

1 RANDALL S. NEWMAN (SBN 190547)
2 Attorney at Law
3 99 Wall St., Suite 3727
4 New York, NY 10005
5 212.797.3735
6 rsn@randallnewman.net
7
8 *Attorney for Plaintiff,*
9 *Christopher J. Cordova*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER J. CORDOVA,

Plaintiff,

vs.

JONATHAN HUDON-HUNEULT,
NNEKA OHIRI, 14693663 CANADA
INC.,

Defendants.

Case No. 25-cv-04685-VKD

HON. VIRGINIA K. DEMARCHI

**PLAINTIFF’S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS’ MOTION TO
DISMISS COUNTS 2, 3 AND 4 OF
PLAINTIFF’S FIRST AMENDED
COMPLAINT**

HEARING:

Date: January 13, 2026
Time: 10:00 a.m.
Place: 280 South 1st St.
Courtroom 2 (5th Floor)
San Jose, CA 95113

TABLE OF CONTENTS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I. STATEMENT OF ISSUES TO BE DECIDED 1

II. INTRODUCTION 2

III. FACTUAL BACKGROUND..... 3

IV. ARGUMENT 6

A. Standard On A Motion To Dismiss 6

B. Evidentiary Objections..... 7

 i. Even If The Court Were Allowed To Consider The Huneault Declaration And Exhibits On A Motion To Dismiss, Such Evidence Would Be Barred By The Federal Rules Of Evidence..... 7

C. Nneka Ohiri Did Not Move Or Otherwise Plead And Defaulted..... 8

D. Fair Use Is Irrelevant To Defendants’ Motion 9

E. Plaintiff States A Claim Under 17 U.S.C. § 512(f) 9

 i. Plaintiff Alleges That Defendants Knowingly And Materially Misrepresented That The Material Was Removed By Mistake..... 10

 ii. Plaintiff Alleges That YouTube Relied On Defendants' Misrepresentations And Restored Defendants' Videos 12

 iii. Plaintiff Alleges That He Was Injured As A Result of Defendants' Misrepresentations In The Counter-Notices 12

 iv. Defendants Rely On A Nonexistent Citation, Misstated Procedural History, And Mischaracterized Authority To Support The Motion To Dismiss Plaintiff's § 512(f) Claim..... 12

F. The Declaratory Relief Claim Is Not Duplicative And Cannot Be Dismissed 14

 i. Defendants Have Not Shown That The Declaratory Judgment Claim Is Duplicative 15

G. Plaintiff States A Claim For Violation Of 17 U.S.C. § 1201 15

1 i. Plaintiff Alleges That His Works Were Protected Under The Copyright Act
2 16
3 ii. Plaintiff Alleges That His Works Were Protected By A Technological
4 Measure 16
5 iii. Plaintiff Alleges that Defendants Circumvented YouTube's Technological
6 Measures In Order to Obtain Access to His Copyrighted Works..... 18
7 iv. Defendants' Argument That Plaintiff Did Not Plead A Circumvention Claim
8 Ignores The Allegations In The FAC..... 19
9 v. Defendants' Argument That Plaintiff Lacks Standing To Assert A § 1201
10 Claim Has No Merit 19
11 V. CONCLUSION.....20

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Ashcroft v. Iqbal,
 556 U.S. 662 (2009)..... 6

Bell Atl. Corp. v. Twombly,
 550 U.S. 544 (2007)..... 6

Campbell v. Acuff–Rose Music, Inc.,
 510 U.S. 569 (1994)..... 9

ENTTech Media Group LLC v. Okularity, Inc.,
 2:20-cv-06298-JWH-Ex, 2021 WL 916307 (C.D. Cal. Mar. 10, 2021)..... 10

Hosseinzadeh v. Klein,
 276 F.Supp.3d 34 (S.D.N.Y. 2017) 13-14

iSpot.tv, Inc. v. Teyfukova,
 No. 21-cv-6815-MEMF (MARx), 2023 WL 3602806 (C.D. Cal. May 22, 2023) 16

Khoja v. Orexigen Therapeutics, Inc.,
 899 F.3d 988 (9th Cir. 2018) 7

Lenz v. Universal Music Corp.,
 815 F.3d 1145 (9th Cir. 2016) 10, 12-13

MedImmune, Inc. v. Genentech, Inc.,
 549 U.S. 118 (2007)..... 15

Navarro v. Block,
 250 F.3d 729 (9th Cir. 2001). 6

Rossi v. Motion Picture Ass’n of America, Inc.,
 391 F.3d 1000 (9th Cir. 2004)..... 13

United States v. Hayes,
 763 F. Supp. 3d 1054 (E.D. Cal. 2025) 14

1 *Yout, LLC v. Recording Indus. Ass’n of Am., Inc.*,

2 633 F. Supp. 3d 650 (D. Conn. 2022)..... 17-18, 20

3 **STATUTES**

4
5 17 U.S.C. § 102(a) 16

6 17 U.S.C. § 1201(a)(1)(A) 16, 19

7 17 U.S.C. § 512(g)(2)(C) 15

8 17 U.S.C. § 512(g)(3)..... 5

9 17 U.S.C. §§ 512(f).....3, 9, 20

10 28 U.S.C. § 192720

11 28 U.S.C. § 2201(a) 15

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. STATEMENT OF ISSUES TO BE DECIDED**

- 2 1. Whether the Court may consider the Declaration of Jonathan Hudon-Huneault
3 (“Huneault Decl.”) (ECF No. 43-2) and the exhibits attached thereto on a Rule
4 12(b)(6) motion.
- 5 2. Whether Plaintiff states a claim for misrepresentation under 17 U.S.C. §
6 512(f) in Count II of the First Amended Complaint (“FAC”).
- 7 3. Whether Plaintiff states a claim for declaratory relief under 17 U.S.C. § 512(g)
8 and 28 U.S.C. § 2201 in Count III of the FAC.
- 9 4. Whether Plaintiff states a claim for circumvention of a technological measure
10 under 17 U.S.C. § 1201 in Count IV of the FAC.
- 11 5. Whether the Motion can be granted as to Defendant Nneka Ohiri (“Ohiri”),
12 where the Motion was not filed on her behalf, asserts no argument directed to
13 her conduct, and does not seek dismissal of the claims asserted against her.
- 14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 II. INTRODUCTION

2 Plaintiff Christopher J. Cordova (“Plaintiff”) submits this Memorandum of Law in
3 Opposition to the Motion to Dismiss Counts Two, Three, and Four of the FAC filed by
4 Defendants Huneault and 14693663 Canada Inc. (“Canada Inc.”) (collectively,
5 “Defendants”), which fails to address the claims actually pled or apply the Rule 12(b)(6)
6 standard. The Motion does not cite the FAC or meaningfully engage with Plaintiff’s
7 allegations. Instead, Defendants construct an alternative factual narrative untethered to the
8 FAC. A motion that fails to address the allegations in the FAC cannot support dismissal
9 under Rule 12(b)(6).

10 The deficiencies do not end there. Defendants misstate the procedural posture and
11 holdings of the cases they cite, rely on a nonexistent appellate citation to a Second Circuit
12 opinion, and ignore allegations central to Plaintiff’s claims. These are not minor errors or
13 debatable issues of interpretation; they reflect a fundamental failure to grapple with the
14 governing law and the operative pleading.

15 Critically, only two defendants have moved for dismissal. Ohiri did not join the
16 Motion and offers no independent basis for dismissing the claims asserted against her. As
17 discussed below, the Motion therefore does not, and cannot, reach the claims against Ohiri
18 at all.

19 The Motion proceeds as if Rule 12(b)(6) does not exist. Rather than accept the well-
20 pleaded allegations of the FAC as true, Defendants invite the Court to credit the Huneault
21 Decl., consider unauthenticated screenshots, and resolve factual disputes in Defendants’
22 favor. Ninth Circuit law forbids that approach. A Rule 12(b)(6) motion is confined to the
23 complaint and properly incorporated materials; it is not a vehicle for disputing facts or
24 introducing extrinsic evidence.

25 Plaintiff alleges, in detailed and specific terms, that Defendants built the Frauditor
26 Troll YouTube channel (the “Frauditor Troll Channel”) by stealing other creators’ content,
27 including between fifty and one hundred of Plaintiff’s videos alone, by bypassing
28 YouTube’s rolling-cipher technological protection measure using ripping tools. Plaintiff

1 further alleges that Defendants reproduced those unlawfully obtained videos in long,
2 uninterrupted blocks on the Frauditor Troll Channel under the guise of fair use.

3 Plaintiff also alleges that after he submitted DMCA Takedown Notices to YouTube
4 over Defendants' use of his videos, Defendants submitted nine DMCA counter-notices in
5 response containing multiple false statements, including a fabricated service address, a
6 reference to a nonexistent "Fair Use Act of 1976," a false assertion of retained counsel, and
7 boilerplate fair-use language undermined by Defendants' own admissions. Plaintiff alleges
8 that Defendants understood that invoking the so-called "magic words" of fair use would
9 trigger restoration by YouTube and believed there was virtually no risk that Plaintiff would
10 actually enforce his rights based on their perception that he lacked the resources to do so.

11 Finally, Plaintiff alleges that after commencing this action, Defendants, concerned
12 that their systematic copyright theft scheme would be exposed, deleted more than 1,700
13 videos from the Frauditor Troll Channel without retaining any backups, an extraordinary
14 act of spoliation that Defendants later acknowledged was motivated by fear of legal
15 exposure. Taken together, the allegations in the FAC more than suffice at the pleading
16 stage to plausibly state claims under 17 U.S.C. §§ 512(f) and 1201(a), as well as for
17 declaratory relief under 17 U.S.C. § 512(g) and 28 U.S.C. § 2201.

18 Because Defendants ask this Court to do precisely what Rule 12(b)(6) and Ninth
19 Circuit precedent forbid, resolve factual disputes, consider extrinsic evidence, and
20 substitute Defendants' preferred narrative for the allegations pled, the Motion must be
21 denied in its entirety. And because Defendant Ohiri never moved for dismissal at all, the
22 Motion does not, and cannot, reach the claims asserted against her.

23 **III. FACTUAL BACKGROUND**

24 Plaintiff is a Colorado-based constitutional auditor and the creator of the Denver
25 Metro Audits YouTube channel, where he publishes original audiovisual works
26 documenting interactions with government officials, law enforcement, and public
27 employees. (FAC ¶¶ 17, 29–31). His works form part of a broader movement of citizen-
28 journalist creators ("Auditors") who film public-interest encounters and disseminate them

1 through YouTube. (*Id.*)

2 In response to the growing popularity of Auditors, Defendants created the Frauditor
3 Troll Channel. (*Id.* ¶ 32). Huneault, Ohiri and Canada Inc., jointly operate the Frauditor
4 Troll Channel for commercial profit. (*Id.* ¶¶ 19–22). The channel exists not to critique or
5 analyze Plaintiff’s work, but to misappropriate Plaintiff’s and other Auditors’ copyrighted
6 videos in bulk, insert brief mockery, and monetize the resulting uploads through
7 YouTube’s Partner Program. (*Id.* ¶¶ 1–12). The Frauditor Troll Channel is one of the
8 largest anti-Auditor channels. (*Id.* ¶ 33).

9 The Frauditor Troll Channel has repeatedly used Plaintiff’s copyrighted works
10 without permission and outside any plausible claim of fair use. (*Id.* ¶ 34). Between 2022
11 and 2025, Defendants unlawfully obtained between fifty and one hundred of Plaintiff’s
12 copyrighted works. (*Id.*) Defendants did not obtain these works through legitimate means;
13 instead, they circumvented YouTube’s technological protection measures, including its
14 rolling-cipher system, by using ripping software, browser extensions, or other decryption
15 utilities specifically designed to bypass technological measures controlling access to
16 Plaintiff’s videos. (*Id.* ¶¶ 35–40). YouTube’s rolling cipher is a technological protection
17 measure. (*Id.* ¶ 40).

18 Using these unlawfully obtained copies, Defendants created monetized videos that
19 reproduced vast portions of Plaintiff’s copyrighted works in long, uninterrupted blocks
20 without meaningful commentary or transformation. (*Id.* ¶¶ 46–54). For example,
21 Defendants’ video titled *Frauditor DMA Gets Confronted by Angry Citizen (Hilarious)*,
22 incorporates approximately 25 minutes and 54 seconds of Plaintiff’s registered video titled
23 *ANOTHER CHAD EXPOSED!!! Worthless Denver Cops...ASSAULTED!!!* (“*Another*
24 *Chad*”). (*Id.* ¶¶ 46–48). Defendants’ video reproduces *Another Chad* in fifteen separate
25 blocks with no commentary, twelve of which exceed one minute, three of which exceed
26 two minutes, one exceeds three minutes, and one exceeds four minutes. (*Id.* ¶ 47).

27 In Defendants’ video titled *Frauditor DMA gets Camera Touched and CRIES A*
28 *RIVER*, uploaded to the Frauditor Troll Channel, Defendants incorporated more than thirty-

1 seven minutes of Plaintiff’s registered video titled *ANGRY MOB AT BELMAR LIBRARY!!!*
2 “*CALL 911*” *Cops don’t show up* (“*Belmar Library*”), without authorization. Defendants’
3 video reproduced *Belmar Library* in twelve separate blocks with no commentary. (*Id.* ¶
4 53). Each block exceeds one minute; eight blocks exceed two minutes; three blocks exceed
5 four minutes; and the longest uninterrupted segment runs over six minutes. (*Id.*)

6 In Defendants’ video titled *Frauditors Ejected from Federal Courthouse (NEW)*
7 uploaded to the Frauditor Troll Channel, Defendants incorporated more than eighteen
8 minutes of Plaintiff video titled *FEDERAL COURTHOUSE FAIL!!! Threatened with*
9 *arrest for recording and not one officer identifies!* (“*Courthouse Fail*”)¹, without
10 authorization. (*Id.* ¶¶ 45, 49).

11 Plaintiff submitted DMCA takedown notices in June and October 2023, identifying
12 these and other videos on the Frauditor Troll Channel that incorporated Plaintiff’s footage.
13 (*Id.* ¶ 58). Defendants responded with nine counter-notices under 17 U.S.C. § 512(g)(3)
14 (the “Counter-Notices”), each signed under penalty of perjury, asserting (1) that the videos
15 were taken down by mistake because they were protected by the non-existent “Fair Use
16 Act of 1976,” (2) that he was the owner of the Frauditor Troll Channel, (3) that Defendants
17 had already hired an attorney and were prepared to litigate, and (4) that Defendants could
18 be served at “99 Wall Street, New York, NY,” a fictitious service address in the United
19 States (Defendants reside in Canada) that knowingly omitted a suite number. (*Id.* ¶¶ 59–
20 63). Each of these statements was knowingly false when made, as Defendants admitted in
21 public videos and in contemporaneous communications. (*Id.* ¶¶ 59-63, 66-71).

22 Each of the nine Counter-Notices contained nearly identical boilerplate language
23 copied verbatim and bore no resemblance to a legitimate fair-use analysis. (*Id.* ¶¶ 8, 59–
24 61). In the Counter-Notices, Huneault bragged that the Frauditor Troll Channel had
25 received forty-eight copyright strikes and every video was reinstated through the counter
26

27 _____
28 ¹ Registration of the *Courthouse Fail* video is currently pending before the U.S. Copyright Office. (FAC
¶ 46 n. 7).

1 notification system. (*Id.* ¶ 59). Defendants admitted on video and through
2 contemporaneous emails that they submitted the Counter-Notices not because they
3 believed in good faith that the works were non-infringing, but because doing so would
4 guarantee reinstatement and “penalize” Plaintiff. (*Id.* ¶¶ 66–71).

5 After receiving notice of this lawsuit on June 6, 2025, Defendants began mass-
6 deleting the evidence of their copyright infringement scheme, permanently destroying
7 more than 1,700 videos, amounting to nearly 90% of the Frauditor Troll Channel’s library.
8 (*Id.* ¶¶ 79–82). They later publicly admitted that the deletion was intentional and motivated
9 by fear of accountability for their massive infringement scheme. (*Id.* ¶ 81). They also
10 admitted that they knew Plaintiff was broke, meaning that they believed Plaintiff could not
11 afford an attorney to pursue federal litigation to stop their blatant theft of his videos and
12 that it was a one-in-a-billion chance that they would ever be held responsible for the theft
13 and monetization of Plaintiff’s videos. (*Id.* ¶ 82).

14 These facts, all taken from the FAC and presumed true at the Rule 12(b)(6) stage,
15 establish an extensive pattern of mass infringement, unlawful circumvention, knowing
16 misrepresentations in DMCA Counter-Notices, spoliation of evidence, and bad-faith
17 exploitation of the DMCA process.

18 **IV. ARGUMENT**

19 **A. Standard On A Motion To Dismiss**

20 A Rule 12(b)(6) motion “tests the legal sufficiency” of a complaint. *Navarro v.*
21 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). The Court must accept all well-pleaded factual
22 allegations as true and draw all reasonable inferences in the plaintiff’s favor. *Ashcroft v.*
23 *Iqbal*, 556 U.S. 662, 678 (2009). The question is not whether the plaintiff will ultimately
24 prevail, but whether the complaint alleges “enough facts to state a claim to relief that is
25 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is
26 plausible where the facts permit a reasonable inference of liability. *Id.*

27 In resolving a Rule 12(b)(6) motion, the Court generally may not consider evidence
28 outside the pleadings when assessing the sufficiency of a complaint. *Khoja v. Orexigen*

1 *Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). The Court’s review is limited to the
2 complaint, documents attached to the complaint, documents incorporated by reference, and
3 matters properly subject to judicial notice. *Id.*

4 **B. Evidentiary Objections**

5 Defendants’ Motion relies extensively on materials outside the pleadings, most
6 notably the Huneault Decl. and its attached exhibits. Those materials may not be considered
7 on a Rule 12(b)(6) motion. They are not attached to the FAC, not incorporated by reference,
8 and not proper subjects of judicial notice. The Court therefore must disregard the Huneault
9 Decl. and its exhibits in their entirety.

10 The Ninth Circuit has repeatedly warned that the incorporation-by-reference and
11 judicial-notice doctrines may not be used as an “end-run” around Rule 12(d) to introduce
12 defendant-friendly facts or to resolve factual disputes at the pleading stage. *See Khoja v.*
13 *Orexigen Therapeutics, Inc.* at 1002–03. That is precisely what Defendants ask the Court
14 to do here. They urge the Court to credit Huneault’s self-serving factual narrative over the
15 FAC’s allegations.

16 **i. Even If The Court Were Allowed To Consider The Huneault Declaration** 17 **And Exhibits On A Motion To Dismiss, Such Evidence Would Be Barred** 18 **By The Federal Rules Of Evidence**

19 Even assuming *arguendo* that the Huneault Decl. was procedurally admissible at the
20 pleading stage, which it is not, the declaration and its exhibits would independently be
21 inadmissible under the Federal Rules of Evidence.

22 First, much of the declaration consists of improper lay opinion and legal conclusions
23 regarding “parody,” “transformation,” “authorization,” “market harm,” and “fair use,” all
24 of which are ultimate legal issues reserved for the Court. Fed. R. Evid. 701.

25 Second, the Exhibits A-D to the Huneault Decl. rely extensively on hearsay and
26 unauthenticated materials, including an alleged transcript (Exhibit A) and YouTube
27 screenshots offered for their truth (Exhibits B-D), without any foundation establishing
28 admissibility. Plaintiff objects to these exhibits pursuant to Fed. R. Evid. 401, 602, 801-

1 803 and 901.

2 Accordingly, even if the Court were inclined to look beyond the pleadings, which it
3 cannot, the Huneault Decl. and its exhibits are inadmissible and must be disregarded.

4 **C. Nneka Ohiri Did Not Move Or Otherwise Plead And Defaulted**

5 The procedural record makes one fact unmistakably clear: the Motion cannot dismiss
6 any claim against Ohiri because she never moved to dismiss the FAC and is in default.
7 (ECF Nos. 43, 43-1). On October 13, 2025, Huneault filed a Motion to Dismiss Plaintiff’s
8 initial complaint that named Huneault and Ohiri as defendants. (ECF No. 29). Ohiri was
9 not named as a moving party and Plaintiff requested entry of default against Ohiri. (ECF
10 No. 30). Thereafter, the parties stipulated to set aside Ohiri’s initial default as counsel
11 claimed that he “was not aware that Nneka Ohiri was also named as a Defendant” so the
12 mooted motion to dismiss “did not respond on her behalf.” (ECF No. 36).

13 The stipulation expressly required Defendants to “file a response to Plaintiff’s First
14 Amended Complaint on or before November 24, 2025.” (ECF No. 36 ¶ 6). Yet when the
15 deadline arrived, counsel once again repeated the *same mistake* that caused the first default,
16 and Ohiri was not named as a moving party. (ECF No. 43). This is now the *second time*
17 defense counsel failed to include her in a filing.

18 The Notice of Motion (ECF No. 43) leaves no ambiguity. It identifies only Huneault
19 and Canada Inc. as the moving parties. (*Id.*) Ohiri is not listed in the caption; her name does
20 not appear in the introductory paragraph; the motion expressly states that “Defendants
21 Jonathan Huneault... and 14693663 Canada Inc. will and hereby do move this Court” (ECF
22 Nos. 43, 43-1); and nowhere does the filing request relief on her behalf. The Memorandum
23 in Support likewise states on its face that it is submitted “for Defendant Jonathan Huneault
24 a/k/a Frauditor Troll (14693663 Canada Inc.),” again omitting Ohiri entirely from the
25 caption, the introduction and the argument. (ECF No. 43-1). In fact, the name Nneka Ohiri
26 appears nowhere in the Notice of Motion or Memorandum confirming that the omission
27 was substantive, not clerical. (*Id.*)

28 The Court cannot construe the Motion as a Rule 12(b)(6) motion filed on Ohiri’s

1 behalf. A defendant not named in the notice of motion is not a moving party. *See* L.R. 7-2.
2 The procedural posture is therefore straightforward: Plaintiff filed the FAC; the November
3 24, 2025 response deadline passed; and Ohiri filed nothing for the second time and again
4 failed to plead or otherwise defend. Accordingly, the Motion affords no basis to dismiss
5 the claims asserted against Ohiri.

6 **D. Fair Use Is Irrelevant To Defendants’ Motion**

7 Defendants devote substantial portions of the Motion to arguments about fair use.
8 Those arguments are irrelevant to the issues before the Court.

9 Defendants did not move to dismiss Count One of the FAC, in which Plaintiff asserts
10 a claim against Defendants for copyright infringement related to Defendants’ use of his
11 *Another Chad* and *Belmar Library* videos. Fair use is an affirmative defense to copyright
12 infringement, not a basis for dismissal of the claims Defendants have actually challenged,
13 namely, Plaintiff’s claims under 17 U.S.C. §§ 512(f) and 1201(a), and Plaintiff’s request
14 for declaratory relief. *See Campbell v. Acuff–Rose Music, Inc.*, 510 U.S. 569, 590 (1994)
15 (fair use is an affirmative defense). Because Defendants have not sought dismissal of the
16 infringement claim, their fair use arguments do not address any element of the counts at
17 issue and provide no ground for dismissal.

18 Even assuming fair use was implicated, which it is not, Defendants have failed to
19 lodge **any** of the videos at issue with the Court. Indeed, Huneault inadvertently admits to
20 spoliation in his Declaration as he claims he longer possesses copies of the videos based
21 on *Another Chad* and *Belmar Library*, even though those works remained live on the
22 Frauditor Troll channel until Defendants were served with this lawsuit. (Huneault Decl. ¶¶
23 6, 11(1); FAC n. 7, 9). Accordingly, fair use could not be adjudicated on Defendants’
24 Motion even if it was relevant.

25 **E. Plaintiff States A Claim Under 17 U.S.C. § 512(f)**

26 17 U.S.C. § 512(f) provides that “[a]ny person who knowingly materially
27 misrepresents...that material...was removed or disabled by mistake or misidentification
28 shall be liable for any damages, including costs and attorneys’ fees, incurred by...any

1 copyright owner...who is injured by such misrepresentation, as the result of the service
2 provider relying on such misrepresentation...in replacing the removed material.”

3 In order to state a claim for violation of § 512(f), a plaintiff must allege facts to show
4 that (1) the defendants knowingly and materially misrepresented that the material was
5 removed by mistake; (2) the service provider relied on that misrepresentation; and (3) the
6 plaintiff was injured as a result. *See ENTTech Media Group LLC v. Okularity, Inc.*, 2:20-
7 cv-06298-JWH-Ex, 2021 WL 916307, at *4 (C.D. Cal. Mar. 10, 2021). To satisfy the
8 “knowingly” prong of § 512(f), a plaintiff must allege facts showing that the defendant
9 lacked a subjective good-faith belief that the material was lawful. *Lenz v. Universal Music*
10 *Corp.*, 815 F.3d 1145, 1153-54 (9th Cir. 2016). Whether the defendant formed a subjective
11 good-faith belief is ordinarily a factual question inappropriate for resolution at the pleading
12 stage. *ENTTech Media Group LLC* at *5.

13 **i. Plaintiff Alleges That Defendants Knowingly And Materially**
14 **Misrepresented That The Material Was Removed By Mistake**

15 Plaintiff alleges that Defendants’ Counter-Notices falsely asserted that the
16 takedowns were the result of mistake or misidentification because the videos were
17 purportedly protected by fair use. (FAC ¶¶ 56–63, 96-104). To state a claim under
18 U.S.C. § 512(f), Plaintiff need not prove that Defendants’ fair-use position was incorrect
19 as a matter of law; he must plausibly allege that Defendants did not actually believe their
20 use was non-infringing when they submitted the Counter-Notices. *Lenz v. Universal Music*
21 *Corp.*, 815 F.3d at 1154–55. Plaintiff plausibly alleges precisely that lack of subjective
22 good-faith belief.

23 Before submitting the Counter-Notices, Huneault published a video titled *How to*
24 *Do Fair Use Properly and Avoid Copyright Strikes*, in which he purported to explain what
25 he believed fair use requires. (FAC ¶¶ 55–57). In that video, Huneault articulated specific
26 criteria he claimed were necessary to qualify as fair use, including limiting the amount of
27 copyrighted material used, inserting frequent commentary, and avoiding long
28 uninterrupted playback of another creator’s work. (*Id.*)

1 Plaintiff alleges that Defendants’ infringing videos do not remotely conform to the
2 standards Huneault himself described. (*Id.* ¶¶ 46–57, 97). Those videos consist primarily
3 of long, uninterrupted blocks of Plaintiff’s footage, with minimal interjection. (*Id.* ¶¶ 46-
4 54). The significance of the *How to Do Fair Use Properly* video is not that it accurately
5 states the law, but that it reflects Huneault’s own stated understanding of what fair use
6 required at the time he submitted the Counter-Notices.

7 A defendant who publicly articulates a set of criteria he believes defines lawful fair
8 use and then submits Counter-Notices asserting fair use for videos that plainly disregard
9 those criteria, cannot plausibly claim that he subjectively believed the takedowns were the
10 result of mistake or misidentification. At the pleading stage, this internal inconsistency
11 alone supports a reasonable inference that the fair-use assertions in the Counter-Notices
12 were not honestly held.

13 Plaintiff further alleges that Defendants publicly admitted they believed there was
14 only a “one in a billion chance” Plaintiff would ever sue them. (FAC ¶ 82). That admission
15 further supports the inference that Defendants’ decision to file Counter-Notices was driven
16 not by a belief that their use was lawful, but by the belief that they would not be held
17 accountable. A belief that “no one will sue me” is not a belief that the use is lawful.

18 Plaintiff also alleges that immediately after receiving notice of this lawsuit,
19 Defendants deleted more than 1,700 videos from the Frauditor Troll Channel, including
20 videos whose legality they had sworn to under penalty of perjury in their Counter-Notices.
21 (*Id.* ¶ 80). While deletion alone is not an element of § 512(f), at the pleading stage it is
22 probative of state of mind. A defendant who genuinely believed his videos were lawful
23 would have no reason to destroy nearly his entire library upon being sued.

24 Finally, Plaintiff alleges that the Counter-Notices contained multiple facial
25 falsehoods, including a fictitious service address, reference to a nonexistent “Fair Use Act
26 of 1976,” a false claim of retained counsel, and inconsistent claims of ownership. (*Id.* ¶¶
27 59–63). These misstatements are not themselves the misrepresentation that triggers §
28 512(f) liability, but they are relevant to whether Defendants approached the Counter-Notice

1 process with any regard for truth or accuracy.

2 As *Lenz* makes clear, subjective good faith requires that the defendant actually form
3 a legal belief based on the facts. *Lenz*, 815 F.3d at 1153–55. Boilerplate assertions, internal
4 contradictions, and demonstrably false statements support a reasonable inference that no
5 such belief was formed here.

6 Taken together, Defendants’ own statements about what they believed fair use
7 required, their disregard of those beliefs in practice, their admissions that enforcement was
8 unlikely, and their subsequent destruction of the very videos they swore were lawful more
9 than plausibly alleges that Defendants knowingly and materially misrepresented that the
10 takedowns were the result of mistake or misidentification.

11 **ii. Plaintiff Alleges That YouTube Relied On Defendants’**
12 **Misrepresentations And Restored Defendants’ Videos**

13 Plaintiff alleges that YouTube relied on Defendants’ knowing misrepresentations of
14 fair use and reinstated nine videos, including Defendants’ videos based on *Another Chad*,
15 *Belmar Library* and *Courthouse Fail*. (FAC ¶ 64).

16 **iii. Plaintiff Alleges That He Was Injured As A Result of Defendants’**
17 **Misrepresentations In The Counter-Notices**

18 Plaintiff alleges that as a result of the reinstatement of Defendants’ videos, Plaintiff
19 suffered damages and was forced to initiate this action to have Defendants’ videos removed
20 from the Frauditor Troll Channel, and to prevent their re-upload. (*Id.* ¶ 105). Plaintiff also
21 alleges that he suffered actual damages including lost viewership, lost advertising revenue,
22 and diminution of market and licensing value of his videos. (*Id.* ¶ 92). *Lenz* recognizes
23 these injuries as sufficient. 815 F.3d at 1156-57.

24 **iv. Defendants Rely On A Nonexistent Citation, Misstated Procedural**
25 **History, And Mischaracterized Authority To Support The Motion**
26 **To Dismiss Plaintiff’s § 512(f) Claim**

27 Defendants rely on *Rossi v. Motion Picture Ass’n of America, Inc.*, 391 F.3d 1000
28 (9th Cir. 2004), *Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2016), and

1 *Hosseinzadeh v. Klein*, 276 F.Supp.3d 34 (S.D.N.Y. 2017) to invent a new pleading rule
2 that a plaintiff states a claim under §512(f) only if the complaint pleads facts showing
3 Defendants subjectively knew the videos were not fair use and nonetheless submitted the
4 Counter-Notices anyway. (Defendants’ Motion at 6).

5 This argument fails for multiple independent reasons.
6 First, *Rossi*, *Lenz*, and *Hosseinzadeh* were all decided on summary judgment on a
7 developed factual record, and none of those cases articulated, or purported to articulate, a
8 heightened pleading standard applicable at the Rule 12(b)(6) stage. *Rossi* 391 F.3d at 1002
9 (“We review a district court’s grant of summary judgment *de novo*.”); *Lenz*, 815 F.3d at
10 1148-49 (“We affirm the denial of the parties’ cross-motions for summary judgment.”);
11 *Hosseinzadeh*, 276 F.Supp.3d at 39 (“Before the Court are dueling motions for summary
12 judgment.”).

13 Defendants cite no authority holding that § 512(f) imposes a special pleading
14 requirement beyond Rule 8, or that allegations plausibly supporting an inference of lack of
15 subjective good faith are insufficient as a matter of law at the pleading stage.²

16 Second, Defendants misrepresent the procedural history of *Hosseinzadeh v. Klein*.
17 Defendants assert that the Second Circuit “affirmed” the district court’s decision, citing
18 900 F.3d 39 (2d Cir. 2018). That citation is false. The district court’s decision in
19 *Hosseinzadeh* was not appealed, and the cited Second Circuit opinion has no connection to
20 that case.

21 Third, Defendants further misstate that the district court in *Hosseinzadeh* “dismissed
22 the § 512(f) bad-faith claim at the motion-to-dismiss stage,” allegedly confirming that
23 allegations of knowing misrepresentation cannot survive absent concrete facts establishing
24 subjective awareness of unlawfulness. (Motion at 7). That statement is also false.
25 *Hosseinzadeh* was resolved on summary judgment, and there was never a motion to dismiss
26

27 ² Plaintiff does not contend that § 512(f) claims are categorically immune from dismissal at the pleading
28 stage. Plaintiff’s argument is limited to the absence of authority in Defendants’ Motion supporting the
pleading rule Defendants assert.

1 ruling in that case. *Hosseinzadeh*, 276 F.Supp.3d at 39 (“Before the Court are dueling
2 motions for summary judgment.”). *See also* Docket 16-cv-3087 (KBF) (S.D.N.Y) .

3 Defendants’ citation to a nonexistent Second Circuit decision, together with the false
4 procedural history they attribute to it, is not a debatable characterization of authority; it is
5 an objectively false citation that raises serious concerns under Rule 11’s requirement of a
6 reasonable pre-filing inquiry and the duty of candor to the Court. *See United States v.*
7 *Hayes*, 763 F. Supp. 3d 1054, 1063–66 (E.D. Cal. 2025) (imposing sanctions where counsel
8 cited non-existent authority and fabricated quotations).

9 **F. The Declaratory Relief Claim Is Not Duplicative And Cannot Be**
10 **Dismissed**

11 Plaintiff posted the *Courthouse Fail* video to YouTube on February 3, 2022. (FAC
12 ¶ 45). On or about February 4, 2022, Defendants published *Frauditors Ejected from*
13 *Federal Courthouse (New)* to the Frauditor Troll channel. (*Id.* ¶ 49). Plaintiff did not
14 become aware of Defendants’ video incorporating *Courthouse Fail* until June 2023. (*Id.* ¶
15 51). Thereafter, Plaintiff submitted a DMCA takedown notice; on or about July 5, 2023,
16 Defendants submitted a Counter-Notice, and YouTube reinstated the video based solely on
17 Defendants’ sworn representations. (*Id.* ¶¶ 58-60). The video remains live on the Frauditor
18 Troll Channel. (*Id.* ¶ 110).

19 Plaintiff asserts a declaratory-relief claim under 17 U.S.C. § 512(g) and 28 U.S.C. §
20 2201 to resolve the concrete, ongoing controversy created by the Counter-Notice and the
21 fact that Defendants’ video remains live on the Frauditor Troll Channel. (*Id.*) Defendants
22 expressly claimed lawful use and forced reinstatement. (*Id.* ¶ 111). That put the legality of
23 their conduct, and Plaintiff’s rights under the DMCA, squarely in dispute. The Declaratory
24 Judgment Act exists to eliminate precisely this sort of legal uncertainty.

25 The Declaratory Judgment Act provides that, “[i]n a case of actual controversy
26 within its jurisdiction ... any court of the United States ... may declare the rights and other
27 legal relations of any interested party seeking such declaration, whether or not further relief
28 is or could be sought.” 28 U.S.C. § 2201(a).

1 A case-or-controversy exists when the dispute between the parties is definite and
2 concrete and affects the legal relations between the parties. *See MedImmune, Inc. v.*
3 *Genentech, Inc.*, 549 U.S. 118, 127 (2007). The DMCA’s own structure likewise presumes
4 that disputes over takedowns and counter-notifications will be resolved in “an action
5 seeking a court order to restrain the subscriber from engaging in infringing activity.” 17
6 U.S.C. § 512(g)(2)(C). Here, Plaintiff’s DMCA Takedown Notice, Defendants’ Counter-
7 Notice, YouTube’s reinstatement of the video, and the fact that the video remains live on
8 the Frauditor Troll Channel and continues to assert that their use is lawful create exactly
9 that kind of concrete, ongoing controversy.

10 **i. Defendants Have Not Shown That The Declaratory Judgment**
11 **Claim Is Duplicative**

12 Defendants’ argument that the declaratory-relief claim is “duplicative” of the
13 copyright claim makes little sense: Count 1 is an infringement claim concerning the
14 registered works *Another Chad Exposed* and *Belmar Library*, not *Courthouse Fail*. The
15 declaratory-relief claim (Count 3) concerns only the dispute triggered by Defendants’
16 Counter-Notice relating to *Courthouse Fail* and the fact that the video remains live on the
17 Frauditor Troll Channel. No other claim addresses that controversy. Defendants’ position
18 ignores the operative allegations in the FAC and appears to be a leftover artifact of their
19 prior, now-moot motion to dismiss.

20 Because the FAC pleads an actual, ongoing controversy arising from the Counter-
21 Notice and reinstated *Courthouse Fail* video that remains live on the Frauditor Troll
22 Channel, and because no other cause of action resolves that controversy, the declaratory-
23 relief claim is neither duplicative nor subject to dismissal.

24 **G. Plaintiff States A Claim For Violation Of 17 U.S.C. § 1201**

25 Plaintiff’s claim under 17 U.S.C. § 1201 arises from a simple and unavoidable
26 question: how did Defendants obtain local copies of Plaintiff’s YouTube videos in the first
27 place? YouTube does not provide users with downloadable copies of uploaded videos
28 through ordinary use of the platform. As Plaintiff alleges in the FAC, Defendants obtained

1 local copies of Plaintiff’s works using ripping software and reuploaded them to the
2 Frauditor Troll channel. (FAC ¶¶ 4, 34–43, 117-18).

3 Section 1201 squarely addresses this conduct. In order to state a claim for violation
4 of 17 U.S.C. § 1201(a)(1)(A), a plaintiff must allege that: (1) the works at issue were
5 protected under the Copyright Act; (2) the copyrighted works were protected by a
6 “technological measure”; and (3) the technological measure was “circumvented” in order
7 to obtain access to the copyrighted works. *iSpot.tv, Inc. v. Teyfukova*, No. 21-cv-6815-
8 MEMF (MARx), 2023 WL 3602806, at *4 (C.D. Cal. May 22, 2023) (citing 17 U.S.C. §
9 1201(a)(1)(A)). As set forth below, Plaintiff plausibly alleges each of these elements.

10 **i. Plaintiff Alleges That His Works Were Protected Under The**
11 **Copyright Act**

12 Plaintiff adequately alleges that the works at issue are protected under the Copyright
13 Act. To qualify for copyright protection, a work must be an original work of authorship
14 fixed in a tangible medium of expression. 17 U.S.C. § 102(a).

15 Plaintiff alleges that he is the creator and original owner of original audiovisual
16 works consisting of videos fixed in a tangible medium of expression and published on
17 YouTube. (FAC ¶¶ 18, 114-15). Plaintiff further alleges that these works contain original
18 audiovisual expression and are protected by copyright from the moment of creation. (*Id.*)
19 Those allegations are sufficient to establish copyright protection at the pleading stage.
20 Accordingly, Plaintiff has adequately pleaded the first element of a claim under 17 U.S.C.
21 § 1201(a)(1)(A).

22 **ii. Plaintiff Alleges That His Works Were Protected By A**
23 **Technological Measure**

24 Plaintiff alleges that his copyrighted audiovisual works were protected by a
25 technological measure within the meaning of 17 U.S.C. § 1201(a) because when published,
26 YouTube automatically applied a technological protection measure that controls access to
27 and prevents unauthorized copying or downloading of Plaintiff’s audiovisual files by
28 directing users to stream content through YouTube’s player interface rather than access the

1 underlying downloadable files, consistent with 17 U.S.C. § 1201. (FAC ¶ 116). *See also*
2 *Yout, LLC v. Recording Indus. Ass’n of Am., Inc.*, 633 F. Supp. 3d 650, 666-67 (D. Conn.
3 2022) (taking judicial notice that YouTube’s terms of service contains “features that...limit
4 the use of the Service or Content” to streaming.)

5 The only known court decision to examine YouTube’s access controls under § 1201
6 did so in the context of a declaratory-judgment action brought by a software developer
7 seeking a ruling that its conduct did not violate § 1201. In *Yout*, the plaintiff, sought a
8 declaration that its software, which enabled downloading YouTube videos, did not
9 circumvent a technological measure. *Id.* at 655. The court ultimately dismissed the
10 declaratory judgment claim, concluding that declaratory relief was inappropriate. *Id.* at
11 677.

12 Importantly, however, before dismissing the action, the court conducted an extensive
13 analysis of § 1201 and YouTube’s technical architecture to determine whether YouTube
14 employed a technological measure. *See id.* at 662-78. In doing so, the court rejected the
15 premise that a technological measure must consist of traditional DRM, passwords,
16 encryption, or secret keys. *Id.* at 663–65. The court explained that § 1201 encompasses
17 measures that “restrain” or “direct” access to copyrighted works, even if those measures
18 do not absolutely prevent access. *Id.* at 665–66.

19 As part of that analysis, the court described YouTube’s streaming-based architecture
20 as restraining access to downloadable media files by directing users to stream content
21 through the player page rather than obtain the underlying files. *Id.* at 666. The court further
22 discussed YouTube’s use of a signature-based request mechanism, referred to by the parties
23 as a “rolling cipher,” and explained that access to downloadable files required modification
24 of that signature value. *Id.* at 666–67. The court observed that, without modifying the
25 signature value, users could not access the downloadable file, supporting the inference that
26 the signature mechanism functions as an access control. *Id.* at 667.

27 Although the *Yout* court did not decide the motion to dismiss in the context of the
28 merits of a § 1201 claim, it explained that bypassing YouTube’s player page and modifying

1 request parameters to obtain downloadable files would qualify as circumvention of an
2 access-control measure as defined by § 1201(a). *Id.* at 671-72.

3 Here, unlike *Yout*, Plaintiff is not seeking declaratory relief and is not asking the
4 Court to resolve § 1201 liability in the abstract. Plaintiff alleges that his works were
5 distributed through YouTube subject to the platform's access controls and that Defendants
6 defeated those controls to obtain unauthorized downloadable copies. (FAC ¶¶ 4, 11, 35-40,
7 116-17). At the pleading stage, *Yout* supports the conclusion that such allegations plausibly
8 describe a technological measure that controls access to Plaintiff's videos within the
9 meaning of § 1201(a). 633 F. Supp. 3d at 665–67, 671–72.

10 **iii. Plaintiff Alleges that Defendants Circumvented YouTube's**
11 **Technological Measures In Order to Obtain Access to His**
12 **Copyrighted Works**

13 Plaintiff alleges that Defendants used ripping software to bypass YouTube's
14 technological protection measures, specifically the rolling cipher encryption that prevents
15 users from downloading videos for offline copying, and that they used the resulting
16 unauthorized downloads to create their own uploads incorporating Plaintiff's copyrighted
17 works. (FAC ¶¶ 4, 34–43, 117-18). These allegations state a textbook violation of §
18 1201(a)(1). At the pleading stage, Plaintiff need only plausibly allege circumvention,
19 which Plaintiff does.

20 Taken as true, Plaintiff alleges that YouTube employs technological protection
21 measures that effectively control access to Plaintiff's works; that Defendants bypassed
22 those measures using ripping software; that they obtained unauthorized offline copies; and
23 that they used those copies to create infringing uploads. (FAC ¶¶ 4, 34–40, 116-18). These
24 allegations sufficiently allege that Defendants circumvented YouTube's technological
25 measures in order to gain access to his copyrighted works. Accordingly, Defendants'
26 motion to dismiss Plaintiff's § 1201 claim must be denied.

27 //

28 //

1 **iv. Defendants' Argument That Plaintiff Did Not Plead A**
2 **Circumvention Claim Ignores The Allegations In The FAC**

3 Defendants argue that Plaintiff failed to state a plausible claim under 17 U.S.C. §
4 1201 because, according to Defendants, Plaintiff alleges only that Defendants “accessed,”
5 “viewed,” or “recorded” content made available by YouTube. (Motion at 8-10). That
6 argument is based on a willful mischaracterization of the pleadings. Defendants do not cite,
7 let alone engage with, a single paragraph of the FAC in advancing this claim.

8 Plaintiff did not allege mere “accessing,” “viewing,” or “recording” of YouTube
9 content. To the contrary, the FAC specifically alleges that Defendants used tools
10 commonly known as “rippers” or “downloaders” to bypass YouTube’s access controls and
11 obtain native-quality copies of Plaintiff’s YouTube videos. (FAC ¶¶ 4, 36-39, 117-118).
12 These allegations go well beyond passive viewing or screen recording and plausibly plead
13 circumvention of a technological measure within the meaning of § 1201(a)(1)(A).

14 Defendants’ failure to confront the actual allegations in the FAC, and their decision
15 instead to attack a strawman version of the pleadings, does not support dismissal. At the
16 Rule 12(b)(6) stage, the Court must credit Plaintiff’s allegations as pleaded, not
17 Defendants’ rewritten version of them.

18 **v. Defendants' Argument That Plaintiff Lacks Standing To Assert A**
19 **§ 1201 Claim Has No Merit**

20 Without citing any authority, Defendants argue that Plaintiff lacks standing to bring
21 a claim under 17 U.S.C. § 1201 because YouTube, rather than Plaintiff, implemented the
22 technological protection measure at issue. That argument is legally incorrect and was
23 squarely rejected by the Court in *Yout*.

24 As the court held, Defendants’ argument regarding standing is contrary to the plain
25 text of § 1201, which imposes no requirement that the copyright owner itself implement
26 the technological measure. *Yout* 633 F. Supp. 3d at 665. As the court explained, “The
27 statute defines circumvention and effectiveness in reference to the ‘authority of the
28 copyright owner,’ but it does not require that the copyright owner establish an access

1 control.” *Id.* So long as the technological measure controls access to a copyrighted work
2 and operates with the copyright owner’s authorization, § 1201 applies. Accordingly,
3 Defendants’ standing argument fails as a matter of law under the plain text of § 1201 and
4 should be rejected.

5 **V. CONCLUSION**

6 Defendants’ Motion fails at the threshold. It does not include a statement of the
7 relevant facts as required by Civil Local Rule 7-1(a)(4); it does not cite or address the
8 allegations actually plead in the FAC; it relies on extrinsic evidence barred at the Rule
9 12(b)(6) stage; and it repeatedly misstates both Plaintiff’s allegations and the law
10 Defendants purport to apply. A motion to dismiss that substitutes its own factual narrative
11 for the allegations in the complaint, cites authority that does not exist, and ignores
12 controlling standards cannot support dismissal.

13 Equally fatal, the Motion offers no basis for dismissing the claims against Ohiri, who
14 did not move and again failed to plead or otherwise defend. The Court cannot dismiss
15 claims on behalf of a non-moving, defaulted defendant.

16 In short, this is not a close case. The FAC plausibly pleads violations of 17 U.S.C.
17 §§ 512(f) and 1201, as well as a live controversy warranting declaratory relief. Defendants’
18 Motion does not engage those allegations and provides no lawful basis for dismissal.
19 Accordingly, the Motion should be denied in its entirety.

20 The Court may also wish to consider whether Defendants’ use of fabricated citations,
21 misstated procedural history, and disregard of basic pleading standards complies with their
22 obligations under Rule 11 and 28 U.S.C. § 1927.

23 //

24 //

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December 15, 2025

/s/ Randall S. Newman
Randall S. Newman, Esq. (SBN 190547)
99 Wall Street, Suite 3727
New York, NY 10005
(212) 797-3735
rsn@randallnewman.net

*Attorney for Plaintiff,
Christopher J. Cordova*