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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOTAL RECALL TECHNOLOGIES,

Plaintiff,

No. C 15-02281 WHA

v.

PALMER LUCKEY and OCULUS VR,  
LLC, as successor-in-interest to Oculus  
VR, Inc.,

Defendants.

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

**INTRODUCTION**

A partnership agreement between two individuals provided that no lawsuit would be maintained without the approval of both. Over the objection of one, the other brought a lawsuit in the name of the partnership against third parties. An earlier order dismissed the suit. After remand from our court of appeals, defendants renew their motion for summary judgment. Their motion for summary judgment is **GRANTED**.

**STATEMENT**

Prior orders set forth the facts of this case (Dkt. Nos. 179, 213). Briefly, in 2010, Ron Igra and Thomas Seidl formed a two-person partnership, Total Recall Technologies (“TRT”), with the goal of developing consumer virtual-reality technology. The partnership agreement gave each of the two partners veto power over any decision regarding TRT, and stated that “for any decision regarding the company Ron Igra and Thomas Seidl have to agree on any action

1 August 2011, Seidl entered into a written agreement with defendant Palmer Luckey to develop a  
2 prototype for a head-mounted virtual-reality display according to certain specifications supplied  
3 by Seidl. Luckey eventually formed Oculus LLC, which later re-registered as defendant Oculus  
4 VR, LLC, and sold to Facebook, Inc.

5 Igra wanted to sue Luckey on the theory that Luckey had misappropriated Seidl's ideas.  
6 Seidl, however, did not want to sue. In 2014, Igra commenced an action in Hawaii state court  
7 against Seidl, seeking to compel Seidl to authorize an action against Luckey in TRT's name.  
8 Igra and Seidl continued to correspond, but Seidl maintained his objection to suing Luckey and  
9 Oculus (*see* Dkt. Nos. 179 at 2; 213 at 2–3).<sup>1</sup>

10 In May 2015, with the Hawaii action still unresolved, Igra, using TRT's name,  
11 commenced this action *over Seidl's objection* here in federal court in San Francisco. After  
12 substantial motion practice, it became clear that Igra brought this action in TRT's name without  
13 Seidl's prior agreement. After discovery closed, an order stayed the action pending resolution  
14 of the Hawaii action but invited defendants to bring an early motion for summary judgment on  
15 whether this lawsuit had been properly authorized (Dkt. No. 149).

16 In their motion, defendants contended that Igra lacked authority to pursue this action due  
17 to Seidl's refusal to agree to sue (Dkt. No. 135). At no point did TRT respond by raising any  
18 arguments as to the applicability of the Rule 9(a) pleading standard. Instead, TRT argued that  
19 defendants had no "standing" to challenge TRT's internal business processes (primarily relying  
20 on one district court case which did not apply Rule 9(a)) and also that there remained a dispute  
21 of fact as to whether or not Seidl had exercised his veto pursuant to the partnership agreement  
22 (Dkt. No. 153).

23 In June 2016, an order held that defendants could challenge the partnership's authority  
24 — even as a third party — and that Seidl had never authorized the lawsuit under state law, so  
25 Igra could not maintain this action in TRT's name. No dispute between Igra and Seidl existed

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26  
27 <sup>1</sup> The Hawaii action at issue was actually Igra's second lawsuit against Seidl in Hawaii state court  
28 relating to this internal dispute. The first had been to compel Seidl to produce documents relating to Seidl's  
agreement with Luckey. The first action is immaterial to the instant motion. All references to the "Hawaii  
action" herein refer to the second action, the one seeking to compel Seidl to agree to commence the instant  
action against Luckey and Oculus.

1 about the facts of the communications between them. TRT merely disputed the legal effect of  
2 Seidl’s objections. Critically, the June 2016 order also postponed its effect subject to stated  
3 conditions, to “give counsel an opportunity to cure the authorization problem. To that end, the  
4 stay previously entered will remain in effect . . . until . . . the partners of Total Recall  
5 Technologies, file [] sworn declarations herein affirmatively and without qualification stating  
6 that both authorize and agree to the maintenance of this civil action in the name of Total Recall  
7 Technologies against Palmer Luckey and Oculus VR, LLC, that both ratify all actions taken  
8 herein so far on behalf of Total Recall Technologies, and that both consent to continued  
9 prosecution of the case by the law firm of Quinn Emanuel Urquhart & Sullivan, LLP . . .” (Dkt.  
10 No. 179 at 9, 14–15).

11 Yet, counsel never met the conditions provided by the order. Instead, in December  
12 2016, Igra and Seidl stipulated to dismissal of the Hawaii action, agreeing to a new  
13 “Confidential Settlement and Release Agreement” between Igra and Seidl (Dkt. No. 204-1).  
14 Pursuant to the settlement agreement, Seidl withdrew “from the TRT partnership effective  
15 October 14, 2016, by executing a Withdrawal from Partnership . . . . Following Seidl’s  
16 withdrawal from TRT, Seidl shall have no control over TRT or any decision-making rights with  
17 respect to TRT” (Dkt. No. 204-2, Exh. A ¶ II.A). The settlement agreement defined the term  
18 “California Lawsuit” to mean our instant action, and assigned rights to it, as follows (*id.* ¶  
19 II.B.1):

20 California Lawsuit Shall Remain TRT Property. Following the  
21 withdrawal by Seidl as a partner of TRT, any and all rights or other  
22 interests that relate to the California Lawsuit shall remain the  
23 property of TRT, and Seidl shall have no right to control any  
24 aspect of the California Lawsuit, and Seidl shall have no right to  
25 veto the California Lawsuit. Seidl understands that Igra intends to  
26 continue to pursue the California Lawsuit through TRT, and Seidl  
27 agrees that, with the exception of the rights set forth in Paragraph  
28 II.B.3. of this Agreement, he has no individual claims related to the  
California Lawsuit and shall have no right to seek judicial  
supervision or control over the California Lawsuit.

26 The settlement agreement required Seidl to “reasonably cooperate with counsel for TRT  
27 with respect to the California Lawsuit” and also provided that Seidl would receive thirty percent  
28 of any monetary award, settlement, or other recovery herein after payment of fees and costs (*id.*

1 ¶¶ II.B.3; II.C). On the other hand, Igra agreed to “defend and indemnify Seidl for any fees,  
2 costs, monetary penalty or other liability arising out of the California Lawsuit” (*id.* ¶ II.H). In  
3 exchange, Seidl received all of TRT’s intellectual property rights, with the exception of any  
4 rights in the names “Total Recall Technologies” and “TRT.” Seidl agreed to pay Igra a portion  
5 of revenues generated from those intellectual property assets (*id.* ¶ II.C). Seidl also received  
6 “all other tangible and intangible assets of TRT,” that is, he received all assets “[e]xcept for the  
7 rights in the California Lawsuit . . . and the names ‘Total Recall Technologies’ and ‘TRT’” (*id.*  
8 ¶ II.E). Igra and Seidl released all claims against each other (*id.* ¶ II.F). They executed the  
9 settlement agreement on November 28, 2016. They entered a stipulation of dismissal of the  
10 Hawaii action on December 6 (Dkt. No. 207-2, Exh. B).

11 After this settlement, TRT submitted a declaration from Seidl noting his withdrawal  
12 from TRT and stating that he understood that he had “no right to control any aspect of the  
13 California Lawsuit and no right to veto the California Lawsuit.” He understood, moreover, that  
14 he had “no individual claims related to the California Lawsuit and no right to seek judicial  
15 supervision or control over the California Lawsuit” (Dkt. Nos. 189-1 at ¶ 1; 213 at 4). For his  
16 part, Igra stated that he “as the sole remaining partner of Total Recall, authorize[d] and  
17 consent[ed] to the maintenance of” this action and the prosecution of the action by his counsel  
18 herein (Dkt. No. 189-2 at ¶ 7). Significantly, however, Seidl never gave any authorization or  
19 ratification of this action. Summary judgment was therefore granted in favor of defendants that  
20 TRT had not cured the authority problem and judgement was entered in favor of defendants  
21 (Dkt. No. 213 at 1, 5).

22 TRT appealed. On appeal, plaintiff argued that (1) defendants lacked “standing” to  
23 contest Igra’s authority to sue in TRT’s name and TRT’s capacity to sue; (2) there was a  
24 genuine issue of material fact as to whether or not Seidl did in fact agree to sue; and (3) Igra  
25 retroactively ratified the lawsuit after becoming the sole TRT partner (Dkt. No. 246 at 3). In  
26 addition, TRT challenged a prior dismissal of two claims at the pleading stage. The court of  
27 appeals affirmed those dismissals.  
28

1 As confirmed during oral argument in this action, until its briefing on appeal, TRT had  
2 never anchored its arguments that “standing” to contest Igra’s authority should be applied under  
3 Rule 9. Even on appeal, TRT’s Rule 9 arguments were raised solely in its reply briefing to  
4 counter defendants, who had raised it. Nevertheless, our court of appeals reversed the summary  
5 judgment order as having improperly applied state law rather than federal Rule 9 on the  
6 procedural question of whether defendants can challenge plaintiff’s authority to file this action.

7 The panel remanded:

8 [F]or the district court to consider this question in the first instance  
9 under federal law, including the possible applicability of either  
10 Federal Rule of Civil Procedure 9(a)(1)(A) or 9(a)(1)(B).  
11 Specifically, the district court should consider whether the issue of  
12 a partner’s authorization to sue on behalf of a partnership is one of  
13 “capacity” within the meaning of Rule 9(a)(1)(A), or “authority”  
14 within the meaning of Rule 9(a)(1)(B), or whether there is some  
15 other basis on which Defendants can raise the issue. If the district  
16 court concludes that a partner’s authorization to sue on behalf of a  
17 partnership is an issue of “capacity” or “authority” under Rule  
18 9(a), then it should determine whether Plaintiff offered facts  
19 sufficient to establish its authority or capacity to sue. The district  
20 court should also consider whether, even if Defendants could raise  
21 the issue, and even if Plaintiff’s attempted retroactive ratification  
22 was valid, the statute of limitations had already expired on  
23 Plaintiff’s claims.

24 *Total Recall v. Luckey*, 731 F. App’x 706, 707 (9th Cir. 2018) (citations omitted). It seems odd  
25 that the district court was found to have erred on a point plaintiff never raised in the district  
26 court. It further seems strange that the district court was found to have applied state law, when  
27 the district court applied federal Rule 17(b) which directed the district court to apply state law.  
28 Nevertheless, the instant order must carry out the instruction by our court of appeals.

On remand, TRT provided a new declaration from Seidl which stated: “[a]t no point in  
time . . . did I intend to waive any of TRT’s rights against Palmer Luckey and Oculus in  
connection with the Exclusivity Agreement . . . When I withdrew from TRT as a partner, I did  
so with the explicit intention and understanding that TRT would continue to pursue this lawsuit  
against Defendants . . .” (Dkt. No. 248-18 at ¶¶ 6, 8). This order follows full briefing and oral  
argument (Dkt. Nos. 246, 248, 253).

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