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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HIPHOPLANDS, LTD.,

Plaintiff and Appellant,

v.

BLACKGROUND RECORDS, LLC,

Defendant and Respondent.

B248865

(Los Angeles County
Super. Ct. BC372661)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Gregory Alarcon, Judge. Affirmed as modified.

Randall A. Spencer for Plaintiff and Appellant.

Miller Law Associates, Randall A. Miller and Steven S. Wang for
Defendant and Respondent.

INTRODUCTION

A record company sued a distribution company for breach of contract, seeking two remedies: monetary damages and an accounting. The jury returned a general verdict in favor of the record company and against the distribution company, but awarded no damages. The trial court subsequently ruled that the record company was entitled to an accounting and, after a court trial on the accounting, awarded the record company over \$8 million in unpaid royalties. The distribution company challenges the award, contending the jury's finding of no damages barred the record company's request for an accounting. We conclude the jury's failure to award damages did not preclude the court from ordering an accounting. Therefore, with one modification, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Deal Memo*

In November 2002 Blackground Records, LLC, a Delaware company doing business in California, entered into a written agreement entitled "Blackground Deal Memo" with Unique Corp. Ltd., a British company, pursuant to which Blackground granted Unique the exclusive right to distribute recordings in Blackground's catalogue in certain territories outside the United States and Canada. The details of the parties and their relationship are not essential to this appeal because the only issue is a procedural one.

By way of background, Blackground had been searching in late 2002 for international licensing opportunities for an album entitled "I Care 4 U" by the recording artist Aaliyah, a rising star who had recently died in a plane crash in the Bahamas. Blackground had also been looking for suitable international licensees to re-release several titles in its catalogue, "once those titles became available for release upon the expiration of" a prior distribution contract. Although the deal memo covered other

recordings by Aaliyah and recordings by other artists in Blackground's catalogue, Aaliyah's "I Care 4 U" album "was the real thrust of [the] deal."

Like many litigated contracts in the music industry, the deal memo was a sketchy, incomplete document, containing a mixture of contractual obligations and "expression[s] of opinion." A representative of Blackground described the agreement as a "blend of a letter and a deal memo," in which Alan Bellman, "the owner or at least the managing director of Unique," was "putting together what his intentions would be" if Unique obtained the rights outlined in the deal memo. Although the deal memo envisioned that the parties would execute a subsequent long form contract, they never did.

Paragraphs 2, 3, and 4 of the agreement described the distribution rights Blackground was granting to Unique. Although the agreement is not entirely clear, it appears that paragraph 3 gave Unique the rights to distribute "I Care 4 U" and other recordings by Aaliyah, and paragraph 4 gave Unique the rights to distribute other albums in Blackground's catalogue, such as recordings by Timbaland, Tank, and other artists. Paragraph 2, which eventually gave rise to one of the disputes in the litigation, created a limited exception, for compilations, to the rights granted by the agreement. Paragraph 2 stated: "No third party compilation[s] licensing or re-mixing without prior approval of Blackground Records." This provision was "a restriction or a prohibition that would require Unique . . . to come back to Blackground in the event it wanted to release a compilation record," in which case Blackground would have the right, as "all licensor labels do, to either say yea or nay, you can put [the compilation] out or you can't put it out."

Paragraphs 5, 6, and 7 of the agreement governed how and how often Unique would account for and pay Blackground its share of the revenue generated by the sales of the recordings Unique would be distributing. Paragraph 6 required Unique to pay Blackground certain advances and, after deducting various approved expenses described in paragraph 5, to pay Blackground 50 percent of the profits, but in no event less than \$1.50 per unit sold. Paragraph 7, which gave rise to the other main dispute in the litigation, required Unique to provide Blackground with accountings of all expenses

deducted and royalty payments due, 120 days after the end of each April, July, October, and January during the term of the agreement. For Blackground, this was the most important provision because it determined when Unique would account for “back-end payments based on sales” and how much Unique would pay Blackground. If Unique owed money for a particular quarter, it had to attach a check to the accounting statement.

Paragraph 17 of the agreement, added in handwriting, provided that Blackground could assign the agreement to an affiliated entity, but it was silent on whether Unique had the same assignment right. In March 2007 Unique assigned its rights under the agreement to Hiphoplands, Ltd., a British company.¹

B. *The Claims*

Hiphoplands filed this action in June 2007 as the assignee of Unique. Hiphoplands alleged that Unique paid Blackground over \$1.1 million in advances, but that Blackground failed to deliver all of the records required under the deal memo. In particular, Hiphoplands alleged that Blackground breached the agreement by failing to deliver “Soundtrack to Your Life” by the recording artist Ashley Parker Angel, “Timbaland Presents Shock Value” by Timbaland, and “Sex, Love and Pain” by Tank. Hiphoplands also alleged that Blackground falsely represented to Unique that recording artists Toni Braxton and JoJo were not Blackground recording artists, but instead were signed to a company called Black Ocean Records, and therefore their recordings were not a part of the Blackground-Unique agreement. Hiphoplands alleged that both Braxton and JoJo in fact were Blackground artists, which Unique did not discover until years later. Hiphoplands asserted causes of action for breach of contract, fraud, inducing breach of

¹ Paragraph 13 was a choice of law provision stating that the agreement “shall be construed under the Laws [o]f England” and a forum selection clause stating “the English Courts shall be the Courts of competent jurisdiction.” Neither side makes any argument on appeal about this paragraph. The issue came up at trial, but counsel resolved it in some way that, while unclear from the record, apparently allowed the court to apply California law.

contract, interference with prospective economic advantage, unfair competition, and declaratory relief.

Blackground filed a cross-complaint, alleging Unique had breached paragraph 7 of the agreement by failing to account and pay royalties and breached paragraph 2 of the agreement by granting a license to a third party to produce a compilation album without Blackground's approval. Blackground claimed that Unique had exploited Blackground's recordings without paying any money due. Blackground asserted causes of action for breach of contract for failure to pay royalties under paragraph 7, breach of contract for licensing a compilation without authorization under paragraph 2, and an accounting.

C. The Jury Trial

The case proceeded first to a jury trial, the details of which are not essential to this appeal because, as noted, the only issue is a procedural one. Much of the evidence concerned Hiphoplands' complaint, which is not at issue in this appeal.

By way of summary, before trial the court denied Blackground's motion to bifurcate and hear first Blackground's affirmative defense of failure to state a cause of action. The court also denied Blackground's request for a hearing under Evidence Code section 402 on Hiphoplands' "ability to establish preliminary facts relating to its breach of contract, fraud claims, and the validity of the assignment prior to empaneling a jury." The court also denied 10 motions in limine filed by Hiphoplands. The court ordered counsel several times to meet and confer on the jury instructions and a special verdict form. The court ultimately decided to use a general verdict form that did not distinguish between the complaint and the cross-complaint, although it is unclear from the record why the court did so.

At trial, Bellman testified that Unique prepared and mailed to Blackground royalty accounting statements every quarter. Susan Barber, a business manager for Blackground, testified that Blackground never received any royalty statements or checks from Unique. At the beginning of the trial, Hiphoplands apparently produced a document relating to an accounting. Samuel Chilakos, an attorney for Blackground, did not think much of this

document, describing it as “incomplete and entirely unreliable. It doesn’t have the information that’s required under the agreement. . . . Not all the [time] periods are reported. Not all of the titles are reported. . . . There’s no calculation of what royalties would actually be payable. . . . I would expect to see the advances offset by how much royalties were under each territory per product. I don’t see that here.” Chilakos stated: “Looks like to me like somebody schlopped this together in a very big rush to try, you know, [to] produce something for this trial.” He said he could not analyze it “because it made no sense. There was no determination of how it’s calculated. It’s only presented for one period. . . . It’s wholly inadequate in my opinion. This is some of the worst-looking statements I’ve ever seen, to be quite honest I don’t even call these statements. I call this garbage.” Chilakos also described the document as “worthless” and “a joke.”

Chilakos also testified that Blackground learned of an unauthorized compilation album that Blackground contended violated paragraph 2 of the agreement. Chilakos testified that Unique received over \$100,000 for licensing the compilation album and “had no plans of telling Blackground about it.”

The trial court instructed the jury, among other things, that Blackground alleged in its cross-complaint Unique had breached the agreement by failing to provide accountings of the revenue generated by the distribution of Blackground’s recordings and by granting a third party a license of Blackground recordings without permission. The court told the jury that “Blackground . . . claims that it sustained damages as a result of Unique’s material breach of contract.” The court further instructed the jury:

“To recover damages from Hiphopland[s] . . . for breach of contract on its cross-complaint, Blackground . . . must prove all of the following:

- “1. That Blackground . . . and Unique . . . entered into a contract;
- “2. That Blackground . . . did all, or substantially all, of the significant things that the contract required it to do or that it was excused from doing those things;
- “3. That Unique . . . failed to do something the contract required it to do; and
- “4. That Blackground . . . was harmed by the failure[.]”

Because counsel apparently never agreed on a special verdict form, the trial court gave the jury a general verdict form that provided:

“We, the jury in the above entitled cause find as follows;

“SELECT ONE OF THE FOLLOWING TWO OPTIONS:

“____ We find in favor of Plaintiff [Hiphoplands] and against Defendant [Blackground] and award damages to Plaintiff [Hiphoplands] in the amount of \$_____.

“____ We find in favor of Defendant [Blackground] and against Plaintiff [Hiphoplands] and award damages to Defendant [Blackground] in the amount of \$_____.”

The jury returned a verdict with the second option selected (i.e., in favor of Blackground and against Hiphoplands) and awarded Blackground damages in the amount of \$0. The trial court scheduled a hearing on “the issue of an accounting” and set a briefing schedule.

D. The Court’s Ruling That Blackground Was Entitled to an Accounting

At the hearing on Blackground’s entitlement to an accounting, after the parties had briefed the issue, Hiphoplands argued that the court should not order an accounting because “the basis for the accounting was the alleged first claim for breach of contract for failing to account and failing to provide royalty statements,” and “[t]his claim was nonsuited and/or dismissed at trial.”² Hiphoplands contended that, because “the jury awarded no damages to either party,” and because of “the nonsuit for the first cross-claim for breach of contract” (which as far as the record is concerned never occurred), Blackground “never established all of the elements for *any* breach of contract action in this case.”

Blackground argued the evidence at the jury trial “established that neither Unique nor its assignee, Hiphoplands . . . ever provided an appropriate accounting or related royalty payments to Blackground,” and that “Unique materially breached the Agreement

² Hiphoplands did not cite in the trial court, and does not cite on appeal, any evidence that the court ever granted a motion for a nonsuit on Blackground’s first cause of action or that Blackground ever dismissed that cause of action.

by sublicensing an unapproved third party compilation for which it received in excess of a \$100,000 advance.” Blackground asked the court to “order an accounting in this matter, take it at a later time after the relevant documents have been produced, and reserve jurisdiction to render final judgment following the completion of the accounting.”

After the hearing, the trial court ruled as follows: “The court will order an accounting.” The court also signed a document entitled “Interlocutory Judgment for Accounting,” in which the court found that the deal memo required Hiphoplands to account to Blackground. The interlocutory judgment also stated: “The court finds that the evidence introduced at trial establishes that neither [Hiphoplands] nor [its] assignee [sic] ever provided an appropriate accounting or related royalty payments to [Blackground].” The court indicated it would advise the parties “of the date that the court will take the accounting,” or the court would appoint a referee.³

E. *The Court Trial on the Accounting*

Three and a half years later, the court conducted a court trial on the accounting. The details of the court trial and the testimony of the various witnesses are not essential to this appeal because Hiphoplands has abandoned its challenge to the outcome of the court trial.⁴ Essentially, each side presented expert testimony regarding Hiphoplands’ “commercial exploitation of Blackground’s music.” The court credited Blackground’s expert, discredited Hiphoplands’ expert, found that Unique “realized substantial revenues from the exploitation of Blackground’s music,” and awarded Blackground \$8,676,611. The court calculated this amount as follows: \$6,158,097 in royalties owed for the album “Aaliyah,” \$2,642,202 in royalties owed for the album “One in a Million,” \$313,905

³ This “interlocutory judgment” was not appealable. An order directing an accounting is not appealable. (See *In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1218-1219; *Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 964-965; *Papadakis v. Zelis* (1992) 8 Cal.App.4th 1146, 1149.)

⁴ Hiphoplands filed a Notice of Abandonment of Issues stating it was abandoning its evidentiary challenge to the calculation by Blackground’s expert in the court trial of the amount Hiphoplands owed Blackground.

“based upon the Unique sales statements produced at the jury trial phase of the proceeding,” \$562,408 in iTunes license fees and sales of digital downloads, and \$100,000 for Hiphoplands’ “unauthorized licensing of the ‘Ultimate Aaliyah’ compilation album,” less a \$1,100,000 credit for the royalty advances Unique had paid to Blackground.⁵ In connection with the \$100,000 award, the court found that “Unique’s licensing of the ‘Ultimate Aaliyah’ compilation album was done without Blackground’s consent, and, accordingly, the \$100,000 in proceeds derived from such unauthorized licensing is owed by Hiphoplands to Blackground.”

The court entered a “final judgment” in favor of Blackground in the amount of \$8,676,611. Hiphoplands timely appealed.

DISCUSSION

A. *Standard of Review*

Generally, we review the trial court’s decision to order an accounting for abuse of discretion. (See *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367.) Whether the jury verdict precluded the court from ordering an accounting as a matter of law, however, is a legal question we review de novo. (See *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 159-161; see also *Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 444 [reviewing de novo the “legal determination that the failure to ‘do equity’ was a complete defense in an accounting action”].)

B. *The Jury’s Verdict Did Not Bar Blackground’s Claim for an Accounting*

As an initial matter, Blackground argues the jury verdict had “no bearing” on its entitlement to an accounting because it pleaded “an independent *equitable* cause of action for an accounting.” According to Blackground, its accounting claim was “an independent cause of action” based on “an independent relationship that required an accounting.”

⁵ The correct total amount is actually \$8,676,612.

Blackground is incorrect. An accounting is not an independent cause of action but a type of remedy that depends on the validity of the underlying claims. (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82, disapproved on another ground in *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626; *Duggal v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 95; see *Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824, 833 [“an accounting is derivative; it must be based on other claims”].)

Hiphoplands, agreeing that Blackground’s right to an accounting depends on the success of its two underlying breach of contract causes of action, argues that Blackground was not entitled to an accounting because the jury found against Blackground on those causes of action. Hiphoplands contends that the parties submitted to the jury “the issue of whether [Hiphoplands] breached paragraph 7 of the Agreement by failing to account to Blackground and if so, the damages sustained by Blackground,” and, “[a]lthough the jury returned a general verdict in favor of Blackground, it failed to award Blackground even nominal damages.” Therefore, Hiphoplands maintains, Blackground was not entitled to an accounting “because it did not prevail on either cause of action” for breach of contract.

Hiphoplands is incorrect. While it is true, as Hiphoplands maintains, that Blackground’s request for an accounting depends on the first cause of action for breach of paragraph 7 and that “Blackground’s first cause of action **was** submitted to the jury,” it is not true that Blackground failed to prevail on that claim. To the contrary, the jury found in favor of Blackground and against Hiphoplands. The verdict form only asked the jury to identify the prevailing party; it did not distinguish between prevailing on the complaint and prevailing on the cross-complaint. Because we indulge all inferences in favor of the general verdict, however, we construe it to mean Blackground prevailed on all its claims against Hiphoplands and on all of Hiphoplands’ claims against Blackground. (See *Henderson v. Harnischfeger Corp.* (1974) 12 Cal.3d 663, 673 [a “general verdict implies a finding in favor of the prevailing party of every fact essential to the support of his action or defense”]; *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1193 [“the jury’s general verdict “imports findings in favor of the

prevailing party on all material issues; and if the evidence supports implied findings on any set of issues which will sustain the verdict, it will be assumed that the jury so found””]; *Codekas v. Dyna-Lift Co.* (1975) 48 Cal.App.3d 20, 24 [“[a] general verdict implies a finding in favor of the prevailing party of every fact essential to the support of his action; all inferences and intendments favor such a verdict”].) Therefore, Blackground prevailed on every cause of action, including its claim for breach of paragraph 7, the provision in the agreement requiring Hiphoplands to provide Blackground with accountings and royalty payments, and Blackground was entitled to ask the court for an accounting.

Hiphoplands relies principally on the jury’s finding of no damages on Blackground’s breach of contract causes of action and argues that “Blackground was not entitled to an accounting because no money was due.” Hiphoplands points out that a breach of contract claim includes the element of damages,⁶ and an accounting claim requires a showing that “some balance is due the plaintiff that can only be ascertained by an accounting.”⁷ According to Hiphoplands, “[t]he finding of no damages should have ended the case because Blackground failed to establish one of the essential prerequisites for an accounting, namely, that a balance *in some amount* was due” Hiphoplands argues that by awarding Blackground \$0 in damages, the jury determined that no damages were due and that no amount was due. In its reply brief, Hiphoplands adds the

⁶ *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 645; see *Behnke v. State Farm General Ins. Co.* (2011) 196 Cal.App.4th 1443, 1468 [“[d]amages are an essential element of a breach of contract claim”]; *Bramalea California, Inc. v. Reliable Interiors, Inc.* (2004) 119 Cal.App.4th 468, 473 [a breach of contract is not actionable without damage].

⁷ ““A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting.”” (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 910; see *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 401 [“[t]o plead a request for an accounting, a complaint ‘need only state facts showing the existence of the relationship which requires an accounting and the statement that some balance is due the plaintiff’”].)

argument that the trial court lacked authority to make “its own evaluation of the trial evidence and [reject] the jury’s findings of fact when ruling on equitable remedies based on the same evidence considered by the jury.”

Hiphoplands’ argument rests on a false premise. The jury found that no damages were due as a result of Hiphoplands’ breach of the compilation provision in paragraph 2 of the agreement, not that no amount was due under the accounting and royalty provisions in paragraph 7 of the agreement. Blackground’s claim for breach of paragraph 2, the second cause of action, alleged that Hiphoplands breached that provision by granting a license to a third party to produce a compilation album without Blackground’s approval, which Blackground claimed resulted in over \$100,000 in damages. Blackground’s claim for breach of paragraph 7, the first cause of action, alleged that Hiphoplands breached that provision by not sending Blackground any accountings or royalty payments. Blackground did not seek monetary damages for this breach.

The evidence, closing arguments, and jury instructions make clear that the only damages Blackground sought from the jury were for the claim that Hiphoplands breached the no-unapproved-compilation provision of paragraph 2. For example, Chilakos, Blackground’s primary witness at the jury trial, testified:

“Q: Now, there’s one element of damages that—or lost profits that Blackground is seeking; is that correct?

“A: Yes, that’s correct.

“Q: What is that?

“A: That is for the *Ultimate Aaliyah* CD. Is that what you’re referring to?

“Q: Yes.

“A: Yes. For the advance that Unique got \$100,000—it was I believe 56,000 some odd pounds, which is roughly probably—roughly two bucks a pound. So about \$112,000 is the amount of money that they received as an advance.

“Q: And Blackground is claiming that as lost profits?

“A: Yes.”

The only damages claim by Blackground discussed in closing arguments was Blackground's claim for \$116,000 for the unauthorized Aaliyah compilation licensing. Counsel for Blackground argued to the jury, "Well, the thing that we're focusing on as to No. 3 [i.e., the third element of the breach of contract cause of action, breach by Unique] is that Unique failed to obtain the approval of Blackground Records for the compilation album. . . . The *Ultimate Aaliyah* record. Now, Mr. Bellman didn't tell you that he didn't license the record. He didn't tell you that he didn't get the 58,000 pounds, which is about—times two, it's about \$116,000." Referring to the jury instruction on damages for the cross-complaint, counsel for Blackground argued, "If you find that Blackground Records has proved its claim against Unique for breach of contract, you must also decide how much money will reasonably compensate Blackground Records for the harm. . . . [Y]ou have to see the testimony of Sam Chilakos, who testified with no evidence introduced to contradict him, that Blackground Records would have demanded the \$116,000, that is, the 58,000 pounds, as a condition of the compilation of agreeing to or licensing the contract." Counsel for Blackground asked the jury to award as damages "the advance paid to Unique, 58,750 pounds," which he asked the jury to multiply by two to convert into dollars. "And that's what Blackground should have been paid. And that has not been paid. And, in fact, it wasn't even mentioned in the accounting records, if you want to call them that, that were provided on the first day of this trial. That's never been accounted for. Never turned over. Never paid. And we'd ask you to award us that compensation in this trial." Finally, in urging the jury to fill out the second option on the general verdict form, counsel stated, "I would ask you to put a checkmark by that option and find in favor of Blackground Records and against Hiphoplands and award Blackground Records damages in the amount of \$116,000."⁸

The jury instructions did not include any instructions on awarding royalty payments as damages. Indeed, it appears that the parties stipulated to remove the jury instructions on the issue of royalties from the group of instructions the court gave to the

⁸ Counsel for Hiphoplands did not address Blackground's damages claim in his closing and rebuttal arguments.

jury.⁹ The trial court did instruct the jury pursuant to CACI No. 300, the introductory breach of contract instruction, that Blackground was claiming Unique materially breached the contract “by failing to provide required royalty accountings and by granting an unauthorized license of Blackground recordings.”¹⁰ The court also instructed the jury pursuant to CACI No. 303 that, to recover damages from Hiphoplands, Blackground had to prove there was a contract, Blackground performed, Unique breached, and Blackground was harmed. And the court instructed the jury pursuant to CACI No. 350 that, to recover damages, Blackground had to prove the harm was likely to arise in the ordinary course of events from the breach and that, at the time of contracting, the parties could have reasonably foreseen the harm as the probable result of a breach. But there were no instructions telling the jurors they could award royalties as damages.

Thus, it was on Blackground’s claim for damages caused by Hiphoplands’ breach of paragraph 2 that the jury found in favor of Blackground (i.e., Blackground prevailed), but determined that Blackground had not proven its entitlement to damages. On Blackground’s claim for breach of paragraph 7 for not sending Blackground any accountings or royalty payments, Blackground also prevailed but did not ask the jury to award damages. Nor did Blackground present the jury with any evidence that would have enabled the jury to calculate the amount of royalties due.¹¹ Instead, Blackground, after prevailing on its first cause of action, asked the court to order an accounting of the revenues and expenses associated with Hiphoplands’ exploitation of Blackground’s

⁹ “The Court: The second group of jury instructions, does that need to have some instructions pulled out now?”

“Mr. Ivie [counsel for Blackground]: I think all of the royalty instructions have got to come out.

“Mr. Luti [counsel for Hiphoplands]: The royalty instructions have got to come out. And I guess we’ll address it.”

¹⁰ The court also gave an instruction defining “compilation.”

¹¹ Chilakos testified in the jury trial that royalty payments were due, but Blackground had “insufficient data to say how much.”

recordings, and to order Hiphoplands to pay Blackground its share of any resulting profits, as required by paragraph 7.

And for good reason. The issue of an accounting is an equitable one for the court. (*De Guere v. Universal City Studios, Inc.* (1997) 56 Cal.App.4th 482, 507; *Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 865.) Blackground could not ask the jury for an accounting, and the jury could not decide Blackground was entitled to an accounting or perform an accounting. Instead, Blackground could ask the jury to determine whether Hiphoplands breached the contract, the jury could decide that Hiphoplands did, and then Blackground could ask the court to determine whether Hiphoplands was entitled to an accounting. That is exactly what happened here.

Of course, asking the court for an accounting is one thing; obtaining an accounting is another. In order to obtain an accounting, Blackground had to show (1) a fiduciary relationship between the two companies, or (2) the accounts were so complicated that an ordinary legal action demanding a fixed sum was impracticable. (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 403.) After allowing the parties to brief and argue these factors, the court determined Blackground had proven its entitlement to an accounting under this standard. Hiphoplands does not challenge the court's implied finding either that there was a fiduciary relationship between Blackground and Hiphoplands or that the royalty accounting was sufficiently complicated, other than to repeat its argument that the accounting was not complicated because the jury awarded no damages. Nor does Hiphoplands argue that such an accounting was not available as a remedy for breach of a contract to pay royalties. (See, e.g., *Cafferty v. Scotti Bros. Records, Inc.* (S.D.N.Y. 1997) 969 F.Supp. 193, 204 ["an accounting to determine the amount of royalties due is an appropriate and recognized remedy in a case such as a [breach of contract] case"]; Bazis, *Remedies and Roadblocks in the Recovery of Unpaid Music Royalties* (Winter 2000) 17 Entertainment & Sports Lawyer 18, 20 ["[a]n accounting to determine the amount of royalties due is often deemed appropriate in an action for recovery of royalties where periodic accountings are called for by the parties' contract"].) Hiphoplands contends only that the jury's verdict precluded the court as a matter of law from ordering

an accounting and determining how much Hiphoplands owed Blackground pursuant to that accounting. For the reasons stated, we reject that contention.

With one exception. As noted, the \$8,676,611 the court determined Hiphoplands owed Blackground pursuant to the accounting included \$100,000 for the unauthorized Aaliyah compilation licensing. This is the same damages claim for breach of paragraph 2 that Blackground presented to the jury and the jury found Blackground had not proven. This jury finding was binding on the trial court. (See *Hoopes v. Dolan*, *supra*, 168 Cal.App.4th at p. 159 [“where the legal issues are tried first, the judge cannot ignore the jury’s verdict and grant equitable relief inconsistent with the jury’s findings”].) Therefore, the trial court erred in including this amount in the accounting of what Hiphoplands owed Blackground.¹²

DISPOSITION

The judgment in favor of Blackground and against Hiphoplands is modified to be \$8,576,612, rather than \$8,676,611. (See *ante*, fn. 5.) As modified, the judgment is affirmed. Blackground is awarded its costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.

¹² It is not entirely clear what the trial court’s award of \$313,905 for “incomplete sales statements [Unique produced] at the jury phase” represented. A settled statement for one of the days of testimony during the court trial states that Chilakos testified this amount was “for royalties relating to sales of Blackground music as reported on the incomplete sales statements provided by Hiphoplands at the jury phase of the proceedings.” According to Chilakos, “the sales statements produced by Hiphoplands during the jury trial phase of the proceedings did not provide any information regarding sales by Hiphoplands and its assignor in interest, Unique, of Blackground recording artist ‘Aaliyah’s’ double platinum albums, ‘One in a Million’ and ‘Aaliyah.’” In any event, Hiphoplands does not challenge this amount.