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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDRE YOUNG pka DR. DRE, an individual,

Plaintiff,

vs.

WIDEAWAKE DEATH ROW ENTERTAINMENT LLC, a limited liability company; WIDEAWAKE ENTERTAINMENT GROUP, INC., a corporation; WIDEAWAKE HOLDING COMPANY, INC., a corporation; and DOES 1 through 10, inclusive;

Defendants.

Case No. CV 10-1019 CAS (JEMx)

ORDER GRANTING IN PART AND DENYING IN PART CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT

(filed January 5, 2011 and March 15, 2011)

I. INTRODUCTION

On February 11, 2010, plaintiff Andre Young, professionally known as the rap artist Dr. Dre, filed the instant action against defendants Wideawake Death Row Entertainment, LLC; Wideawake Entertainment Group, Inc.; Wideawake Holding Company, Inc; and Does 1 through 10. On February 22, 2010, plaintiff dismissed Wideawake Holding Company, Inc.

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1 On June 7, 2010, the Court dismissed six of plaintiff's eight claims with leave to
2 amend. Specifically, the Court dismissed plaintiff's claims under the Lanham Act, 15
3 U.S.C. §§ 1051 et seq., for false advertising, pursuant to 15 U.S.C. § 1125(a); trademark
4 infringement, pursuant to 15 U.S.C. § 1114; trademark dilution, pursuant to 15 U.S.C. §
5 1125(c); and misappropriation of the common law right of publicity. The Court also
6 dismissed plaintiff's claims for violation of Cal. Civ. Code § 3344; and violation of the
7 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. On July 8, 2010,
8 plaintiff filed a notice of intention not to amend the complaint. Accordingly, the only
9 surviving claims are for breach of contract and imposition of a constructive trust.

10 On January 5, 2011, plaintiff filed a motion for partial summary judgment on the
11 first claim for relief for breach of contract. On March 15, 2011, defendants filed a
12 motion for summary judgment, or, in the alternative, partial summary judgment. On
13 March 28, 2011, plaintiff filed an opposition to defendants' motion for summary
14 judgment, and a counter-motion for partial summary judgment. On April 1, 2011,
15 defendants filed an opposition to plaintiff's motion for partial summary judgment. The
16 parties filed replies on April 8, 2011.¹ After carefully considering the arguments set
17 forth by both parties, the Court finds and concludes as follows.

18 **II. FACTUAL BACKGROUND**

19 Plaintiff alleges that he is an "internationally renowned and immensely popular
20 composer, producer, recording artist and performer, with an excellent reputation among
21 the public and the critical community for his music." Compl. ¶ 1. In 1991, plaintiff co-

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¹ In addition, the parties filed dueling evidentiary objections to evidence submitted by the opposing party. The Court overrules Plaintiff's Objections to Evidence Cited in Support of Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment Nos. 1–11; the Court sustains objections Nos. 13 and 14. The Court overrules Plaintiff's Objections to Evidence Cited in Support of Defendants' Motion for Summary Judgment Nos. 3–5. Because the Court does not rely on the evidence to which the remainder of defendants' or plaintiff's objections are addressed, the Court denies those objections as moot.

1 founded the rap music record label Death Row Records (“Death Row”) with Marion
2 “Suge” Knight (“Knight”). Defendants’ Statement of Genuine Issues of Material Fact
3 (“DSGIMF”) ¶ 1. From 1991 until 1996, plaintiff co-owned Death Row with Knight
4 and was a producer, performer, and writer on the record label. Id. On December 15,
5 1992, plaintiff released the album “The Chronic.” Id. ¶ 2.

6 On March 14, 1996, plaintiff entered into a written agreement surrendering his
7 ownership interest in Death Row and resigning as an officer, employee and director of
8 the company (the “1996 Agreement”). Plaintiff’s Statement of Genuine Issues of
9 Material Fact (“PSGIMF”) ¶ 3. Paragraph 3 of the 1996 Agreement provides, in
10 relevant parts:

11 (a) Nothing contained in this Agreement shall affect any artist’s
12 royalties, mechanical royalties or producer’s royalties due or to become due
13 by Death Row to Young on or after January 1, 1996.

14 (b) Subject to paragraph 3(a) hereof, Young hereby irrevocably
15 assigns, transfers, conveys and quitclaims to Death Row all vested or
16 contingent right, title and interest of every kind and description, including
17 all copyrights, in and to the master recordings embodied in sound
18 recordings heretofore released by Death Row, including but not limited to
19 the sound recording entitled “The Chronic”. . . .

20 (c) . . . unless the parties hereto otherwise agree in writing, the
21 foregoing master recordings shall only be distributed in the manners
22 heretofore distributed.

23 (d) Subject to paragraph 3(a) hereof, Young hereby irrevocably
24 consents to the inclusion of any or all of the foregoing master recordings
25 in one Death Row “Greatest Hits” or “Best of” album.

26 Declaration of Stephen D. Rothschild (Rothschild Decl.), Exh. 1 (1996 Agreement) at
27 2–3. Paragraph 8 of the 1996 Agreement includes a “Waiver of Remedies” providing:

28 The parties irrevocably waive and relinquish any right now or hereafter

1 existing to seek or obtain the remedy of rescission, termination, or any
2 similar remedy. The parties' sole remedy hereunder shall be an action for
3 actual damages, or equitable relief in favor of Death Row to enforce the
4 provisions of this Agreement subject to any and all rights which Interscope
5 has or may hereunder have to Young's services.

6 Id. at 5.

7 Plaintiff's recordings were not available on the internet for digital download prior
8 to the execution of the 1996 Agreement.² DSGIMF ¶ 4. In March 2000, Death Row
9 concluded an agreement with third party internet vendor Musicmaker.com
10 ("Musicmaker"), making plaintiff's recordings, including "The Chronic," available for
11 digital download over the internet. Declaration of Michael D. Holtz ("Holtz Decl."),
12 Exhs. E and F.

13 On January 15, 2009, defendants acquired Death Row's assets from Death Row's
14 bankruptcy estate. PSGIMF ¶ 5. Defendants' purchase of Death Row's assets included
15 the rights to plaintiff's recordings subject to the terms of the 1996 Agreement. Id.

16 Plaintiff claims that since acquiring Death Row's assets in bankruptcy, defendants
17 have distributed digital copies of "The Chronic," and individual songs from the album,
18 through internet retailers such as iTunes and Amazon.com. Plaintiff's Statement of
19 Undisputed Material Facts ("PSUMF") ¶ 6. Furthermore, Death Row has distributed the
20 following albums that include plaintiff's recordings along with recordings by other
21 artists: (1) "Death Row Greatest Hits;" (2) "The Very Best of Death Row;" (3) "Death
22 Row Records–15 Years on Death Row;" (4) "Dr. Dre Chronicles Deluxe–Death Row
23 Classics;" (5) "Dr. Dre Chronicles–Death Row Classics;" (6) "Death Row Records–The
24 Singles Collection;" and (7) "Ultimate Death Row Box Set" (collectively, "the post-
25 1996 albums"). Id. ¶ 7.

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27 ² Digital or "permanent" downloads are "are digital copies of recordings that, once
28 downloaded over the Internet, remain on an end-user's computer or other device until
deleted." F.B.T. Prods., LLC v. Aftermath Records, 621 F.3d 958, 962 (9th Cir. 2010).

1 The gravamen of the dispute is whether defendants breached the 1996 Agreement
2 by making available for digital download plaintiff's album "The Chronic," among other
3 works, and releasing multiple "Best of or Greatest Hit" albums, without his
4 authorization.

5 **III. LEGAL STANDARD**

6 Summary judgment is appropriate where "there is no genuine issue as to any
7 material fact" and "the movant is entitled to a judgment as a matter of law." Fed. R. Civ.
8 P. 56(c). The moving party has the initial burden of identifying relevant portions of the
9 record that demonstrate the absence of a fact or facts necessary for one or more essential
10 elements of each cause of action upon which the moving party seeks judgment. See
11 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

12 If the moving party has sustained its burden, the nonmoving party must then
13 identify specific facts, drawn from materials on file, that demonstrate that there is a
14 dispute as to material facts on the elements that the moving party has contested. See
15 Fed. R. Civ. P. 56(c). The nonmoving party must not simply rely on the pleadings and
16 must do more than make "conclusory allegations [in] an affidavit." Lujan v. Nat'l
17 Wildlife Fed'n, 497 U.S. 871, 888 (1990); see also Celotex, 477 U.S. at 324. Summary
18 judgment must be granted for the moving party if the nonmoving party "fails to make a
19 showing sufficient to establish the existence of an element essential to that party's case,
20 and on which that party will bear the burden of proof at trial." Id. at 322; see also
21 Abromson v. Am. Pac. Corp., 114 F.3d 898, 902 (9th Cir. 1997).

22 In light of the facts presented by the nonmoving party, along with any undisputed
23 facts, the Court must decide whether the moving party is entitled to judgment as a matter
24 of law. See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631 &
25 n.3 (9th Cir. 1987). When deciding a motion for summary judgment, "the inferences to
26 be drawn from the underlying facts . . . must be viewed in the light most favorable to the
27 party opposing the motion." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475
28 U.S. 574, 587 (1986) (citation omitted); Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co.,

1 121 F.3d 1332, 1335 (9th Cir. 1997). Summary judgment for the moving party is proper
2 when a rational trier of fact would not be able to find for the nonmoving party on the
3 claims at issue. See Matsushita, 475 U.S. at 587.

4 **IV. DISCUSSION**

5 **A. Breach of Contract**

6 The parties' cross-motions raise three fundamental issues: (1) whether defendants
7 breached paragraph 3(c) of the 1996 Agreement by distributing digital downloads of
8 "The Chronic," allowing internet retailers to sell plaintiff's recordings as singles, and
9 including plaintiff's recordings on the post-1996 albums; (2) whether defendants
10 breached paragraph 3(d) of the 1996 Agreement by distributing plaintiff's recordings on
11 the post-1996 albums; and (3) whether defendants have any colorable affirmative
12 defenses. Because these issues require the Court to construe the 1996 Agreement, the
13 Court begins with an overview of the principles of contract interpretation under
14 California law.

15 Under California law, "[t]he language of a contract is to govern its interpretation,
16 if the language is clear and explicit, and does not involve an absurdity." Cal. Civ. Code
17 § 1638. The trial court's goal is to give effect to the parties' mutual intent at the time of
18 contracting. Cedars-Sinai Med. Ctr. v. Shewry, 137 Cal. App. 4th 964, 979 (2006)
19 (citing Cal. Civ. Code § 1636). If the contract is reduced to a writing, the court should
20 attempt to determine the parties' intent from the writing alone, if possible. Id.

21 Where contract terms are disputed, however, the trial court must provisionally
22 consider extrinsic evidence which is relevant to show whether the contractual language
23 is reasonably susceptible to the competing interpretations advanced by the parties. Pac.
24 Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co., 69 Cal. 2d 33, 39 (1968);
25 Wolf v. Superior Court, 114 Cal. App. 4th 1343, 1350 (2004). Extrinsic evidence may
26 include the surrounding circumstances under which the parties entered into the contract,
27 the object, nature and subject matter of the contract, and the subsequent conduct of the
28 parties. Cedars-Sinai, 137 Cal. App. 4th at 980. "If in light of the extrinsic evidence the

1 court decides the language is ‘reasonably susceptible’ to the interpretation urged, the
2 extrinsic evidence is then admitted to aid in . . . interpreting the contract.” Winet v.
3 Price, 4 Cal. App. 4th 1159, 1165 (1992); see also Aftermath Records, 621 F.3d at 963.
4 Determining whether a contract provision is ambiguous is a question of law. Maffei v.
5 N. Ins. Co., 12 F.3d 898, 898 (9th Cir. 1993). However, where “ascertaining the intent
6 of the parties at the time the contract was executed depends on the credibility of extrinsic
7 evidence, that credibility determination and the interpretation of the contract are
8 questions of fact that may properly be resolved by the jury.” City of Hope Nat’l Med.
9 Ctr. v. Genentech, Inc., 43 Cal. 4th 375, 395 (2008).

10 **1. Paragraph 3(c)**

11 Plaintiff argues that defendants breached paragraph 3(c) of the 1996 Agreement
12 by making “The Chronic” available for digital download on the internet, allowing
13 internet retailers to sell as singles his recordings that were not sold as singles prior to the
14 execution of the 1996 Agreement, and distributing his recordings on the post-1996
15 albums. Pl.’s Mot. at 7–10; Pl.’s Reply at 2.

16 Paragraph 3(c) provides that “unless the parties hereto otherwise agree in writing,
17 the foregoing master recordings shall only be distributed in the manners heretofore
18 distributed.” Rothschild Decl., Exh. 1 at 2. Plaintiff argues that this provision
19 unambiguously prohibits defendants from distributing his recordings in any other way
20 than they were distributed prior to the execution of the 1996 Agreement. Pl.’s Mot. at
21 9–10. In support of his argument, plaintiff asserts that “distribution” is how record
22 companies disseminate recorded music to consumers, and case law supports the
23 conclusion that digital downloads are a manner of distribution. Pl.’s Mot. at 7–8 (citing
24 Capital Records Inc. v. Thomas, 579 F. Supp. 2d 1210, 1217 (D. Minn. 2008); Arista
25 Records v. Launch Media, Inc., 578 F.3d 148, 153 (2d Cir. 2009); Atlantic Recording
26 Corp. v. Howell, 554 F. Supp. 2d 976, 983–85 (D. Ariz. 2008); “The Youngbloods” v.
27 BMG Music, No. 07 CV 2394(GBD), 2008 WL 919617, at *1 (S.D.N.Y. 2008)).
28 Moreover, plaintiff asserts that legal commentators have recognized that the usage of

1 “distribution” in the music industry includes digital downloading as a form of
2 distribution. *Id.* at 9 (citing secondary sources).

3 Disputing plaintiff’s interpretation, defendants argue that paragraph 3(c) is
4 intended to address the “manner” in which the recordings are distributed – meaning that
5 the songs on “The Chronic” should not be remixed, mixed in a different order than how
6 they appeared on the original album, or mixed together with other recordings.³ Deft.’s
7 Opp’n at 12. Defendants further maintain that they have not breached paragraph 3(c) by
8 distributing the post-1996 albums because the only songs by plaintiff included on those
9 albums are songs that Death Row distributed as singles prior to the execution of the
10 1996 Agreement.⁴ Deft.’s Opp’n at 9.

11 As an initial matter, the Court finds that the language in paragraph 3(c) providing,
12 “the foregoing master recordings shall only be distributed in the manners heretofore
13 distributed,” precludes defendants from distributing plaintiff’s recordings in any way
14 other than how they were made available prior to the execution of the 1996 Agreement.
15 Thus, the plain language of paragraph 3(c) prohibits defendants from exploiting
16 plaintiff’s works through new distribution channels – such as the internet – and bars
17 defendants from altering plaintiff’s recordings or distributing them in different
18 configurations – including as singles or on new albums. The terms “manners” and
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20 ³ Defendants also argue that the “foregoing recordings” as used in paragraph 3(c)
21 leads to an absurd result because it encompasses every recording released by Death Row
22 prior to 1996, even if the recordings have nothing to do with plaintiff. Deft.’s Opp’n at 13.
23 The alleged ambiguity is a non-issue. Plaintiff concedes that paragraph 3(c)’s distribution
24 limits only relate to “The Chronic” which is specifically mentioned in paragraph 3(b). Pl.’s
25 Reply at 5 n.4. Moreover, even if there is an ambiguity in determining which recordings
are encompassed by the “foregoing recordings,” that does not automatically render the
“manners heretofore distributed” language ambiguous.

26 ⁴ The record reflects that three of plaintiff’s songs were released by Death Row as
27 singles prior to the execution of the 1996 Agreement: “Nuthin’ But a ‘G’ Thang,” “Dre
28 Day,” and “Let Me Ride.” See Holtz Decl., Exh. B (Young Depo.) at 20:18–21:9, Exhs.
K–M.

1 “distribution” are admittedly broad, but they do not appear to be unclear or ambiguous.
2 See Aftermath Records, 621 F.3d at 964 (“A contractual term is not ambiguous just
3 because it is broad.”).

4 Nevertheless, because the terms of the 1996 Agreement are in dispute, the Court
5 must provisionally consider the extrinsic evidence to determine whether paragraph 3(c)
6 is “reasonably susceptible to the competing interpretation advanced by [defendants].”
7 Pac. Gas & Elec. Co., 69 Cal. 2d at 39. Defendants offer no compelling evidence why
8 the phrase “manners heretofore distributed” should be limited to remixing plaintiff’s
9 songs, putting the songs in a different order, or mixing them together with other
10 recordings. Although these actions may breach the 1996 Agreement, there is no
11 evidence supporting defendants’ interpretation they are the *only* actions that constitute a
12 breach. Indeed, unlike many other recording contracts, paragraph 3(c) appears to
13 expressly confine Death Row’s ability to exploit plaintiff’s recordings to the manners in
14 which they had been previously released, and the state of the industry as it existed in
15 1996. See Cohen v. Paramount Pictures Corp., 845 F.2d 851, 853–54 (9th Cir. 1988)
16 (holding that a contract granting rights to “[t]he exhibition of [a] motion picture . . . by
17 *means of television*” did not encompass the right to distribute the film in videocassette
18 form where the contract contained a broad restriction reserving the licensor “all rights
19 and uses in and to said musical composition, except those herein granted.”) (emphasis in
20 original); see also Boosey & Hawkins Music Publishers, Ltd. v. Walt Disney Co., 145
21 F.3d 481, 487 (2d Cir. 1998) (“new-use analysis should rely on neutral principles of
22 contract interpretations. . . . If the contract is more reasonably read to convey one
23 meaning, the party benefitted by that reading should be able to rely on it; the party
24 seeking exception or deviation from the meaning reasonably conveyed by the words of
25 the contract should bear the burden of negotiating for language that would express the
26 limitation or deviation.”).

27 The conclusion that paragraph 3(c) broadly restricts defendants’ ability to
28 distribute plaintiff’s recordings on the internet and in different configurations comports

1 with what appears to be the parties' purpose in including the provision in the 1996
2 Agreement. See Winet, 4 Cal. App. 4th at 1166 ("Our objective in construction of the
3 language used in the contract is to determine and to effectuate the intention of the
4 parties."). At the same time the parties were negotiating the 1996 Agreement, plaintiff
5 was orchestrating an exclusive agreement to form his own record label, "The
6 Aftermath," under Interscope Records. Paragraph 3(c) was intended as a restriction on
7 Death Row's right to exploit plaintiff's work so he would be able to negotiate higher
8 royalty rates for any new manner of distribution of his recordings. See Rothschild
9 Opp'n Decl., Exh.1 (Paterno Depo.) at 215:3–24; Holtz Decl., Exh. A (Paterno Depo.) at
10 103:2–104:9. In addition, because plaintiff was relinquishing his creative control in
11 Death Row and striking out on his own, he sought to retain some measure of security in
12 how Death Row presented his art to the public after his departure. Id.⁵

13 Defendants attempt to characterize plaintiff's deposition testimony as supporting
14 their more narrow interpretation of paragraph 3(c). See Deft.'s Opp'n at 6; DSGIMF ¶ 9
15 (citing Holtz Decl., Exh. B (Young Depo. filed under seal) at 31:6–20, 44:8–14,
16 46:20–47:4). It appears that defendants overstate plaintiff's testimony. During his
17 deposition, defendants' counsel peppered plaintiff about whether he understood the 1996
18 Agreement to bar Death Row from distributing "The Chronic" in different forms of
19 media. Plaintiff repeatedly testified that he "never thought about that." See Holtz Decl.,
20 Exh. B at 44:8–14, 46:20–47:4, 58:21–25. That plaintiff did not specifically consider
21 digital downloading does not support defendants' argument that such conduct does not

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23 ⁵ Peter Paterno, plaintiff's lawyer who was involved in the negotiation of the 1996
24 Agreement, testified that the reasons plaintiff wanted to restrict future rights was so that
25 he would be in a position to negotiate when those rights became available and because "the
26 primary purveyor of digital music . . . iTunes will not let you sell albums as a single
27 package, so . . . you wanted the ability to control how your art got presented to the public."
28 Rothschild Opp'n Decl., Exh.1 (Paterno Depo.) at 215:3–24. Paterno further testified that
"all that . . . Death Row could do with [plaintiff's recordings] is continue to distribute them
in the way they had been distributing them until then. There was no new methods, no new
coupling, no new licenses, nothing." Holtz Decl., Exh A. at 104:4–9.

1 breach the 1996 Agreement. See Boosey & Hawkes Music Publishers, Ltd., 145 F.3d at
2 487–88 (“Although contract interpretation normally requires inquiry into the intent of
3 the contracting parties, intent is not likely to be helpful when the subject of the inquiry is
4 something the parties were not thinking about.”).

5 At oral argument, defendants pointed to a hypothetical defendants’ counsel posed
6 to plaintiff during his deposition where “‘The Chronic’ was released as a complete
7 cohesive album in the same order, exactly how it was originally recorded, and it was . . .
8 made available for distribution as a digital download.” Holtz Decl., Exh. B (Young
9 Depo.) at 59:19–24. Plaintiff responded that he did not believe that such a scenario
10 would breach the 1996 Agreement. See id. at 59:1–10, 60:4. However, plaintiff’s after-
11 the-fact comprehension of the legal effect of the 1996 Agreement as applied to the
12 hypothetical offered by defendants’ counsel adds little to the understanding of the
13 parties’ objective mutual intent at the time the 1996 Agreement was executed. See
14 Cedars-Sinai, 137 Cal. App 4th at 980 (“California recognizes the objective theory of
15 contracts, under which it is the objective intent, as evidenced by the words of the
16 contract, rather than the subjective intent of one of the parties, that controls
17 interpretation.”) (internal quotations and alterations omitted).

18 Defendants further maintain that plaintiff’s subsequent conduct demonstrates that
19 he repeatedly acquiesced in Death Row’s distribution of his recordings via digital
20 download. Def’t.’s Opp’n at 8, 14 (citing Bohman v. Berg, 54 Cal. 2d 787, 795 (1960)
21 (“when a contract is ambiguous or uncertain the practical construction placed upon it by
22 the parties before any controversy arises as to its meaning affords one of the most
23 reliable means of determining the intent of the parties.”)). A careful examination of
24 plaintiff’s subsequent conduct, however, reveals that he diligently guarded his rights
25 under paragraph 3(c).

26 First, plaintiff has always interpreted the 1996 Agreement as prohibiting Death
27 Row from altering the content or configuration of his recordings. On March 5, 1999,
28 even before Death Row began distributing plaintiff’s recordings on the internet,

1 plaintiff's counsel sent Death Row a letter addressing "[r]umors" that "Death Row
2 Records plan[ned] to release a sound recording containing performances of Dr. Dre in a
3 form which differ[ed] from the manner in which they were previously released by Death
4 Row." Holtz Decl., Exh. C at 1.⁶ Plaintiff's counsel stated that "Death Row has no
5 rights to release any master recordings released by Death Row prior to March 14, 1996,
6 without any remixing or other alteration of the recordings." *Id.* On March 23, 1999,
7 plaintiff's counsel again wrote Death Row to confirm that it "eliminated the previously
8 unreleased Dre songs from the album and that there will be no songs on the album which
9 contain the performance of Dre, other than three or four tracks previously released on
10 'The Chronic.'" Holtz Decl., Exh. D at 1. Plaintiff's counsel sought assurances that the
11 tracks "not be remixed or altered in any way." *Id.* Thus, as far back as 1999, plaintiff
12 objected to Death Row "alter[ing] ['The Chronic'] in any way."

13 Moreover, plaintiff's subsequent conduct does not demonstrate that he acquiesced
14 in the digital distribution of his recordings on the internet. When plaintiff's recordings
15 were first made available for digital downloading, plaintiff's counsel wrote cease and
16 desist letters to third parties and to Death Row demanding that internet retailers
17 immediately remove downloads containing plaintiff's recordings. *See* Rothschild Decl.,
18 Exhs. 15 and 17; Holtz Decl., Exhs. G, H, and I. For example, plaintiff's counsel wrote
19 to Musicmaker that "Death Row Records has no right to distribute individual tracks
20 containing Mr. Young's performance, whether by digital download or traditional
21 compact disc distribution." Rothschild Decl., Exh 15 at 1. In a more detailed letter sent
22 to Musicmaker on April 5, 2000, plaintiff's counsel objected to the distribution of
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24 ⁶ Plaintiff objects to the admittance of certain letters written by plaintiff's counsel
25 on the grounds that they are inadmissible hearsay and lack foundation. *See* Pl.'s
26 Objections to Evidence in Support of Deft.'s Opp'n ¶¶ 7-12. The Court overrules
27 plaintiff's objections because it is "provisionally receiv[ing] the [evidence] without actually
28 admitting [it]" to determine whether paragraph 3(c) is reasonably susceptible to defendants'
proposed construction. *U.S. Cellular Investment Co. v. GTE Mobilnet, Inc.*, 281 F.3d 929,
939 (9th Cir. 2002).

1 plaintiff's performances "unless they are distributed as part of, and in the same
2 configuration, of albums previously released by Death Row Records." Rothschild Decl.,
3 Exh. 17 at 1. Similarly, in a letter to Death Row dated March 26, 2000, plaintiff's
4 counsel wrote, "Death Row Records only has the right to distribute Mr. Young's tracks
5 as part of the albums on which they originally appeared. Death Row Records has no
6 right to distribute individual tracks in any other configuration." Holtz Decl., Exh. H at 1.

7 Defendants argue that because plaintiff's protestations focused on the online
8 distribution of his recordings as single tracks, he acquiesced to Death Row's internet
9 distribution in all other respects. The Court disagrees. It does not follow that because
10 plaintiff primarily challenged Death Row's distribution on one ground, he necessarily
11 acceded to the distribution on all other grounds. Rather, viewed its entirety, plaintiff's
12 subsequent conduct cannot be interpreted as permitting Death Row to distribute his
13 recordings via digital download.

14 At oral argument, defendants argued that plaintiff's subsequent conduct
15 demonstrates that he did not believe Death Row's distribution of certain singles from
16 "The Chronic" on the post-1996 albums breached paragraph 3(c) because he never
17 objected to the practice. The Court finds that even if plaintiff did not object, paragraph
18 3(c) is not reasonably susceptible to defendants' interpretation that the distribution of
19 plaintiff's recordings on the post-1996 albums is not a breach. As discussed above,
20 paragraph 3(c) unambiguously limits Death Row's right to distribute plaintiff's
21 recordings in configurations different from the manners in which they were released
22 prior to the execution of the 1996 Agreement. Death Row's release of certain songs
23 from "The Chronic" as singles prior to 1996 only permits defendants to continue
24 distributing those songs as singles. Distributing a song as a single is not the same as
25 distributing it on a compilation. Therefore, paragraph 3(c) unambiguously prohibits
26 Death Row from distributing compilation albums containing plaintiff's recordings
27 without plaintiff's written approval.

28 Finally, defendants assert that, at the very least, there are triable issues as to

1 paragraph 3(c)'s meaning and effect. Deft.'s Opp'n at 6, 11–15. Even if reasonable
2 minds might disagree as to the import of the extrinsic evidence or ascribe a different
3 meaning to the contract, there is not necessarily a question of fact for a jury to resolve.
4 See Wolf v. Walt Disney Pictures & Television, 162 Cal. App. 4th 1107, 1126–27
5 (2008) (interpretation of a written instrument is solely a judicial function “even when
6 conflicting inferences may be drawn from the undisputed extrinsic evidence or that
7 extrinsic evidence renders the contract terms susceptible to more than one reasonable
8 interpretation.”) (internal citations omitted). The interpretation of the contract only
9 presents a question of fact where “ascertaining the intent of the parties at the time the
10 contract was executed depends on the credibility of extrinsic evidence.” City of Hope
11 Nat'l Med. Ctr., 43 Cal. 4th at 395. Here, the Court's interpretation of the 1996
12 Agreement does not hinge on the credibility of the extrinsic evidence, and defendants
13 point to no conflict in such evidence. See Wolf, 162 Cal. App. 4th at 1126 (“When there
14 is no material conflict in the extrinsic evidence, the trial court interprets the contract as a
15 matter of law.”). Accordingly, the Court must interpret the 1996 Agreement as a matter
16 of law.⁷

17 In sum, the Court concludes that paragraph 3(c) unambiguously prohibits
18 defendants from distributing plaintiff's recordings in any fashion other than how they
19 were made available prior to the execution of the 1996 Agreement without plaintiff's
20 written consent. This includes making “The Chronic” available for digital download on
21 the internet, allowing online retailers to sell as singles plaintiff's recordings that were not
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24 ⁷ There is no merit to defendants' assertion that because “The Chronic” was
25 distributed on compact discs – one form of digital distribution – prior to the execution of
26 the 1996 Agreement, there is a question of fact as to whether paragraph 3(c) precludes
27 defendants from distributing the album via digital downloading – another form of digital
28 distribution. See Deft.'s Opp'n at 14. The point is not that both compact discs and internet
downloads are digital. Rather, as discussed *supra*, the limiting language in paragraph 3(c)
prohibits Death Row from exploiting plaintiff's recordings through new distribution
channels, such as the internet.

1 sold individually prior to 1996, and distributing plaintiff’s recordings on compilation
2 albums.⁸ The undisputed extrinsic evidence does not support defendants’ interpretation
3 that the scope of paragraph 3(c) is limited to remixing plaintiff’s songs, putting the songs
4 in a different order, or mixing them together with other recordings.

5 **2. Paragraph 3(d)**

6 Pursuant to paragraph 3(d) of the 1996 Agreement, plaintiff agreed to “the
7 inclusion of any or all of the foregoing master recordings in one Death Row ‘Greatest
8 Hits’ or ‘Best of’ album.” Rothschild Decl., Exh. 1 at 3. Plaintiff asserts that defendants
9 breached the 1996 Agreement by including songs from “The Chronic” on the post-1996
10 albums. Pl.’s Mot. at 10.

11 Defendants respond that there is a difference between “greatest hits or best of”
12 albums and compilation albums. Deft.’s Opp’n at 9. Defendants argue that a “greatest
13 hits or best of” album consists of a collection of songs by one artist, whereas a
14 compilation consists of songs by various artists. *Id.* Defendants contend that the albums
15 released by Death Row are compilation albums, consisting of a few songs by plaintiff
16 mixed or compiled with songs by various other Death Row artists. *Id.*

17 The issue before the Court is whether the post-1996 albums are “greatest hits or
18 best of” albums under paragraph 3(d). The 1996 Agreement does not expressly define
19 “greatest hits or best of” albums, and the Court finds that the language is reasonably
20 susceptible to both parties’ interpretations. Accordingly, the Court will consider the
21 extrinsic evidence to aid it in the interpretation of paragraph 3(d). *Pac. Gas & Elec. Co.*,
22 69 Cal. 2d at 39; *Winet*, 4 Cal. App. 4th at 1165.

23
24 ⁸The evidence in the record conclusively establishes that defendants have distributed
25 “The Chronic” by digital download in its entirety. *See* Rothschild Decl., Exh. 4. The
26 Court takes judicial notice of the fact that individual songs from “The Chronic” are
27 available for digital download as singles. *See* Fed. R. Evid. 201. That internet retailers,
28 such as iTunes, sell songs from “The Chronic” as singles is a fact not subject to reasonable
dispute. *See* iTunes, <http://itunes.apple.com/us/album/the-chronic/id6654037> (last visited
April 18, 2011).

1 The parties do not submit evidence of the negotiations or other contemporaneous
2 expressions of intent as to how paragraph 3(d) should be interpreted. Furthermore, there
3 is only limited evidence establishing how “greatest hits or best of” albums are used in
4 the recording industry. See S. Pac. Tansp. Co. v. Santa Fe Pac. Pipelines, Inc. 74 Cal.
5 App. 4th 1232, 1241 (1999) (“where there is a fixed and established usage and custom of
6 trade, the parties are presumed to contract pursuant thereto. Thus, courts can rely on
7 usage and custom to imply a term where the contract itself is silent in that regard.”)
8 (internal citations omitted). The evidence that is in the record, however, supports
9 defendants’ construction. Plaintiff testified that he understands a compilation album to
10 be different than a “greatest hits or best of” album because “a compilation could be
11 songs from several different artists,” whereas a greatest hits or best of album only
12 includes songs from one artist. Holtz Decl., Exh. B (Young Depo.) at 34:24–35:19.
13 Plaintiff’s transactional lawyer, Peter Paterno, testified that a compilation album “is an
14 album that consists of a bunch of tracks by different artists compiled together and sold as
15 one bundle. Sometimes it refers to a greatest hits record, but it is more commonly
16 referred to as a recompilation album.” Holtz Decl., Exh. A at 130:16–25. In light of this
17 testimony, and the dearth of conflicting evidence in the record on this point, plaintiff has
18 not sustained his burden of demonstrating that paragraph 3(d) is susceptible to his
19 interpretation. Accordingly, the Court finds that defendants did not breach paragraph
20 3(d) by releasing the post-1996 albums.⁹

21 3. Affirmative Defenses

22 Defendants contend that plaintiff’s breach of contract claims are time-barred, his
23 failure to timely object to the alleged breaches constitutes waiver and/or estoppel, and he
24 has suffered no damages. Deft.’s Opp’n at 6–9; Deft.’s Mot. at 10.

25 ///

27 ⁹ As discussed above, however, Death Row’s distribution of plaintiff’s recordings
28 on compilation albums breached paragraph 3(c) of the 1996 Agreement.

1 **i. Statute of Limitations**

2 Under California law, a contract claim based on a written agreement is subject to a
3 four-year statute of limitations. Cal. Civ. Proc. Code § 337(1). “The claim accrues
4 when the plaintiff discovers, or could have discovered through reasonable diligence, the
5 injury and its cause.” Angeles Chem. Co. v. Spencer & Jones, 44 Cal. App. 4th 112, 119
6 (1996). Defendants argue that even if they have repeatedly breached the 1996
7 Agreement within the last four years, the statute of limitations bars plaintiff’s action
8 because it was not brought within four years of March 2000 – the first time Death Row
9 distributed “The Chronic” on the internet via digital download. Deft.’s Opp’n at 7.

10 Plaintiff responds that his claims are not time-barred under the theory of
11 continuous accrual. Pl.’s Reply at 7–8. Where there is a continuing breach of a
12 severable contract, each new breach may give rise to a new cause of action and new
13 limitations period under the “theory of continuous accrual.” See Armstrong Petroleum
14 Corp. v. Tri-Valley Oil & Gas Co., 116 Cal. App. 4th 1375, 1388 (2004). Typical
15 examples of such contracts include: installment contracts, periodic rental payments, and
16 “contracts calling for periodic, pension-like payments on an obligation with no final and
17 fixed amount.” Id.

18 In Peterson v. Highland Music, Inc., 140 F.3d 1313, 1321 (9th Cir. 1998), for
19 example, plaintiffs sought rescission of a transfer of the copyright in their recording
20 “Louie, Louie” based on defendants’ failure to pay royalties. The Ninth Circuit held that
21 because “[t]here is no fixed amount to be paid out over time . . . , but rather a continuing
22 obligation to pay a portion of the profits and royalties on ‘Louie, Louie’ as the recording
23 gets used over time,” plaintiffs’ claim was not barred by the statute of limitations. Id.
24 The court reasoned that to find plaintiffs’ claim time-barred “would be to hold that
25 California law forever bars a party from seeking a remedy . . . after it has once passed up
26 the opportunity to do so, regardless of the nature of any future breaches of the other
27 party's obligations.” Id.

28 Although Peterson is not on all fours, the Court finds its reasoning persuasive in

1 the present context. As in Peterson, the 1996 Agreement imposed a continuing duty on
2 defendants to distribute “The Chronic” consistent with the limitations in paragraph 3(c)
3 or obtain plaintiff’s written consent. Thus, the statute of limitations renews each time
4 defendants concluded agreements to distribute, or otherwise distributed plaintiff’s
5 recordings in manners they were not distributed prior to the execution of the 1996
6 Agreement without first obtaining plaintiff’s written approval. Accordingly, plaintiff’s
7 claims are not time-barred to the extent they are based on independent breaches that
8 occurred within four years of the time plaintiff commenced this action.¹⁰

9 **ii. Waiver and Estoppel**

10 Defendants maintain that plaintiff’s breach of contract claim is barred by the
11 doctrines of waiver and estoppel because he failed to timely object to the purported
12 breaches of the 1996 Agreement. Deft.’s Opp’n at 8 (citing Medico-Dental Building Co.
13 v. Horton & Converse, 21 Cal. 2d 411, 432 (1942) (waiver); Cal. Evid. Code § 623
14 (estoppel); Wagner v. Glendale Adventist Med. Ctr., 216 Cal. App. 3d 1379, 1388
15 (1989) (“When one party has, through oral representations and conduct or custom,
16 subsequently behaved in a manner antithetical to one or more terms of an express written
17 contract, he or she has induced the other party to rely on the representations and conduct
18 or custom. In that circumstance, it would be equally inequitable to deny the relying party
19 the benefit of the other party’s apparent modification of the written contract.”)).

20 Defendants’ waiver and estoppel arguments fail as a matter of fact for the reasons
21 set forth in section IV.A.1. Defendants’ arguments also fail as a matter of contract law.

22
23 ¹⁰ For example, plaintiff’s claim for breach of contract premised on Death Row’s
24 distribution of plaintiff’s recordings on “Death Row’s Greatest Hits” and “The Very Best
25 of Death Row” are time-barred because those albums were released in 1996 and 2005
26 respectively, more than four years before plaintiff filed the instant action. See Rothschild
27 Decl., Exhs. 5 and 6. Plaintiff’s breach of contract claim premised on the distribution of
28 the remaining post-1996 albums is not time-barred, however, because Death Row
distributed those albums within four years of the time plaintiff filed suit. See id., Exhs.
7–12.

1 The 1996 Agreement explicitly provides that “[t]his Agreement or any provision hereof
2 may not be . . . waived . . . except by a written instrument executed by all of the parties.”
3 Rothschild Decl., Exh. 1 at 6. Here, there is no writing executed by the parties waiving
4 the requirements of paragraph 3. Accordingly, plaintiff’s actions cannot constitute a
5 waiver of any provision of the 1996 Agreement. See Culver Ctr. Partners East # 1, L.P.
6 v. Baja Fresh Westlake Village, Inc., 185 Cal. App. 4th 744, 752 (2010) (where contract
7 contains express clause prohibiting waiver except by writing, a party’s actions do not
8 constitute an express waiver). Similarly, defendants could not have reasonably relied
9 upon plaintiff’s conduct to their detriment since the 1996 Agreement only allows a
10 waiver by express writing.

11 **iii. Damages**

12 Defendants next assert that plaintiff has suffered no actual damages as a result of
13 the breach. Deft.’s Mot. at 10 (citing Bardis v. Oates, 119 Cal. App. 4th 1, 10 (2004)
14 (“Damage to the plaintiff is, of course, an essential element to recovery in both tort and
15 contract actions.”) (citations omitted)).

16 Contract damages are generally intended to “‘compensate [] the [plaintiff] for the
17 loss of his ‘expectational interest’—the benefit of his bargain which full performance
18 would have brought.” Sharabianlou v. Karp, 181 Cal. App. 4th 1133, 1144–45 (2010)
19 (quoting Runyan v. Pac. Air. Indus., Inc., 2 Cal. 3d 304, 316 n.15 (1970)). “The ‘benefit
20 of the bargain’ measure of damages is the difference between the actual value of what
21 the plaintiff has received and that which he expected to receive.” Salahutdin v. Valley of
22 Cal., Inc., 24 Cal. App. 4th 555, 564 (1994). Thus, to satisfy his initial burden, plaintiff
23 must introduce evidence that defendants’ breach caused him to receive less than what he
24 otherwise would have had there been full performance.

25 Defendants contend that if they had not distributed plaintiff’s recordings as they
26 did, plaintiff would not have collected any royalties from the sales. Deft.’s Mot. at 10.
27 Defendants further contend that plaintiff has not suffered damages based on the royalty
28 rate he received because the 1996 Agreement does not specify a royalty rate. Id. at

1 11–12. Defendants argue that if plaintiff believed he was entitled to a higher royalty rate
2 his remedy was to renegotiate those rates with defendants. Id. at 12.

3 Defendants’ arguments are not well taken. Contrary to defendants’ suggestion,
4 the breach of the 1996 Agreement is that defendants failed to obtain plaintiff’s consent
5 to distribute his recordings in manners that differed from those employed prior to 1996.
6 The upshot of this limitation is that plaintiff would have had the opportunity to negotiate
7 the terms for new manners of distribution of his recordings, including higher royalty
8 payments.¹¹ Thus, defendants’ argument that plaintiff was obligated to negotiate
9 separately his royalty rates with defendants is unsustainable. If defendants were correct,
10 they could repeatedly breach paragraph 3(c) by selling plaintiff’s recordings in all new
11 manners of distribution and effectively lock him in at the 18 percent royalty rate the
12 parties had previously agreed upon. Accordingly, the Court concludes that plaintiff has
13 satisfied his initial burden of establishing that he suffered damages by accepting a
14 reduced royalty rate that he otherwise would not have been obligated to accept.
15 Salahutdin, 24 Cal. App. 4th at 564. The precise amount of damages is a question of
16 fact, inappropriate for summary adjudication. See Dep’t of Indus. Relations v. UI Video
17 Stores, Inc., 55 Cal. App. 4th 1084, 1097 (1997) (summary adjudication improper where
18 amount of damages raises factual issue).

19 Accordingly, the Court finds that defendants have failed to set forth any viable
20 affirmative defenses to plaintiff’s breach of contract claim.

21 **B. Constructive Trust and Other Remedies**

22 Defendants argue that the “Waiver of Remedies” contained in paragraph 8 of the
23 1996 Agreement precludes plaintiff from obtaining any relief other than actual

24
25 ¹¹ Indeed, plaintiff argues that when he and Death Row agreed to the 18 percent
26 royalty payment in the early 1990s, Death Row and its distributor also provided plaintiff
27 with recording expenses, promotion and marketing resources, tour support, entertainment
28 industry opportunities, and other support. Pl.’s Opp’n at 4–5, 9. Plaintiff argues that
defendants cannot provide him with this additional consideration and, as a result, he is
entitled to a higher royalty rate for new manners of distribution. Id.

1 damages.¹² Deft.’s Mot. at 1, 7–9 (citing DVD Copy Control Ass’n, Inc. v.
2 Kaleidescape, Inc., 176 Cal. App. 4th 697, 725 (2009) (“as a general matter, where the
3 parties have stipulated to the nature or amount of a remedy, it is proper for the trial court
4 to honor the parties’ agreement unless it finds that to do so would be contrary to a rule of
5 law or public policy.”)). The Waiver of Remedies forbids the parties from “seek[ing] or
6 obtain[ing] the remedy of rescission, termination, or any similar remedy.” Rothschild
7 Decl., Exh. 1 at 5. The Waiver of Remedies further provides that the parties sole remedy
8 “shall be an action for actual damages, or equitable relief in favor of Death Row. . . .”
9 Id.

10 The Court finds that the Waiver of Remedies unambiguously limits plaintiff’s
11 remedy to “an action for actual damages.” The Court does not, however, read the
12 Waiver of Remedies as barring the imposition of a constructive trust as a substitute for
13 actual damages.¹³ See Foster Poultry Farms, Inc. v. SunTrust Bank, 377 Fed. Appx. 665,
14 at *2–3 (9th Cir. 2010) (“Under California law, a defendant’s unjust enrichment can
15 satisfy the ‘damages’ element of a breach of contract claim, such that disgorgement is a
16 proper remedy.”); Burlesci v. Petersen, 68 Cal. App. 4th 1062, 1070 (1998) (“A
17 constructive trust may be imposed in practically any case where there is a wrongful
18 acquisition or detention of property to which another is entitled.”) (internal quotations
19 and alterations omitted); see also ABKCO Music, Inc. v. Harrisongs Music, Ltd., 722
20 F.2d 988, 996–97 (2d Cir. 1983) (“constructive trust on the ‘fruits’ of ABKCO’s

21
22 ¹² Plaintiff seeks the following remedies in his Prayer for Relief: injunctive relief,
23 accounting, treble damages, punitive damages, attorneys’ fees, and “other further relief as
the Court deems just and proper.” See Prayer for Relief ¶¶ 2, 5, 7–10.

24 ¹³ At oral argument, defendants’ counsel argued that the imposition of a constructive
25 trust is inappropriate to the extent it allows plaintiff to recover more in damages than he
26 would otherwise be entitled to under an expectational interest theory. While the Court is
27 mindful of defendants’ argument and believes that actual damages is the more appropriate
28 remedy, the precise measure of damages is not presently before the Court. Accordingly,
the Court reserves judgment as to the measure of damages until such time as the issue has
been fully briefed and presented to the Court.

1 [wrongful acquisition of defendant’s music rights] was a proper remedy.”).

2 The Court finds that plaintiff is not entitled to treble damages, punitive damages,
3 or attorneys’ fees. As defendants argue, not only are these remedies beyond the scope of
4 the Waiver of Remedies in the 1996 Agreement, they are not provided for as a matter of
5 contract law. See Deft.’s Mot. at 9. Absent an express contractual provision, treble
6 damages and attorneys’ fees are not recoverable for a pure breach of contract. See Cal.
7 Civ. Code § 3300 (“For the breach of an obligation arising from contract, the measure of
8 damages . . . is the amount which will compensate the party aggrieved for all the
9 detriment proximately caused thereby, or which, in the ordinary course of things, would
10 be likely to result therefrom.”); In re Bennett, 298 F.3d 1059, 1070 (9th Cir. 2002)
11 (“Under California law, a prevailing party is ordinarily not entitled to attorneys’ fees
12 unless the parties have previously agreed to shift fees or the fees are otherwise provided
13 by statute.”). Moreover, with the exception of certain limited circumstances, punitive
14 damages are not a remedy for a breach of contract. See Robinson Helicopter Co. v.
15 Dana Corp., 34 Cal. 4th 979, 990 (2004) (“Tort damages have been permitted in contract
16 cases where a breach of duty directly causes physical injury; for breach of the covenant
17 of good faith and fair dealing in insurance contracts; for wrongful discharge in violation
18 of fundamental public policy; or where the contract was fraudulently induced.”) (internal
19 quotations and citations omitted)).

20 Plaintiff argues that the Waiver of Remedies does not bar specific performance,
21 injunctive relief, or an accounting because the provision does not mention those
22 remedies. Pl.’s Opp’n at 7. Plaintiff appears to be focusing on the language which
23 precludes the parties from “seek[ing] or obtain[ing] the remedy of rescission,
24 termination, or any similar remedy.” Although, plaintiff is correct that this sentence
25 does not specifically mention the remedies he seeks, the very next sentence states that
26 “[t]he parties’ sole remedy hereunder shall be an action for actual damages, or equitable
27
28

1 relief in favor of Death Row. . . .” Rothschild Decl., Exh. 1 at 5 (emphasis supplied).¹⁴

2 Next, plaintiff contends that the specific language in paragraph 3 should prevail
3 over the Waiver of Remedies because the two provisions are inconsistent. Pl.’s Opp’n at
4 1, 6–7 (citing Cal. Civ. Proc. Code § 1859 (“in the construction of the instrument the
5 intention of the parties, is to be pursued, if possible; and when a general and particular
6 provision are inconsistent, the latter is paramount to the former.”); Prouty v. Gores Tech.
7 Group, 121 Cal. App. 4th 1225, 1234–35 (2004)). However, the Waiver of Remedies is
8 easily harmonized with paragraph 3. Contrary to plaintiff’s assertion, the Waiver of
9 Remedies does not leave plaintiff without an effective remedy to enforce a breach of an
10 obligation contained in paragraph 3. Indeed, plaintiff has pursued exactly the remedy
11 contemplated – an action for actual damages. Moreover, although plaintiff has waived
12 his right to an accounting under the terms of the 1996 Agreement, it is possible that he is
13 entitled to an accounting pursuant to the separate agreements establishing his royalties.
14 See Rothschild Decl., Exh. 1 at 2 (“[n]othing contained in this Agreement shall affect
15 any artist’s royalties, mechanical royalties or producer’s royalties due or to become due
16 by Death Row to Young on or after January 1, 1996.”).

17 Finally, plaintiff maintains that defendants’ interpretation of the Waiver of
18 Remedies is inconsistent with the intent of the original parties. Pl.’s Opp’n at 3.
19 Plaintiff asserts that the purpose of the Waiver of Remedies was to prevent him from
20 using a breach of the 1996 Agreement by Knight or Death Row as grounds to rescind or
21 terminate his separate agreement with Interscope. Id. at 3, 7–8. Even taking into

22
23 ¹⁴ Notably, this is not the first time that plaintiff has attempted to circumvent the
24 Waiver of Remedies in the 1996 Agreement. In 2007, Judge Vincent Zurzulo dismissed
25 without leave to amend plaintiff’s adversary complaint seeking rescission, declaratory
26 relief, and injunctive relief based on an alleged breach of the 1996 Agreement in the United
27 States Bankruptcy Court for the Central District of California. See Deft.’s Request for
28 Judicial Notice, Exh. A (Adversary Complaint, Case No. 2:07-ap-01625-VZ, Aug. 15,
2007). Finding the waiver provision “very straightforward” and unambiguous, Judge
Zurzulo rejected plaintiff’s argument that the waiver was invalid on the grounds that there
was a defect in the formation of the contract. See id., Exh. B at 20:17–21:1, 22:21.

1 consideration this evidence, the Court finds that the language in the Waiver of Remedies
2 is not “reasonably susceptible” to plaintiff’s interpretation. See Winet, 4 Cal. App. 4th
3 at 1165.

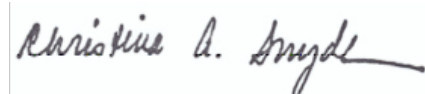
4 In sum, the Court finds that the Waiver of Remedies unambiguously limits
5 plaintiff’s remedy for a breach of the 1996 Agreement to an action for actual damages or
6 imposition of a constructive trust as a substitute to actual damages. Nothing in
7 paragraph 3 or the extrinsic evidence suggests that the Waiver of Remedies is reasonably
8 susceptible to any other construction. Accordingly, defendants are entitled to partial
9 summary adjudication on plaintiff’s remedies for injunctive relief, accounting, treble
10 damages, punitive damages, attorneys’ fees, and specific performance. However,
11 defendants are not entitled to partial summary adjudication on plaintiff’s eighth claim for
12 imposition of a constructive trust.

13 **V. CONCLUSION**

14 In accordance with the foregoing, the Court hereby GRANTS in part and DENIES
15 in part plaintiff’s and defendants’ cross-motions for partial summary judgment.

16 IT IS SO ORDERED

17 Dated: April 19, 2011



18 CHRISTINA A. SNYDER
19 UNITED STATES DISTRICT JUDGE
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