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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 *(San Jose Division)*

10 CHRISTOPHER J. CORDOVA,)
11 Plaintiff,)
12 vs.)
13 JONATHAN HUDON-HUNEALT,)
14 NNEKA OHIRI, 14693663 CANADA INC.,)
15 Defendants.)

) Case Number: 5:25-cv-04685-VKD
)
) **DEFENDANTS’ NOTICE OF MOTION**
) **AND MEMORANDUM OF POINTS AND**
) **AUTHORITIES FOR DISMISSAL FOR**
) ***FORUM NON CONVENIENS*, OR**
) **ALTERNATIVELY POSTING OF A**
) **BOND PURSUANT TO CALIFORNIA**
) **CODE OF CIVIL PROCEDURE 1030**
)
) **Judge:** Magistrate Judge Virginia K.
) Demarchi
) **Complaint Filed:** June 3, 2025
) **Trial Date:** February 1-2, 2027 (Bench Trial)
)
) **Hearing on Motion:** April 14, 2026
) **Time:** 10:00 a.m.
) **Location:** Courtroom 2 – 5th Floor, 280
) South 1st Street, San Jose, CA 95113
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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on **April 14, 2026 at the hour of 10:00 a.m.** or as soon thereafter as the matter can be heard, the Defendants Jonathan Hudon-Huneault, Nneka Ohiri, and 14693663 Canada Inc. (the “**Defendants**”) will appear before the Honorable Virginia K. DeMarchi and will move, and hereby does move, for an Order:

- a. dismissal for *forum non conveniens* in favor of the Federal Court of Canada; or
- b. alternatively, if the case is not dismissed for *forum non conveniens*, that the Plaintiff post a bond with the clerk of Court pursuant to Local Civil Rule 65.1-1 and California Code of Civil Procedure section 1030. Defendants requests Plaintiff be ordered to post a bond in the amount of \$135,619.75– which represents the minimum amount of recoverable costs and attorneys fees that the Defendants will incur defending the Plaintiff’s claims – within 30 days of this Court’s order and if the bond is not posted within the permitted time that this action be dismissed.

This motion is made on the following grounds:

- a. The Federal Court of Canada is an adequate alternative forum;
- b. That the balance of private and public interest factors favor dismissal;
- c. The Plaintiff is an individual residing outside of California and has publicly claimed that he has no monies to pay for this lawsuit and is attempting to drown the Defendants in legal expenses; and
- d. Defendants have a reasonable possibility of prevailing on the Plaintiff’s claims.

This motion will be based on this Notice, on the Memorandum of Points and Authorities, Declaration of Jonathan Hudon-Huneault on November 24, 2025 (Dckt. No. 43-2), Declaration of Jonathan Hudon-Huneault made March 10, 2026, and Declaration of Simon Lin, and on the pleadings and evidence on file in this action.

Date: March 10, 2026 By: Simon Lin
Simon Lin – State Bar No. 313661

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

On this motion, the primary relief sought by the Defendants Jonathan Hudon-Huneault, Nneka Ohiri, and 14693663 Canada Inc. (the “**Defendants**”) is dismissal under *forum non conveniens*. The alleged conduct all occurred in Canada is subject to the Canadian intellectual property laws. Other District Courts dismissed similar claims in favor of the Federal Court of Canada, considering the significant similarity of the copyright laws in both countries, and the fact that both countries are bound by the *Berne Convention*. The Plaintiff also does not even reside in this district. The balance of private and public interest factors all favor dismissal.

As an alternative relief, the Defendants request an Order that Plaintiff post a bond in the amount of \$135,619.75, representing the minimum recoverable costs and attorneys fees that the Defendants will incur defending the Plaintiff’s claims. Again, the Plaintiff does not even reside in California and public statements that he has made indicates that he will be unable to pay any costs or attorney’s fees should the Defendants succeed in their defense. The Defendants have a reasonable possibility of prevailing on the Plaintiff’s claims on four (4) strong basis: (a) fundamentally, the Plaintiff does not even have standing to bring this claim as the Ninth Circuit has indicated on numerous occasions it is not possible for a person to hold a “bare right to sue” for copyrights, which is what Plaintiff has here; (b) the Defendants have an express license via the YouTube Terms of Service; (c) the Defendants have an implied license from Plaintiff and, in any event, Plaintiff is equitably estopped from claiming otherwise; and (d) finally, fair use serves as a complete defense for all three claims: copyright infringement, the alleged misrepresentation in a DMCA counter-notice, and the circumvention of technological measures. There is clearly a reasonable possibility Defendants may succeed.

2. RELEVANT BACKGROUND FOR THIS MOTION

Plaintiff pleaded that he owns, operates, and creates content for a YouTube channel called “Denver Metro Audits.” (Dkt. No. 58 ¶ 5, Dkt. No. 39 ¶ 17, and Dkt. No. 65 - Court’s Order

1 Granting in Part and Denying in Part the Defendants’ Motion to Dismiss (“**Order on**
2 **Defendants’ Motion to Dismiss**”) at p. 2). Defendants also own and operate a YouTube
3 channel titled “Frauditor Troll.” (Dkt. No. 58 ¶ 4, Dkt. No. 39 ¶ 19-20, Order on Defendants’
4 Motion to Dismiss at p. 2). Defendants collectively own and/or operate the Frauditor Troll
5 Channel. (Dkt. No. 58 ¶ 4, Dkt. No. 39 ¶ 21, and Order on Defendants’ Motion to Dismiss at
6 p. 2).

7 Plaintiff published three (3) videos on YouTube on various dates: (a) “*Federal*
8 *Courthouse Fail!!! Threatened with arrest for recording and not one officer identifies!*”
9 (“***Courthouse Fail***”) was published on February 3, 2022, but Plaintiff has no copyright
10 registration so far. Dkt. No. 39 ¶ 45 n.6. The copyright for this video was made on February
11 6, 2026; (b) “*Another Chad Exposed!!! Worthless Denver Cops . . . Assaulted!!!*” (“***Another***
12 ***Chad***”) was published on March 16, 2022, with copyright registration obtained on February
13 6, 2024. Dkt. No. 39 ¶ 41-42; and (c) “*Angry Mob at Belmar Library!!! “Call 911! Cops*
14 *don’t show up*” (“***Belmar Library***”) was published on October 1, 2023, with copyright
15 registration obtained on February 6, 2024. Dkt. No. 39 ¶ 43-44.

16 Plaintiff submitted twelve (12) DMCA notices against several of the Defendants’ videos
17 published on the Defendants’ YouTube channel, alleging that the Defendants infringed the
18 copyright of the *Courthouse Fail*, *Another Chad*, and/or *Belmar Library* videos. Dkt. No. 39
19 ¶ 58; Dkt. No. 58 ¶ 21-22 and Exhibit D; Order on Defendants’ Motion to Dismiss at p. 3.

20 For the second and third videos (*Another Chad* and *Belmar Library*), Plaintiff pleaded
21 that he is not currently the owner of the copyright and he only holds a right to sue (Dkt. No.
22 39 ¶ 18, 87-88). For the first video (*Courthouse Fail*), it is no longer relevant for purpose of
23 this action as Plaintiff has withdrawn his motions to extend the deadline for amending
24 pleadings and to amend the complaint to add the copyright registration for this particular video
25 (Dkt. No. 89). Plaintiff’s stated reason for the withdrawal of the motion is that the Defendants’
26

1 video that referenced the *Courthouse Fail* video is no longer available on YouTube.¹

2 **3. Grounds to Dismiss for Reason of *Forum Non Conveniens***

3 A district court may dismiss a case where litigation in a foreign forum would be more
4 convenient for the litigants. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250 (1981). A
5 defendant may move to dismiss based on *forum non conveniens* in copyright infringement
6 lawsuits. See *Creative Tech., Ltd. v. Aztech Sys. Pte., Ltd.*, 61 F.3d 696, 700-01 (9th Cir. 1995)

7 Recently, the Ninth Circuit affirmed a Western District of Washington dismissal for
8 *forum non conveniens* with a DMCA notification and counter-notification, and is the same
9 situation here. *Nexon Korea Corp. v. Ironmace Co. Ltd.*, No. C23-576, 2023 WL 5305996
10 (W.D. Wash. Aug. 17, 2023). The fact that a party served a counter-takedown notice pursuant
11 to 17 U.S.C. § 512 means that party consents to personal jurisdiction, but does not amount to
12 consent to venue – *forum non conveniens* remains available. 17 U.S.C. § 512(g)(3)(D); *Nexon*
13 *Korea Corporation v. Ironmace Co. Ltd.*, 2024 WL 3493002 (9th Cir. 2024).

14 Notably, in *Sysco Machinery Corp. v. Cymtek Solutions, Inc.*, 124 F. 4th 32, 38 (1st Cir.
15 2024), the First Circuit noted that “flexibility is the watchword” and each case turns on its
16 unique facts, noting that courts across the country repeatedly granted *forum non conveniens*
17 dismissals in intellectual property cases with sufficient foreign nexuses. See *Sysco* at 40-41.
18 The First Circuit relied on two Ninth Circuit decisions in formulating its analysis (*Creative*
19 *Tech.* and *Lockman Found. v. Evangelical All. Mission*, 930 F.2d 764 (9th Cir. 1991)). In
20 *Creative Tech*, the Ninth Circuit affirmed the dismissal on *forum non conveniens* grounds
21 since the plaintiff would have an adequate alternative remedy under Singapore’s Copyright
22

23 ¹ This asserted reason makes little sense since Plaintiff has claimed on other motions that
24 Defendants’ videos referencing *Another Chad* and *Belmar Library* were already made inaccessible
25 on YouTube (e.g., Dkt. No. 10 where this Court DENIED Plaintiff’s *ex parte* motion for a
26 preservation order noting that taking down of the allegedly infringing content from YouTube was
27 an outcome Plaintiff *specifically requested* via a “takedown notice.”) Applying Plaintiff’s recent
28 reasoning in Dkt. No. 89 that a claim may no longer be necessary if the impugned videos are no
longer accessible on YouTube, his entire claim is wholly unnecessary.

1 Act. This is the same situation here – there is adequate alternative remedy under Canadian
 2 law. In *Lockman Found*, the Ninth Circuit noted that in the context of trademarks claims the
 3 potential inability to litigate a *Lanham Act* claim in Japanese courts would not preclude a
 4 dismissal based on *forum non conveniens*. The same reasoning would apply to all three of
 5 Plaintiff’s copyright claims herein, as illustrated in the subsection immediately below.

6 *i. Federal Court of Canada is Clearly an Adequate Forum for Plaintiff’s Claims*

7 A defendant seeking *forum non conveniens* dismissal is to show the existence of an
 8 adequate alternative forum. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1143 (9th Cir. 2001).
 9 An adequate alternative forum is one where the defendant is amenable to service of process.
 10 *Id.* at 1143. The standard for adequacy is low and is not a strenuous standard to meet. *Tuazon*
 11 *v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1178 (9th Cir. 2006). Defendant needs to show
 12 that the foreign forum will provide plaintiff with *some* remedy for their claims if merited. *Id.*

13 In *Sysco* at 41, the court also noted that “to qualify as adequate, a foreign forum need not
 14 possess all the remedial tools available to U.S. courts, such as the ability to enforce judgments
 15 in the United States. See *Creative Tech.*, 61 F.3d at 702. Rather, we require only that the
 16 foreign forum have the power to provide "reasonably fair" remedies. *Ahmed v. Boeing Co.*,
 17 720 F.2d 224, 226 (1st Cir. 1983).” [emphasis added]

18 There is an available and adequate forum – the Federal Court of Canada.

19 In *Sysco*, the First Circuit referred to *González Cantón v. Mad Ruk Ent., Inc.*, No. 22-
 20 1458, 2023 WL 4546545, at *11 (D.P.R. July 13, 2023), which is very similar to our case. In
 21 *González*, the Court stated that "Canada has its own laws that attend tort and copyright claims,
 22 and though admittedly different from the laws of the United States, those statutes should not
 23 be so dissimilar as to deprive Plaintiff of the proper remedies he seeks."[emphasis added]

24 Courts may rely on other U.S. courts’ decisions that decided same or similar foreign laws.
 25 Federal Rule of Civil Procedure 44.1; *Biotronik, Inc. v. Zurich Ins. PLC Niederlassung Fur*
 26 *Deutschland*, 3:18-CV-01631-SB, 2020 WL 996599, at *2 (D. Or. Feb. 28, 2020); *Towada*

1 *Audio Co., Ltd. v. Aiwa Corp.*, 18-CV-4397, 2019 WL 1200748 at *5 (N.D. Ill. Mar. 14,
2 2019); *Luxottica Group S.p.A. v. Partnerships and Unincorporated Associations Identified on*
3 *Sched. "A"*, 391 F. Supp. 3d 816, 826 (N.D. Ill. 2019), reconsideration denied in part, 18 CV
4 2188, 2019 WL 2357011 (N.D. Ill. June 4, 2019); *de Fontbrune v. Wofsy*, 409 F. Supp. 3d
5 823 (N.D. Cal. 2019); *Monroy v. de Mendoza*, 3:19-CV-1656-B, 2019 WL 5204832 (N.D.
6 Tex. Oct. 16, 2019), vacated in part, 3:19-CV1656-B, 2019 WL 9047217 (N.D. Tex. Nov. 4,
7 2019); *Barry v. Islamic Republic of Iran*, 437 F. Supp. 3d 15 (D.D.C. 2020).

8 Recently, in *Great Bowery Inc. v. Valnet, Inc.*, 1:25-cv-1236-GHW, 2025 WL 3268975
9 at *8-9 (S.D.N.Y. Nov. 23, 2025), the court's analysis regarding the Federal Court of Canada
10 as an alternative forum is squarely applicable here: (a) Canada is competent to adjudicate, and
11 provides adequate remedies for infringement claims under the Canadian *Copyright Act*; (b)
12 Canadian courts have jurisdiction over extraterritorial internet communications that allegedly
13 infringe on a copyright; and (c) Canada is an adequate alternative forum for Plaintiff's
14 copyright infringement claims even if the Canadian court will apply Canadian copyright law
15 and not affirmatively apply U.S. copyright law. Canada's adequacy as a forum does not depend
16 on whether it offers identical causes of action or identical remedies to United States courts.

17 The "national treatment" principle under the *Berne Convention* may be pertinent here as
18 the Ninth Circuit recognized in *Creative Tech.*, 61 F.3d at 706. It is commonly acknowledged
19 that the national treatment principle implicates a rule of territoriality. *Subafilms, Ltd. v. MGM-*
20 *Pathe Communications Co.*, 94 C.D.O.S. 3381, 3385 (9th Cir.1994). *also* 3 Nimmer, *supra*, §
21 17.05, at 17-39 ("The applicable law is the copyright law of the state in which the infringement
22 occurred, not that of the state of which the author is a national ..."). For purposes of a *forum*
23 *non conveniens* analysis, the principle of national treatment sets copyright cases apart from
24 other kinds of cases. Hence, in this case, the applicable copyright laws may be Canadian law
25 (where the alleged infringement occurred), not U.S. law (where the Plaintiff author resides).
26

1 **Count #1 (Copyright Infringement):** It is plain that Canadian copyright laws protect
2 against infringement. E.g. *Berne Convention*; *Creative Tech.*; and *Great Bowery Inc.* Plaintiff
3 will be able to pursue his claim in the Federal Court of Canada. Pursuing the claim in Canada
4 is actually *more favorable* for Plaintiff. In addition, there is no requirement in Canada for
5 works to be registered before commencing litigation, unlike in the USA (Declaration of Simon
6 Lin [**Lin Declaration**], ¶3-5, Ex. A-C). Moreover, Canadian copyright law permits recovery
7 of statutory damages, accounting of profits, and attorneys fees, far superior to the Plaintiff’s
8 current claim for actual damages only in the current case (Lin Declaration, ¶6-7).

9 **Count #2 (Misrepresentation under 17 U.S.C. 512(f)):** The unfair competition laws in
10 Canada under s. 7 of the *Trademarks Act* is equivalent to the misrepresentation claims here
11 (Lin Declaration ¶8-9; see also *Intelsat USA Sales Corp. v. Juch-Tech, Inc.*, 935 F. Supp. 2d
12 101, 118 (D.D.C. 2013) for a discussion of s. 7 of the Canadian *Trademarks Act.*) A claim
13 under the *Trademarks Act* entitles the successful plaintiff to recovery of damages or profits,
14 punitive damages, injunctive relief and attorney’s fees (Lin Declaration ¶8-9; *Great Bowery*
15 *Inc.* at *9 citing Rule 400 of the *Federal Courts Rules* in Canada). This is more superior than
16 Plaintiff’s claim herein for damages only. Plaintiff may also claim under the Canadian
17 *Competition Act* recover damages for misrepresentations and costs (Lin Declaration ¶10).

18 **Count #4 (Circumvention of Technological Measures):** For this particular claim, there
19 is a serious question of whether 17 USC 1201 and 1203 could even apply as the alleged
20 “circumvention” acts were all done in Canada (Declaration of Jonathan Hudon-Huneault on
21 March 10, 2026 [**Huneault Declaration**], ¶5). In any event, the Canadian *Copyright Act* has
22 provisions dealing specifically with circumvention of technological measures for copyrighted
23 works as the Federal Court of Canada has confirmed (Lin Declaration, ¶11).

24 Federal Court of Canada is actually more favorable for Plaintiff substantively. Defendants
25 will stipulate that a claim filed in Canada within 90 days after dismissal here will be *nunc pro*
26 *tunc* to date of the original Complaint. The ensures statute of limitations are preserved.

1 It is only in "rare circumstances ... where the remedy provided by the alternative forum
 2 ... is so clearly inadequate or unsatisfactory, that it is no remedy at all," that this requirement
 3 is not met. *Lockman Found*, 930 F.2d 764, 768 (9th Cir.1991) . (quoting *Piper Piper Aircraft*
 4 *Co. v. Reyno*, 454 U.S. 235, 254 (1981)); see also *Ceramic Corp. of America v. Inka Maritime*
 5 *Corp.*, 1 F.3d 947, 949 (9th Cir.1993).

6 *ii. Private Interest Factors Strongly Favor the Canadian Forum*

7 Firstly, the court may not afford much deference to Plaintiff's choice of forum, when
 8 Plaintiff is a "paper plaintiff" and, he has no "bona fide connection" with the forum. *Wave*
 9 *Studio, LLC v. Gen. Hotel Mgmt. Ltd.*, 712 F. App'x 88, 90 (2d Cir. 2018) Here, Plaintiff does
 10 not even reside in California and does not reveal any ties to this forum. The mere "presence
 11 of American plaintiffs ... is not in and of itself sufficient to bar a district court from dismissing
 12 a case on the ground of forum non conveniens." *Cheng v. Boeing Co.*, 708 F.2d 1406, 1411
 13 (9th Cir.1983). In *Pacific Car and Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir.1968),
 14 the court noted a plaintiff's choice of forum "is entitled to only minimal consideration" when
 15 "the forum of original selection ... has no particular interest in the parties or subject matter."

16 There is also no general presumption for or against a foreign forum, and it is for the
 17 Plaintiff to show that considering the private and public interests involved and for him to show
 18 that the balance of convenience militates against bringing suit in the Federal Court of Canada.
 19 *Gemini Capital Group, Inc. v. Yap Fishing Corp.*, 150 F.3d 1088, 1091-1092 (9th Cir. 1998).

20 The factors relating to the private interests of the litigants include: "(1) the residence of
 21 the parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to physical
 22 evidence and other sources of proof; (4) whether unwilling witnesses can be compelled to
 23 testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment; and
 24 (7) all other practical problems that make trial of a case easy, expeditious and inexpensive."
 25 *Boston Telecomms. Grp. v. Wood*, 588 F.3d 1201, 1206–07 (9th Cir. 2009).

1 The residence of the parties and the witnesses factor favors dismissal. Neither the
2 Plaintiff, nor Defendants reside in California. The witnesses also do not reside in California.

3 The convenience of the forum for litigants and witnesses also favors dismissal. One of
4 the Defendants is 4-months pregnant with expected delivery in August 2026, which is a
5 significant inconvenience for both parents to travel to California for a trial with an infant
6 (Huneault Declaration, ¶2-4). Plaintiff also does not reside in California. He would also need
7 to travel across the country to attend trial. Moreover, a trial may not even be necessary in
8 Canada. The Federal Court of Canada has summary procedures to resolve copyright cases
9 based on an “application” where evidence are provided by affidavit and cross-examination on
10 the affidavits, alleviating the need for any party to travel (Lin Declaration, ¶12, Ex. E).

11 Regarding the physical evidence and other sources of proof, this factor may be neutral as
12 the claim can be decided from the videos and the written emails and correspondences.

13 Regarding the compelling of witnesses for trial, this factor may also be neutral here since
14 the Plaintiff’s main witnesses are the Defendants (Lin Declaration, ¶14, Ex. G). To the extent
15 the Plaintiff has any USA-based witnesses, there is no reason to believe that a USA state or
16 federal court would not respect a letters rogatory issued from a Canadian court, considering
17 the USA is a signatory to the *Hague Evidence Convention*.

18 Another private interest factor favoring Canada is the enforceability of the final judgment.
19 *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1229 (9th Cir. 2011). There is no
20 doubt that a judgment of the Federal Court of Canada would be enforceable in Canada. On
21 the other hand, there is no evidence of a reciprocal judgment enforcement agreement between
22 the province of Ontario (where the Defendants reside) and California or any other USA
23 jurisdiction. As such, a judgment from this Court would necessarily need to be re-litigated in
24 some fashion in Ontario, with possibly further appeals, before the judgment can be recognized.

25 The situation herein is comparable to *González* at *13 that similarly involved copyright
26 claims. The only tie in *González* was that the plaintiff resided in the state. Here, the Plaintiff

1 does not even reside in California. Like in *González*, none of the events that prompted this
2 case happened in this forum or involved anyone in California. This case occurred purely over
3 the internet. None of the parties or witnesses are in California. This favors the Canadian forum.

4 *iii. Public Interest Factors Further Favor the Canadian Forum*

5 The public interest factors are generally less important than the private-interest factors.
6 *Leon v. Millon Air Inc.*, 251 F.3d 1305, 1311 (11th Cir. 2001).

7 Regarding the “administrative difficulties arising from congested courts” factor (*Gulf Oil*
8 *Corporation v. Gilbert*, 330 U.S. 501, 508-509 (1947)), the Government of Canada stated that
9 one prime advantage of the Federal Court is that IP matters “can often be more quickly heard
10 and appealed”, which has a specialized intellectual property chamber with a designated judge
11 for each case (Lin Declaration, ¶13, Ex. F).

12 Regarding the avoidance of unnecessary problems in conflicts of laws or the application
13 of foreign law public interest factor (*Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 508-509
14 (1947)), this factor again strongly favors a Canadian forum. As noted above, the “national
15 treatment” principle under the *Berne Convention* may be pertinent here as the Ninth Circuit
16 recognized in *Creative Tech.*, 61 F.3d at 706. It is commonly acknowledged that the national
17 treatment principle implicates a rule of territoriality. *Subafilms, Ltd. v. MGM-Pathe*
18 *Communications Co.*, 94 C.D.O.S. 3381, 3385 (9th Cir.1994). *also* 3 Nimmer, *supra*, § 17.05,
19 at 17-39 (“The applicable law is the copyright law of the state in which the infringement
20 occurred, not that of the state of which the author is a national ...”). It would be highly
21 inconvenient for this Court to have to resolve issues under Canadian copyright law, since there
22 may need to be proof of the foreign laws at the trial.

23 *iv. Conclusion on Forum Non Conveniens*

24 Private interest and public interest factors all favor the Federal Court of Canada. Should
25 this Court dismiss Plaintiff’s claims in favor of the Federal Court of Canada, Defendants are
26 prepared to a dismissal of their Counterclaim in favor of the Federal Court of Canada as well.

1 **4. ALTERNATIVELY, AN ORDER FOR PLAINTIFF TO POST BOND UNDER**
2 **CALIFORNIA CODE OF CIVIL PROCEDURE 1030**

3 As a matter of law, litigants that avail themselves of our court systems but have nothing
4 to lose – for example, no property in California upon which costs might someday be levied –
5 may be compelled to post an undertaking. All a defendant need show to require such an
6 undertaking is that the plaintiff is a foreign domiciliary and that the defendant has a
7 “reasonable possibility” of prevailing on the merits. This Court has “inherent power to require
8 plaintiffs to post security for costs.” *Pittman ex rel. L.P. v. Avish P’ship*, 525 F. App’x 591,
9 592 (9th Cir. 2013); see also U.S. District Court Northern District of California Local Rule
10 65.1-1 [“Upon demand of any party, where authorized by law and for good cause shown, the
11 Court may require any party to furnish security for costs which can be awarded against such
12 party in an amount and on such terms as the Court deems appropriate.”]. Such a requirement
13 “is especially common when a non-resident party is involved.” *Pittman*, 525 F. App’x at 592
14 (quoting 10 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2nd § 2671).

15 Federal courts in California are specifically authorized to order the posting of a security
16 pursuant to California Code of Civil Procedure section 1030. *Pittman*, 525 F. App’x at 593;
17 *Kourtis v. Cameron*, 358 F. App’x 863, 866 (9th Cir. 2009). See *Wilson v. Haubert, PLLC v.*
18 *Yahoo! Inc.*, No. C-13-5879 EMC, 2014 WL 1351210, at *2 (N.D. Cal. Apr. 4, 2014) (noting
19 that the application of state law in this area is within the Court's discretion).

20 Under California Code of Civil Procedure s. 1030, a court may order a plaintiff to post
21 security when defendant shows: (1) plaintiff resides out of state; and (2) there is a “reasonable
22 possibility” that the defendant will prevail on the merits. Cal. Code Civ. Proc. § 1030; *Pittman*,
23 525 F. App’x at 593. The purpose of this mechanism is ‘to secure costs in light of the difficulty
24 of enforcing a judgment for costs against a person who is not within the court’s jurisdiction,’
25 such as an out-of-state resident like the Plaintiff. *Yao v. Superior Court*, 104 Cal.App.4th 327,
26 331 (2002). Cal. Code Civ. Proc. § 1030 extends to security for attorney’s fees, not just costs.

1 that there [is] no possibility that [the plaintiff] could win at trial, but only that it [is] reasonably
2 possible that [the defendant will] win.”).

3 In this case, the Defendants have at least four (4) strong defenses on the merits, any one
4 of which could themselves be a complete answer to all three of counts that remains in the
5 Complaint: (a) Plaintiff has no standing to make the copyright claims here; (b) the Defendants
6 have an express license via the YouTube Terms of Service; (c) the Defendants have an implied
7 license from Plaintiff and, in any event, Plaintiff is equitably estopped from claiming
8 otherwise; and (d) finally, fair use serves as a complete defense for all three counts.

9 *iv. Defense #1 : Plaintiff Lacks Standing to Bring the Claims*

10 As Section 501(b) states, and the Ninth Circuit has made clear, after a copyright owner
11 has fully transferred an exclusive right, it is the transferee who has standing to sue for that
12 particular exclusive right. See 17 U.S.C. § 501(b); *Righthaven LLC v. Hoehn*, 716 F.3d 1166,
13 1170 (9th Cir. 2013). The “right to sue” is not an exclusive right under 17 U.S. Code § 106.

14 For the two videos that remain subject of this case (*Another Chad* and *Belmar Library*),
15 Plaintiff pleaded that he is not currently the owner of the copyright. Plaintiff has transferred
16 all of his exclusive rights under 17 U.S. Code § 106 to an entity. The Plaintiff only claims to
17 have retained a right to sue (Dkt. No. 39 ¶ 18, 87-88).

18 *Fathers & Daughters Nevada, LLC v. Zhang*, 284 F. Supp. 3d 1160, 1170 (D. Or. 2018)
19 dealt with “retaining” a mere right to sue for copyright infringement, and is a complete answer:

20 **D. Contractual Reservation of Right to Sue Clause**

21 ...

22 Second, the Ninth Circuit has repeatedly held that agreements and assignments cannot
23 convey simply a right to sue, because a right to sue is not an exclusive right under the
24 Copyright Act. See *DRK Photo*, 870 F.3d at 987-88; *Righthaven*, 716 F.3d at 1169-70;
25 *Silvers*, 402 F.3d at 890. If a party cannot transfer a simple right to sue, the Court finds
26 that a party similarly cannot retain a simple right to sue. Just as Goldenrod (or F&D)
could not assign or license to Vertical or anyone else no more than the right to sue for
infringement, it cannot transfer the substantive Section 501(b) rights for display and
distribution in the United States and its territories, including digital rights, but retain only

1 the right to sue for one type of infringement of those transferred rights (illegal display
2 and distribution over the internet).

3 [emphasis added]

4 *Fathers & Daughters Nevada* was based on established Ninth Circuit precedent that the
5 Copyright Act does not have a bare “right to sue” that can be transferrable. *DRK Photo v.*
6 *McGraw-Hill Global Educ. Holdings, LLC*, 870 F.3d 978, 987 (9th Cir. 2017) (holding that
7 the substance and effect of the assignments and agreements purporting to assign ownership
8 were "merely a transfer of the right to sue on accrued claims, which cannot confer standing"
9 under the Copyright Act); *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 890 (9th Cir.
10 2005) ("The bare assignment of an accrued cause of action is impermissible under 17 U.S.C.
11 § 501(b)."). *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1169-1170 (9th Cir. 2013) (emphasis
12 added) (quoting 17 U.S.C. § 101). "[I]f a copyright owner grants an exclusive license of
13 *particular rights*, only the exclusive licensee and not the original owner can sue for
14 infringement of those rights."

15 The contractual retention of a bare “right to sue” is not permissible. It is clear from the
16 Complaint that the Plaintiff is not the legal owner of the copyright under 17 U.S.C. § 501(b).
17 He also cannot be a beneficial owner. As the Ninth Circuit confirmed in *DRK Photo*, 870 F.3d
18 978, 989 (9th Cir. 2017): Although section 501(b) provides that a beneficial owner of a
19 copyright is entitled to bring an infringement action, the Copyright Act does not define the
20 term "beneficial owner." The classic example of a beneficial owner is "an author who ha[s]
21 parted with legal title to the copyright in exchange for percentage royalties based on sales or
22 license fees." *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1144 (9th Cir.
23 2003) (quoting H.R. Rep. No. 1476, at 159). Here, the Plaintiff is not a recipient of any
24 royalties. The transfer of copyright does not appear to give anything to the Plaintiff in return.

25 As a side note, the Plaintiff is clearly aware of his lack of standing to make a copyright
26 claim. In two very similar copyright claims that Plaintiff has against two lawyers that was

1 filed at around the same time as the current case, the Plaintiff used Executive Lens LLC as the
2 named plaintiff. See Lin Declaration ¶15-16, Ex. H-I. In those two cases, it also involved
3 videos Plaintiff claims to have authored in similar circumstances.

4 v. Defense #2 : Express License under the YouTube Terms of Service

5 The YouTube Terms of Service expressly provided that a YouTube user (such as
6 Plaintiff) grants other YouTube users a royalty-free license to prepare derivative works. Both
7 the Plaintiff and Defendants are bound by the same YouTube Terms of Service:

8 **TERMS OF SERVICE**

9 ***Welcome to YouTube!***

10 ***Introduction***

11 *Thank you for using the YouTube platform and the products, services and features
we make available to you as part of the platform (collectively, the “Service”).*

12 ...

13 ***Content on the Service***

14 *The content on the Service includes videos, audio (for example music and other
sounds), graphics, photos, text (such as comments and scripts), branding (including
trade names, trademarks, service marks, or logos), interactive features, software,
metrics, and other materials whether provided by you, YouTube or a third-party
(collectively, “Content”).*

15 ...

16 ***License to Other Users***

17 *You also grant each other user of the Service a worldwide, non-exclusive, royalty-
free license to access your Content through the Service, and to use that Content,
18 **including** to reproduce, distribute, **prepare derivative works**, display, and perform
it, only as enabled by a feature of the Service (**such as** video playback or embeds).
19 *For clarity, this license does not grant any rights or permissions for a user to make
use of your Content independent of the Service.**

20 ...

21 ***Interpretation***

22 *In these terms, “include” or “including” means “including but not limited to,” and
any examples we give are for illustrative purposes.*

23 [emphasis added]
24 Lin Declaration, Exhibit J

25 The “only as enabled by a feature of the Service” reference refers to “such as” video
26 playback or embeds as illustrative examples, and is not close-ended. In other words, “only as
27 *enabled* by a feature of the Service” would necessarily need to be broadly interpreted.

1 Moreover, the YouTube service has a feature that enables downloading of videos. (Lin
2 Declaration, ¶18, Ex. K) With the downloaded videos in hand, there is nothing that prohibits
3 another YouTube user from taking snippets therein, and building a new derivative work.

4 *vi. Defense #3 : Implied License Granted by Plaintiff and/or Equitable Estoppel*

5 Because the Copyright Act's requirement of a written instrument "applies solely to a
6 `transfer of copyright ownership,' which by definition does not include nonexclusive licenses.
7 . . . nonexclusive licenses may . . . be granted orally, or may even be implied from conduct.
8 When the totality of the parties' conduct indicates an intent to grant such permission, the result
9 is a nonexclusive license." 3 Nimmer on Copyright § 10.03[A][7] (Matthew Bender, rev. ed.
10 2014) (footnotes omitted); see 17 U.S.C. § 101 (defining "transfer of copyright ownership" to
11 exclude "a nonexclusive license"), cited with approval in *Fahmy v. Jay-Z*, No. 2:07-cv-
12 05715-CAS(PJWx), 2015 WL 3407908 at *7 (C.D. Cal. May 27, 2015) also *Michaels v.*
13 *Internet Entertainment Group, Inc.* (C.D.Cal.1998) 5 F.Supp.2d 823, 831. Another court has
14 explicitly stated that a "a nonexclusive license can be transferred . . . by implication." *Crispin*
15 *v. Christian Audigier, Inc.*, 839 F. Supp. 2d 1086, 1092 (C.D. Cal. 2011) (emphasis in original)
16 (citing *Foad Consulting Grp., Inc. v. Azzalino*, 270 F.3d 821, 826-28 (9th Cir. 2001))).
17 Explaining that courts "universally have recognized that a nonexclusive license may be
18 implied from conduct," [emphasis added] the Seventh Circuit has held that "consent given in
19 the form of mere permission or lack of objection is also equivalent to a nonexclusive license
20 and is not required to be in writing," [emphasis added] and that a nonexclusive license "creates
21 an affirmative defense to copyright infringement." *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 775 (7th
22 Cir. 1996) (citing *Effects Assocs. v. Cohen*, 908 F.2d 555, 559 (9th Cir. 1990)).

23 In this instance, the Plaintiff's consent (i.e., implied license) is clearly demonstrated from
24 a one of the Defendants' videos, where the Plaintiff participated and made clear statements
25 indicating the Defendants may continue what they are doing (Huneault Declaration, ¶ 10 and
26

1 Ex. D, Declaration of Jonathan Hudon-Huneault on November 24, 2025 (Dckt. No. 43-2)
 2 [**Huneault Previous Declaration**], ¶ 31-32).

3 Even if there is no implied license, there could be equitable estoppel in the circumstances.
 4 Equitable estoppel is a defense to infringement of copyright. See *Kramer v. From the Heart*
 5 *Prods., Inc.*, 300 Fed. Appx. 555, 556 (9th Cir. 2008). Equitable estoppel is intended to
 6 prevent parties from taking advantage of the law where a party “*has so conducted [itself] that*
 7 *it would be contrary to equity and good conscience*” to permit the party to prevail. See *Granite*
 8 *State Ins. Comp. v. Smart Modular Techs., Inc.*, 76 F.3d 1023, 1027 (9th Cir. 1996).

9 Plaintiff’s conduct, as seen in the video, is arguably calculated to mislead Defendants as
 10 to whether they may incorporate portions of Plaintiff’s videos. *Hampton v. Paramount*
 11 *Pictures Corp.*, 279 F.2d 100, 104 (9th Cir.), cert. denied, 364 U.S. 882, 81 S. Ct. 170, 5 L.
 12 Ed. 2d 103 (1960); *Bob’s Big Boy Family Rests. v. NLRB*, 625 F.2d 850, 854 (9th Cir. 1980).

13 *vii. Defense #4 : Fair Use as a Complete Defense for All Counts*

14 Fair use is a complete defense to all three counts in the Complaint. It is settled law that
 15 fair use is a defense to count #1 - copyright infringement under 17 U.S.C. §§ 101 et seq. The
 16 Defendants have a strong defense based on fair use for both of the videos that Plaintiff alleges
 17 was infringing his copyright (Huneault Previous Declaration, ¶ 3-16; Huneault Declaration, ¶
 18 13-14).

19 As to the second count, misrepresentation under 17 U.S.C. §§ 512(f), the Plaintiff seeks
 20 actual damages from the alleged misrepresentations found in the Defendants’ counter-
 21 notifications that was sent. The Plaintiff pleaded that the alleged misrepresentations caused
 22 the impugned Defendants’ videos to be restored. If the Defendants prevail on the fair use
 23 point, there can be no actual damage because YouTube rightly restored those videos Huneault
 24 Previous Declaration, ¶26-27).

25 Another ground under the second count was the Plaintiff’s alleged “misrepresentation”
 26 for omitting the suite number in the Defendants’ address. Plaintiff’s counsel uses the exact

1 same mail forwarding service at 99 Wall Street. He knew, or should have known, that the lack
 2 of a suite number does not impede delivery. This mail forwarding service representatives
 3 stated that they would search their database to deliver mail in the event a suite number is
 4 missing (Huneault Declaration, ¶6-8, and Ex. B-C; Huneault Previous Declaration, ¶20-24).
 5 Defendants had no difficulty receiving mail from Plaintiff, even without a suite number
 6 (Huneault Declaration, ¶6-8). Plaintiff is clearly making a false pleading as his counsel ought
 7 to know the suite number is a non-issue.

8 As to the fourth ground, circumvention of technological measures under 17 U.S.C. §§
 9 1201, 1203, the answer lies in 17 U.S.C. §1201(c)(1) which provides that:

10 *(c) Other Rights, Etc., Not Affected.—*

11 *(1) Nothing in this section shall affect rights, remedies, limitations, or defenses*
 12 *to copyright infringement, including fair use, under this title.*

13 In *Chamberlain Group, Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178 (Fed.Cir.2004), the
 14 Federal Circuit interpreted the interplay between 17 U.S.C. §§ 1201 and the fair use defense,
 15 noting that the circumvention of technological measures cannot be used to prevent a fair use
 16 defense. This interpretation is consistent with the explicit language of 17 U.S.C. §1201(c)(1).
 17 Defendants recognize that the Ninth Circuit did not follow the Federal Circuit’s approach in
 18 *MDY Indus., LLC v. Blizzard Entm’t, Inc.*, 629 F.3d 928 (9th Cir. 2010). However, the Ninth
 19 Circuit made clear in footnote 12 that it was not deciding the interplay between fair use and
 20 17 U.S.C. §§ 1201:

21 [12] Like the *Chamberlain* court, we need not and do not reach the relationship between
 22 fair use under § 107 of the Copyright Act and violations of § 1201. *Chamberlain*, 381
 23 F.3d at 1199 n. 14. MDY has not claimed that Glider use is a "fair use" of WoW's dynamic
 24 non-literal elements. Accordingly, we too leave open the question whether fair use might
 25 serve as an affirmative defense to a prima facie violation of § 1201. *Id.*

[emphasis added]

26 It is plain that there is a “reasonable possibility” of the Defendants prevailing on their
 27 interpretation that the fair use defense can be a complete defense to 17 U.S.C. §§ 1201, 1203.

1 Other than fair use, there is a serious dispute as to whether simply screen recording can
 2 even be considered circumvention of technological measures (Huneault Previous Declaration,
 3 ¶29-30). This is comparable to a person holding a camera and recording the monitor screen,
 4 which would not circumvent any technological measures. There was no “effective”
 5 technological measure preventing a YouTube user from recording their own screen.
 6 *Couponcabin LLC v. Savings. Com, Inc.*, No. 2:14-CV-39-TLS, 2016 WL 3181826 (N.D.
 7 Ind. Jun. 8, 2016) citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522,
 8 547 (6th Cir. 2004); *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 952 (9th Cir.
 9 2010) (i.e., the technological measure being circumvented must at least be “effective”).

10 *viii. A Security in the Amount of \$135,619.75 is Appropriate*

11 Defendants have incurred USD\$33,800² in attorney’s fees to date (Huneault Declaration,
 12 ¶9). Defendants estimate that the recoverable costs, consisting mainly of deposition costs and
 13 transcripts is USD\$17,459.75 (Lin Declaration, ¶19-21). The estimated costs for trial
 14 transcripts is USD\$2,190³. The attorney’s fees for work that would be incurred up to and
 15 including trial is USD\$82,170 (Lin Declaration, ¶22-23). The total is \$135,619.75.

16 Security requests are routinely granted for similar or greater amounts using the same
 17 methods of estimating costs. See *Kourtis v. Cameron*, 358 F. App’x 863, 866 (9th Cir. 2009)
 18 (affirming \$100,000 bond amount); *Pittman*, 525 F. App’x at 592-93 (affirming \$240,000
 19 bond amount reduced to \$50,000 due to individual plaintiff’s inability to pay); *AF Holdings*
 20 *LLC v. Navasca*, 2013 WL 450383, at *4 (N.D. Cal. Feb. 5, 2013) (requiring bond of \$50,000);
 21 *Gabriel Techs. Corp. v. Qualcomm Inc.*, 2010 WL 3718848, at *15 (S.D. Cal. Sept. 20, 2010)
 22 (ordering plaintiff post \$800,000 bond).

23
 24
 25

 26 ² Based on the conversion rate from \$46,000 CAD to USD.

27 ³ \$7.30 per page, assuming 5 hours of court time each day for two days, and 30 pages per hour.

1 In this case, there is the right to seek attorney’s fees for the prevailing party for copyright
2 claims under 17 U.S. Code § 505 - *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994). A prevailing
3 party for claims for circumvention of technological protection measures is similarly entitled
4 to attorney’s fees under 17 U.S. Code § 1203(b)(5). California Code of Civil Procedure
5 section 1030 expressly covers granting of security not for attorney’s fees in addition to costs.

6 *ix. Conclusion on Security*

7 Defendants respectfully submit that they should be granted an Order that the Plaintiff
8 post, within 30 days, an undertaking of \$135,619.75 with the Court to cover Defendants’
9 reasonably anticipated recoverable costs and attorney’s fees. Should the Plaintiff fail to post
10 the undertaking, their court action should be dismissed, as provided under California Code of
11 Civil Procedure section 1030.

12 In the event the Plaintiff’s court action is dismissed for failure to post security, the
13 Defendants are similarly prepared to a dismissal of their Counterclaim.

14 **5. Conclusion and Relief Sought**

15 The Defendants submit that there are strong reasons to dismiss for reason of *forum non*
16 *conveniens* similar to the situation in *González Cantón v. Mad Ruk Ent., Inc.*, No. 22-1458,
17 2023 WL 4546545, at *11 (D.P.R. July 13, 2023). The Plaintiff does not even reside in
18 California and there is significant inconvenience in litigating in California. There is clearly an
19 adequate forum – the Federal Court of Canada – and the balance of the private and public
20 factors weigh in favor of dismissal.

21 Alternatively, if the court action is not dismissed in favor of the Federal Court of Canada,
22 the Defendants submit that there are strong grounds to order security for costs under California
23 Code of Civil Procedure section 1030 and/or United States District Court Northern District of
24 California Local Rule 65.1-1. There are admissions from the Plaintiff that he has advanced
25 this court action with intent to bury the Defendants with legal expenses, and he has no means
26 to repay the Defendants should the Defendants prevail. The Defendants also have strong

1 defenses that have “reasonable possibility” of prevailing. In these circumstances, it would be
2 unjust to permit the Plaintiff to advance his lawsuit without giving the Defendants sufficient
3 assurance that their costs will be covered.

4 Respectfully submitted,

5 Date: March 10, 2026

By: Simon Lin

6 Simon Lin – State Bar No. 313661