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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSH COLLETTE, an individual,

Plaintiff,

v.

VISION SECURITY, LLC,
NORTHSTAR ALARM SERVICES,
LLC, and DOES 1-20, inclusive,

Defendants.

No. 2:15-cv-00426-MCE-DB

MEMORANDUM AND ORDER

Through this action, Plaintiff Josh Collette (“Plaintiff”) seeks to recover damages from Defendants Vision Security, LLC (“Defendant Vision”), NorthStar Alarm Services, LLC (“Moving Defendant” or “Defendant NorthStar”), and Does 1 through 20, alleging breach of contract and two common counts for services provided under a quantum meruit theory. The only claim alleged against Defendant NorthStar is a single common count for services provided. Defendant NorthStar now moves for partial summary judgment as to that count on grounds that because Plaintiff’s services were performed solely at the request of Defendant Vision and for its benefit, those services cannot be linked to Defendant NorthStar in either fashion. For the reasons set forth below, Defendant’s motion is DENIED.¹

¹ Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

BACKGROUND²

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3 Beginning in September 2011, Plaintiff managed a team of door-to-door salesmen
4 selling home security systems and associated system monitoring on behalf of Defendant
5 Vision. Pl.'s Compl., ECF No. 1. Under the terms of Plaintiff and Defendant Vision's
6 alleged oral agreement, compensation for Plaintiff's sales was based upon a
7 commission formula that calculated numerous factors including the homeowner's credit
8 score, the length of any monitoring contract, and installation costs. Dep. of Collette, ECF
9 No. 36-3, 51:3-53:25.

10 From September 2011 until January 2014, Plaintiff sold security systems and
11 associated monitoring systems on Defendant Vision's behalf, primarily to homeowners
12 within Sacramento County. During that time, Plaintiff alleges he earned a total of
13 \$390,616.09 but was paid only \$101,736.54. According to Plaintiff, \$288,879.55 of his
14 commissions therefore remain due and owing from Defendant Vision. Compl., ECF
15 No. 1 ¶¶ 21-22. Plaintiff concedes he did not generate alarm monitoring accounts for
16 Defendant NorthStar during the pertinent time period.

17 A year after Plaintiff ceased making sales on Defendant Vision's behalf,
18 Defendant NorthStar purchased nearly 8,000 accounts from Defendant Vision. Id. at
19 ¶ 26. Defendant NorthStar states that these accounts were purchased in January 2015
20 via an "arm's-length transaction" in which Defendant NorthStar provided substantial
21 payment and consideration to Defendant Vision for the alarm monitoring accounts
22 pursuant to an asset purchase agreement. Def.'s SSUF, ECF No. 36-2 ¶ 14. Moving
23 Defendant consequently asserts that it was a bona fide purchaser of the 8,000 accounts.
24 Def.'s Answer, ECF No. 11, 7:14. Plaintiff alleges, however, that Defendant NorthStar

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27 ² The following recitation of facts is taken, sometimes verbatim, from Plaintiff's Complaint, ECF
28 No. 1, Defendant NorthStar's Motion for Partial Summary Judgment, ECF No. 36, and from a general
review of the docket.

1 knew that the purchased accounts included accounts Plaintiff had established on behalf
2 of Defendant Vision and for which Plaintiff had not received just compensation.³

3 The 2015 asset purchase agreement between Defendants Vision and NorthStar
4 was signed by Robert Harris and John Daniel Noble as representatives of Defendant
5 Vision. Pl.'s Opp'n, ECF No. 41-4 at Ex. 2. Robert Harris is currently the Chief
6 Executive Officer of Defendant Vision, as well as President and board member of
7 Defendant NorthStar. John Daniel Noble is currently the President of Defendant Vision,
8 as well as Chief Operating Officer of Defendant NorthStar. Id. at Ex. 3-4. Defendant
9 NorthStar states that neither Robert Harris nor John Daniel Noble had any affiliation with
10 Defendant NorthStar prior to the completion of the January 2015 asset purchase
11 agreement. Def.'s Reply, ECF No. 45.

12 Plaintiff, on the other hand, alleges he had both formal and informal interaction
13 with Defendant NorthStar during the period of time when he was generating accounts on
14 behalf of Defendant Vision, including what Plaintiff regarded as recruitment meetings
15 between himself and Defendant NorthStar. Decl. Feuz, ECF No. 36-3, 49-50. Plaintiff
16 also alleges that there was communication between himself, Robert Harris, and John
17 Daniel Noble concerning Defendant Vision's outstanding payment amounts prior to the
18 asset purchasing agreement between Defendants. Pl.'s Opp'n, ECF No. 41-4 at Ex. 6.
19 Consequently, Plaintiff alleges Defendant Northstar purchased security monitoring
20 accounts with knowledge that Plaintiff had created the accounts and had not been fully
21 compensated.

22 Plaintiff's complaint was filed on February 24, 2015. Moving Defendant's Motion
23 for Partial Summary Judgment was filed on December 28, 2016, with Plaintiff's
24 Opposition filed February 9, 2017. Defendant NorthStar subsequently filed a Reply on
25 March 9, 2017.

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27 ³ For the purposes of the instant motion, Defendant NorthStar does not dispute that some of the
28 accounts purchased from Defendant Vision were originally generated by Plaintiff. Def.'s SSUF, ECF
No. 36-2, 4.

STANDARD

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3 The Federal Rules of Civil Procedure provide for summary judgment when “the
4 movant shows that there is no genuine dispute as to any material fact and the movant is
5 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
6 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
7 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

8 Rule 56 also allows a court to grant summary judgment on part of a claim or
9 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) (“A party may
10 move for summary judgment, identifying each claim or defense—or the part of each
11 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
12 Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a
13 motion for partial summary judgment is the same as that which applies to a motion for
14 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic
15 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
16 judgment standard to a motion for summary adjudication).

17 In a summary judgment motion, the moving party always bears the initial
18 responsibility of informing the court of the basis for the motion and identifying the
19 portions in the record “which it believes demonstrate the absence of a genuine issue of
20 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
21 responsibility, the burden then shifts to the opposing party to establish that a genuine
22 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith
23 Radio Corp., 475 U.S. 574, 586-87 (1986); First Nat’l Bank v. Cities Serv. Co., 391 U.S.
24 253, 288-89 (1968).

25 In attempting to establish the existence or non-existence of a genuine factual
26 dispute, the party must support its assertion by “citing to particular parts of materials in
27 the record, including depositions, documents, electronically stored information,
28 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do

1 not establish the absence or presence of a genuine dispute, or that an adverse party
2 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
3 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
4 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,
5 Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
6 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also
7 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is
8 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
9 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
10 before the evidence is left to the jury of “not whether there is literally no evidence, but
11 whether there is any upon which a jury could properly proceed to find a verdict for the
12 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
13 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
14 As the Supreme Court explained, “[w]hen the moving party has carried its burden under
15 Rule [56(a)], its opponent must do more than simply show that there is some
16 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
17 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
18 nonmoving party, there is no ‘genuine issue for trial.’” Id. 87.

19 In resolving a summary judgment motion, the evidence of the opposing party is to
20 be believed, and all reasonable inferences that may be drawn from the facts placed
21 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
22 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
23 obligation to produce a factual predicate from which the inference may be drawn.
24 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d,
25 810 F.2d 898 (9th Cir. 1987).

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ANALYSIS

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3 Plaintiff asserts that he is entitled to unpaid commissions under a quantum meruit
4 theory. Defendant NorthStar moves for partial summary judgment on grounds that,
5 because Plaintiff's services were neither performed at its request or for its benefit, his
6 common count for services provided based on quantum meruit necessarily fails.

7 Quantum meruit is an equitable remedy under California law pursuant to which a
8 plaintiff who has rendered services benefitting the defendant may recover the
9 reasonable value of those services in order to prevent unjust enrichment of the
10 defendant. King v. Nat'l Gen. Ins. Co., 129 F. Supp. 3d 925 (N.D. Cal. 2015).

11 To recover under a quantum meruit theory, a plaintiff must establish "that he or
12 she was acting pursuant to either an express or implied request for services from the
13 defendant and that the services rendered were intended to and did benefit the
14 defendant." Ochs v. PacifiCare of California, 115 Cal. App. 4th 782, 794 (2004); Day v.
15 Alta Bates Medical Ctr., 98 Cal. App. 4th 243 (2002).

16 In order to determine whether there has been a request for services, courts have
17 looked to whether the recipient of the performed services either requested them
18 expressly, or impliedly requested them by acquiescing in the receipt of performed
19 services. Producers Cotton Oil Co. v. Amstar Corp., 197 Cal. App. 3d 638, 659-660
20 (1988). (Finding an implied request where the party being charged with payment of
21 service had received the benefit during the harvesting of sugar beets when (1) there was
22 knowledge that the crop was being harvested, (2) no inquiry was made about how those
23 costs were to be paid, and (3) a subsequent benefit was received through sale of the
24 harvest.)

25 The second prong of the quantum meruit analysis hinges upon the defendant's
26 receipt of a benefit. Courts pay particular attention when "one party has accepted and
27 retained a benefit with full appreciation of the facts, under circumstances making it
28 inequitable for him to retain the benefit without payment of its reasonable value."

1 Truestone, Inc. v. Simi West Industrial Park II, 163 Cal. App. 3d 715, 724 (1984) (quoted
2 in Day, 98 Cal. App. 4th at 248). A quantum meruit claim is particularly apt where the
3 defendant acquires the benefit with knowledge of the circumstances establishing unjust
4 enrichment. King v. Nat'l Gen. Ins. Co., 129 F. Supp. 3d 925 (N.D. Cal. 2015). Further,
5 “a transferee with knowledge of the circumstances giving rise to an unjust enrichment
6 claim may be obligated to make restitution. For example, ‘[a] person... is entitled to
7 restitution from a third person who had notice of the circumstances before giving value
8 or before receiving title or a legal interest in the subject matter.’” (Rest., Restitution,
9 § 13(b)) (quoted in First Nationwide Savings v. Perry, 11 Cal. App. 4th 1657 (1992)).

10 Defendant NorthStar argues that there are no triable issues of fact supporting the
11 claim that Plaintiff’s services were requested by or performed for the benefit of the
12 Moving Defendant. Defendant NorthStar asserts that any interconnectedness on behalf
13 of corporate officers Robert Harris and John Daniel Noble with Defendant NorthStar
14 occurred after and as part of the January 2015 asset purchase agreement. Def’s. Reply,
15 ECF No. 45, 4. Moreover, Defendant NorthStar asserts that any co-mingling of
16 corporate leadership is not indicative of notice or knowledge by Defendant NorthStar as
17 to any nonpayment allegations made by Plaintiff for accounts generated on behalf of
18 Defendant Vision. Id.

19 The parties agree that during the execution of the oral agreement between
20 Plaintiff and Defendant Vision, Plaintiff did not generate any alarm monitoring accounts
21 directly for Defendant NorthStar. Pl.’s SSUF, ECF No. 41-2 ¶ 5. Plaintiff nonetheless
22 alleges, however, that Defendant NorthStar received a benefit from the accounts
23 originally generated on behalf of Defendant Vision. Id. at ¶ 9. Further, Plaintiff alleges
24 Defendant NorthStar had notice of Plaintiff’s claim for nonpayment prior to the January
25 2015 asset purchase agreement. Pl.’s Opp’n, ECF No. 41. Plaintiff points to the fact
26 that both Robert Harris and John Daniel Noble held leadership positions within both
27 Defendant Vision and Defendant NorthStar as evidence of this notice. Id. Plaintiff also
28 alleges specific conversations that took place between Plaintiff, Robert Harris, and John

1 Daniel Noble, both in person and via email, that discuss in clear terms the nonpayment
2 of Plaintiff's services provided to Defendant Vision from September 2011 to January
3 2014. Pl. Opp'n, ECF No. 41-4 at Ex. 6. In his deposition, Plaintiff stated that he had
4 discussed with both Robert Harris and John Daniel Noble the alleged outstanding
5 amount due and owing to Plaintiff prior to the January 2015 sale of accounts. Id.

6 Thus, Plaintiff asserts that through Robert Harris and John Daniel Noble,
7 Defendant NorthStar knew it was purchasing accounts from Defendant Vision that had
8 been generated by Plaintiff without just compensation, and therefore at least impliedly
9 acquiesced to the provision of those services by Plaintiff and the benefit they conferred.

10 As mentioned above, it is undisputed, at least for purposes of this motion, that a
11 portion of the accounts purchased by Defendant NorthStar from Defendant Vision as
12 part of the January 2015 asset purchase agreement were accounts originally generated
13 by Plaintiff.⁴ Therefore, the crux of the matter before this Court is the
14 interconnectedness of the two Defendants, and whether that interconnectedness creates
15 an implied request for services and benefit received on the part of Defendant Northstar,
16 with the knowledge that Plaintiff was claiming that he had not received just
17 compensation for those services. While the Moving Defendant asserts an absence of a
18 genuine issue of material fact surrounding whether Defendant Northstar is liable under a
19 quantum meruit theory for the benefit of services provided by Plaintiff, this Court
20 disagrees.

21 Plaintiff's opposition points out that both Defendants are residential alarm service
22 providers headquartered in Orem, Utah. Compl., ECF No. 1. The pleadings suggest
23 that the two Defendants are intrinsically interrelated, with Robert Harris and John Daniel
24 Noble holding leadership positions within both companies. Pl.'s Opp'n, ECF No. 41-4 at
25 Ex. 3-4. Additionally, these two men purportedly had communications with Plaintiff
26 concerning the alleged nonpayment of services provided before the sale of accounts to

27 ⁴ Def.'s SSUF, ECF No. 36-2 4, 2 n.3.
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1 Defendant NorthStar. Decl. Feuz, ECF No. 36, 3:49-50. Moreover, Robert Harris and
2 John Daniel Noble acted as Defendant Vision's signatories on the January 2015 asset
3 purchase agreement between Defendants. Pl.'s Opp'n, ECF No. 41-4 at Ex. 2. The
4 parties agree, at least for this motion, that accounts purchased by Defendant NorthStar
5 did include customer accounts generated by Plaintiff. Def.'s SSUF. ECF No. 36-2, 4.

6 Based on these assertions, Plaintiff has raised a triable issue of fact with respect
7 to whether the companies are so interrelated that the performance of services and
8 benefit received for one company would essentially amount to an implied request for the
9 performance of services and a benefit received for the other. Through the pleadings
10 alone, Plaintiff has raised a triable issue of fact as to whether Defendant NorthStar,
11 because of the interrelatedness of its corporate officers and its purchase of Plaintiff-
12 generated accounts for which Plaintiff had not been fully compensated, impliedly
13 requested both Plaintiff's services and the benefits they produced.

14 Those triable issues proliferate when additional factual matters beyond the
15 pleadings are considered. Drawing all inferences from this evidence in favor of Plaintiff
16 as the Court is required to do, the Court finds that the facts detailed above suggest that
17 Plaintiff was not fully compensated for accounts that ultimately benefitted Defendant
18 NorthStar. Further, as also explained above, facts concerning the interrelated corporate
19 leadership of Defendant Vision and Defendant NorthStar suggest Defendant NorthStar
20 had knowledge of Plaintiff's claim of nonpayment prior to the January 2015 asset
21 purchase agreement. Consequently, Defendant NorthStar has not demonstrated that
22 Plaintiff's services were not performed upon Defendant NorthStar's express or implied
23 request, and did not result in a benefit to Defendant NorthStar.

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CONCLUSION

For the reasons set forth above, Defendant NorthStar's Motion for Partial Summary Judgment (ECF No. 36) is DENIED.

IT IS SO ORDERED

Dated: September 21, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE