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A/K/A “FRAUDITOR TROLL” (14693663 CANADA INC.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHRISTOPHER J CORDOVA

Plaintiff,

vs.

JONATHAN HUNEALT A/K/A
“FRAUDITOR TROLL”, and
14693663 CANADA INC.

Defendants.

No. 5:25-cv-04685-VKD

Honorable Judge: Virginia K.
DeMarchi

**DEFENDANTS’ MOTION TO
DISMISS PLAINTIFF’S
COMPLAINT UNDER FEDERAL
RULE OF CIVIL PROCEDURE
12(b)(6).**

HEARING

Date: December 30, 2025
Time: 10:00 AM
Place: 280 South 1st Street,
Courtroom: 2 (5th Floor), San Jose, CA
95113.

*[Filed concurrently with notice of
motion, proposed order, and
declaration of Jonathan Huneault]*

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO
DISMISS CAUSES OF ACTION 2, 3, AND 4 OF THE FAC.**

I. INTRODUCTION/BACKGROUND

Plaintiff has sued Defendants for making a parody video of his “First Amendment Auditor” videos on YouTube. Plaintiff’s schtick is simple, they go into “public areas” to force a confrontation with business owners and/ law enforcement officers. Once, Plaintiff pulled his routine in a Courthouse, and he has been banned from the social security administration office. For people like Plaintiff, they don’t care if they are interfering with the lives of normal people, or even pulling 4 or 5 officers to the scenes of their videos (at taxpayer expense, of course, and depleting law enforcements ability to pursue “real legal issues, such as crimes.” No, Plaintiff could care less about all this and instead cares more about their video channel and getting viewers and subscribers. While this may be protected first amendment activity, it is also ripe for comment and ridicule, including the parody videos Defendants make of Plaintiff’s activities, referring to them as “frauditors.”

Plaintiff has been known to allow commentaries of his videos without suing other people, as long as they act kindly to him, but the minute someone criticizes and ridicules his work, he goes off the deep end and decides its time to file a lawsuit. This law has no viability in any of its four causes of action. A parody video is protected as fair use, and as clearly set forth in the first motion to dismiss (the copyright action), this is protected under *17 U.S.C. 107* as briefed (docket 29, 33) and incorporated herein to this memorandum by reference.

To summarize, the four factor of the fair use test each favor Plaintiff:

- 1. Purpose and character of the use:** Defendants work is transformative as a commentary and parody of Plaintiff’s original video. He makes fun of Plaintiff in many ways as set forth in his attached declaration. He has transformed the original into “something new”

1 with a different audience that Plaintiff. Even Plaintiff admits this. **See declaration of**
2 **Defendant. Defendant relies on** *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579
3 (1994) and other cases holding that a parody is protected free speech, even though the
4 entire song was used.
5

6 **2. Nature of the copyrighted work:** Plaintiff admits he is a news journalist. His “news”
7 videos are based on factual events (how people react to folks that like to cause a scene in
8 public, dealing with a public issue, the first amendment). There is scan editing by Plaintiff.
9 Thus, Plaintiffs work is entitled to only the most minimal, or “thin” copyright protection.
10 **See declaration of Defendant.**
11

12 **3. Amount and substantiality of the portion used:** The amount used was, fairly extensive,
13 but necessary to conjure the absurdity of Plaintiff’s original work. There really is no
14 “*heart of the work*” at stake in Plaintiff’s videos as it is nothing more than an ongoing
15 attempt to create a public scene and make fun of business owners and law enforcement.
16

17 **4. Effect of use on the potential market for the original.** A parody does not usurp the
18 market opportunities for Plaintiff’s work. Plaintiff even admits that Plaintiff and
19 Defendant “have different audiences.” **See declaration of Defendant.**
20

21 During the case management conference, it was discussed that fair use is a mixed question of
22 law and fact, as such, should not be decided on a motion to dismiss. However, the fact that the
23 fair use factors weigh in favor, this makes it clear that there could be no “bad faith” that could be
24 found under 17 U.S.C. 512(f), the second cause of action, and this claim cannot meet the
25 plausibility standard and must be dismissed.
26

1 Plaintiff also seeks Declaratory Relief relating to his cause of action for copyright
2 infringement. This claim is duplicative and must be dismissed. The only reason Plaintiff asserts
3 this cause of action is to seek attorney fees which are not available due to the untimely registration
4 of his copyright. This should be dismissed with prejudice.

5
6 Finally, Plaintiff added a new claim that alleges Defendants circumvented YouTube's
7 technology protection measures which allowed him to get access to Plaintiff's video on YouTube.
8 This too lacks credibility, is false, and Plaintiff has no legal standing to assert this claim on behalf
9 of YouTube, apparently.

10
11 Thus, causes of action two, three and four should be dismissed with prejudice as
12 amendment is futile. If Plaintiff claims to have facts to amend, the court should require them to
13 say so on the record in detail as to what those facts are.

14 15 II. MEMORANDUM OF POINTS AND AUTHORITIES

16 17 A. ISSUES TO BE DECIDED:

- 18 1. Whether Plaintiff filed their DMCA takedown notice in bad faith in light of application of
19 the four-factor fair use test. Can such a claim meet the "plausibility" standard under these
20 facts?
- 21
22 2. Whether the court should dismiss the *duplicative claim* for declaratory judgment of
23 copyright infringement, bad faith take down, and anti-circumvention, where these causes
24 of action are separately alleged, and this request for relief adds nothing more than an
25 attempt to seek to recover attorney fees they are not entitled to under the copyright
26 infringement statute.

1 3. Whether Plaintiff has alleged plausible facts to support a claim of anti-circumvention, and
2 whether they have “standing” to assert this claim.

3
4 **B. STANDARD OF REVIEW UNDER RULE 12(b)(6)**

5 Federal Rule of Civil Procedure 12(b)(6) authorizes dismissal where a complaint fails to state
6 a claim upon which relief can be granted. Under federal procedural standards, courts decide a Rule
7 12(b)(6) motion by assuming the truth of well-pleaded facts, drawing reasonable inferences in the
8 plaintiff’s favor, and then determining whether the claim is plausible on its face. *Ashcroft v. Iqbal*,
9 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Courts are not
10 required to accept as true mere legal conclusions, unwarranted inferences, or “[t]hreadbare recitals
11 of the elements of a cause of action.” *Iqbal*, 556 U.S. at 678.

12
13
14 When a plaintiff’s allegations are consistent with lawful conduct or equally suggest an
15 innocent explanation, the claim is not plausible and must be dismissed. *Twombly*, 550 U.S. at 557.
16 Dismissal is proper where the facts alleged, even if accepted as true, do not meet the essential
17 elements of the claim. See *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (affirming
18 dismissal where allegations lacked factual content showing required state of mind).

19
20 In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Court reinterpreted the substance
21 of Rule 8(a), holding that plaintiffs must plead “enough facts to state a claim to relief that is
22 plausible on its face” to avoid dismissal under Rule 12(b)(6). Here, Plaintiff’s cannot meet this
23 basic requirement as to its causes of action for anti-circumvention, and bad faith counternotice.

24 Plaintiff’s complaint asserts THREE causes of action relevant to this motion:
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1 **1. There is no bad faith by Defendant in issuing its objectively “good faith”**
 2 **counternotice based on fair use rights under 17 U.S.C. 107.**

3
 4 **SECOND CAUSE OF ACTION:** Misrepresentation, bad faith counternotice under 17 U.S.C.
 5 512f. As noted above, application of the four fair use factors makes this 100% there could never
 6 be the required “bad faith” to hold Defendants liable for filing a counternotice to protect its parody
 7 video, and to ultimately protects its channel from being subject to takedown by YouTube (“three
 8 strikes and you’re out with YouTube). There is no possible way Plaintiff can make this allegation
 9 “stick.” Respectfully, this is without merit or plausibility and must be dismissed without
 10 amendment. In their complaint, Plaintiff repeatedly asserts that Defendant acted “knowingly,”
 11 “deliberately,” and in “bad faith” when he used portions of Plaintiff’s publicly posted video for
 12 online commentary. Plaintiff pleads only conclusions, not facts. There are no allegations showing
 13 that Defendant subjectively believed his use was unlawful or that he knowingly issued a false
 14 counter-notification. Moreover, per Defendant’s declaration, Plaintiff consented to the use.

15
 16 **A. Section 512(f) requires actual, subjective knowledge of falsity**

17 The Ninth Circuit has made the standard explicit and demanding. Under *Rossi v. MPAA*, 391
 18 F.3d 1000, 1005 (9th Cir. 2004), a defendant is liable under §512(f) only if the plaintiff pleads
 19 facts showing the defendant *subjectively knew* the challenged use was lawful and nonetheless
 20 misrepresented it as infringing. *Rossi* rejected an objective negligence or reasonableness standard.
 21 Even a mistaken belief in infringement is insufficient. *Lenz v. Universal Music Corp.*, 815 F.3d
 22 1145, 1154 (9th Cir. 2016) reaffirmed *Rossi*. Although *Lenz* held that copyright owners must
 23 consider fair use before sending takedown notices, it *also* held that §512(f) liability attaches only
 24 where a party actually knows the use is unauthorized by law. A mistaken or debatable view of fair
 25 use cannot constitute bad faith. *Hosseinzadeh v. Klein*, 276 F. Supp. 3d 34 (S.D.N.Y. 2017), *aff’d*

1 900 F.3d 39 (2d Cir. 2018), similarly rejected bad-faith allegations where the defendant used
2 portions of a video for commentary and parody. Because the use was facially transformative, the
3 court held no reasonable jury could find subjective knowledge of illegality. Importantly, the court
4 dismissed the §512(f) bad-faith claim at the motion-to-dismiss stage, confirming that allegations
5 of “knowing misrepresentation” cannot survive absent concrete facts showing actual subjective
6 awareness of unlawfulness.
7

8 **B. The complaint pleads no facts showing defendant knowingly misrepresented anything**

9 Plaintiff’s “bad faith” theory is entirely conclusory. The complaint asserts that Defendant
10 “knew” his use was infringing, acted “willfully,” and “knew the registered video was protected.”
11 But Plaintiff alleges no factual content supporting the conclusion that Defendant subjectively
12 believed his commentary video was unlawful. For example, there are no allegations that:

- 13 • Defendant admitted knowing his use was infringing.
- 14 • Defendant acknowledged fair use applied but chose to misrepresent the facts.
- 15 • Defendant had access to any information contradicting his belief.
- 16 • Defendant formed any view other than the one he stated: that the use was lawful
17 commentary.
18

19 Moreover, Plaintiff’s was NOT in fact copyright registered (until two years later).

20 Instead, the complaint makes clear that Defendant’s counter-notice expressly claimed fair use.
21 A claim of fair use, particularly in a context of commentary, parody, and criticism, affirmatively
22 **negates subjective bad faith.** The Ninth Circuit is clear: without specific facts showing
23 Defendant *actually knew* his use was unlawful, a §512(f) claim cannot survive. *Rossi*, 391 F.3d at
24 1005; *Lenz*, 815 F.3d at 1154.
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C. Defendant’s work, on its face, reflects a good-faith belief in fair use

Plaintiff’s allegations confirm that Defendant added narration, humor, commentary, and expressive criticism of the “First Amendment auditor” genre. Whether Plaintiff agrees with the commentary is irrelevant. Courts repeatedly hold that parody, critique, or “reaction” formats constitute at minimum a legitimate fair-use question, which defeats any allegation of subjective knowledge of infringement. *Hosseinzadeh*, 276 F. Supp. 3d at 46. Where the legality of the fair use may even be debatable, there can be no §512(f) liability under the facts of this case. *Lenz*, 815 F.3d at 1154.

2. Plaintiff has filed a duplicative claim for declaratory judgment for the sole purposes of seeking attorney fees, where it cannot due so due to its untimely copyright registration mandating dismissal with prejudice.

THIRD CAUSE OF ACTION: Declaratory Relief 28 U.S.C. 2201 and 17 U.S.C. 512(f) (which must be dismissed as duplicative since Plaintiff has already asserted these two claims). Courts consistently hold that declaratory relief merges with the underlying claim when it presents no separate controversy or remedy. *Swirsky v. Carey*, 376 F.3d 841, 853 n.16 (9th Cir. 2004) (noting that declaratory relief merges with the copyright action); *Arista Records LLC v. Greubel*, 453 F. Supp. 2d 961, 965 (N.D. Tex. 2006) (dismissing declaratory claim as redundant where it mirrored the infringement claim); *Galan v. Walt Disney Co.*, No. 2:20-cv-04145, 2021 WL 2533905, at *6 (C.D. Cal. June 17, 2021) (same).

3. There is no plausible claim of circumvention, and Plaintiff has no standing to assert rights only YouTube would have.

FOURTH CUASE OF ACTION: Circumvention of Technological measures, 17 U.S.C. 1201, 1203. Plaintiff likewise alleges that Defendant engaged in DMCA “circumvention” by allegedly

“downloading” or “recording” Plaintiff’s YouTube video. Even assuming Plaintiff intended to plead a §1201 claim, the facts alleged do not identify any technological measure that Defendant bypassed. Courts have uniformly held that routine viewing, or screen-recording of publicly available YouTube videos is not “circumvention.” See *iSpot.tv, Inc. v. Teyfukova*, No. 2:21-cv-06815, Order at 1–2 (C.D. Cal. May 22, 2023); *MDY Industries, LLC v. Blizzard Entertainment, Inc.*, 629 F.3d 928 (9th Cir. 2010). This is all that Defendant has done, used a screen recorder, **see Defendant’s declaration.** Moreover, Plaintiff lacks standing to assert rights that only YouTube would possess. It is not Plaintiff’s technology at issue, nor is this alleged.

A. PLAINTIFF FAILS TO STATE ANY PLAUSIBLE §1201 ANTI-CIRCUMVENTION CLAIM. Plaintiff repeatedly suggests that Defendant “downloaded,” “took,” or “accessed” his video without authorization. Even if construed as a §1201 theory, it fails as a matter of law.

Section 1201 requires bypassing a “Technological measure that effectively controls access”

Under *MDY Industries, LLC v. Blizzard Entm’t, Inc.*, 629 F.3d 928 (9th Cir. 2010):

- §1201 targets access controls, not mere copying;
- a violation occurs only when a defendant avoids, bypasses, removes, deactivates, or impairs a technological protection measure;
- ordinary use of content after it has been lawfully displayed, including downloading or screen-recording, does not violate §1201.

A technological measure “effectively controls access” only if it prevents access in the ordinary course of operation. *MDY*, 629 F.3d at 952. Similarly, in *iSpot.tv, Inc. v. Teyfukova* (C.D. Cal. May 22, 2023), the court dismissed a §1201 claim where the plaintiff failed to identify any protective technology that was bypassed. Simply “accessing,” “viewing,” or “recording” content made available by YouTube does not constitute circumvention. The complaint fails to allege

1 circumvention of any technological measure. Plaintiff’s allegations describe nothing more than
2 Defendant “downloading” or “screen-recording” a publicly available YouTube video. The
3 complaint affirmatively states that the video was publicly posted, freely viewable, and accessible
4 to anyone with an internet connection. Courts have consistently held that such conduct does not
5 constitute circumvention under §1201 because it does not involve defeating a technological
6 measure that “effectively controls access” to a work. *MDY Indus., LLC v. Blizzard Entm’t, Inc.*,
7 629 F.3d 928, 952–54 (9th Cir. 2010) (distinguishing prohibited circumvention of access controls
8 from mere use or copying after lawful access).

9
10 District courts applying MDY reach the same conclusion. See *iSpot.tv, Inc. v. Teyfukova*, No.
11 2:21-cv-06815, slip op. at 1–2 (C.D. Cal. May 22, 2023) (dismissing §1201 claim where plaintiff
12 failed to identify any protective technology the defendant bypassed). Because Plaintiff identifies
13 no technological measure and no act of defeating such a measure, his §1201 theory cannot
14 proceed.

15 16 CONCLUSION

17 Causes of action 2, 3 and 4 must be dismissed with prejudice under Rule 12(b)(6)..
18 Amendment would be futile. If Plaintiff claims they can amend, they should so state specific facts
19 to support their contention.
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1 Respectfully submitted.

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3 DATED this 24th day of November 2025

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5 **THE LAW OFFICES OF STEVEN**
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