants
23 WARNER MUSIC GROUP CORP.,
24 WARNER RECORDS INC., and
25 RHINO ENTERTAINMENT
26 COMPANY
27
28