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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RUSSELL G. GREER, Plaintiff-Appellant, v. JOSHUA MOON, an individual; KIWI FARMS, a website, Defendants-Appellees.	No. 21-4128

On Appeal from the United States District Court for the District of Utah
Case No. 2:20-CV-00647-TC

(Filed Oct. 16, 2023)

Andrew Grimm of The Digital Justice Foundation, Omaha, Nebraska, for Appellant.

Gregory Skordas of Skordas & Caston, LLC, Salt Lake City, Utah, for Appellees.

Before **BACHARACH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

ROSSMAN, Circuit Judge.

When he discovered his copyrighted book and song online, Plaintiff Russell Greer sent a "takedown notice" to Defendants Joshua Moon and his website Kiwi Farms, requesting the material be removed from the Kiwi Farms site. *See* 17 U.S.C. § 512(c) (codifying notice-and-takedown process). When Mr. Moon refused to remove the infringing material from Kiwi Farms, Mr. Greer sued the Defendants for copyright infringement. The district court granted the Defendants' motion to dismiss, concluding Mr. Greer failed to state a claim. Exercising jurisdiction under 28 U.S.C. § 1291, we disagree, and reverse and remand for further proceedings.

I

A

To "promote the Progress of Science and useful Arts," the Constitution empowers Congress to "secur[e] for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, § 8, cl. 8. Since 1790, Congress has effected this goal by legislating to grant copyright holders a bundle of rights, including the use and distribution of their copyrighted materials. *See*, *e.g.*, Copyright Act of 1790, Pub. L. No. 1-15, 1 Stat. 124.

Nearly fifty years ago, to address "significant changes in technology affect[ing] the operation of the copyright law," H.R. Rep. No. 94-1476, at 47, Congress

enacted the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (codified at 17 U.S.C. § 101 *et seq.*). The Copyright Act of 1976 provides "[a]nyone who violates any of the exclusive rights of the copyright owner" shall be "an infringer. . . ." 17 U.S.C. § 501(a); *see also Sony Corp. of Am.* v. *Universal City Studios, Inc.*, 464 U.S. 417, 433 (1984) ("Anyone who violates any of the exclusive rights of the copyright owner, that is, anyone who trespasses into his exclusive domain by using or authorizing the use of the copyrighted work . . . is an infringer of the copyright.") (internal quotation marks, citations omitted). Under the same Act, those "exclusive rights" include the rights "to reproduce the copyrighted work," "to distribute copies . . . of the copyrighted work to the public," "to display the copyrighted work publicly," and "to perform the copyrighted work publicly by means of a digital audio transmission." 17 U.S.C. § 106(1), (3)–(6).

While the Copyright Act itself does not "expressly render anyone liable for infringement committed by another," *Sony Corp.*, 464 U.S. at 434,[1] federal courts have long recognized and applied theories of secondary liability, *see Metro-Goldwyn-Mayer Studios, Inc.* v. *Grokster, Ltd.*, 545 U.S. 913, 930 (2005) (explaining "doctrines of secondary liability emerged from common law principles and are well established in the law"). In applying secondary liability to copyright infringement, the Supreme Court explained the imposition of

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[1] *But see* H.R. Rep. No. 94-1476, at 61 (1976) ("Use of the phrase 'to authorize' is intended to avoid any questions as to the liability of contributory infringers.").

liability on those who have not themselves directly infringed "is grounded on the recognition that adequate protection of a [copyright] monopoly may require the courts to look beyond actual duplication . . . to the products or activities that make such duplication possible." *Sony Corp.*, 464 U.S. at 442, 104 S.Ct. 774.[2]

There are several flavors of secondary liability for copyright infringement.[3]

Vicarious liability attaches when the secondary infringer has "an obvious and direct financial interest in the exploitation of copyrighted materials" and "the right and ability to supervise" the direct infringer. *Shapiro, Bernstein & Co.* v. *H.L. Green Co.*, 316 F.2d 304, 307 (2d Cir. 1963); *see also Diversey* v. *Schmidly*, 738 F.3d 1196, 1204 (10th Cir. 2013) (drawing this test from the Second Circuit's opinion in *Gershwin Publishing Corp.* v. *Columbia Artists Management, Inc.*, 443 F.2d 1159, 1162 (2d Cir. 1971)). Vicarious liability has no knowledge requirement, based as it is on the

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[2] In *Sony Corp.* itself, however, the Court rejected a claim of secondary liability directed towards Sony's distribution of videocassette recorders. Sony had neither advertised nor intended the VCR for infringement purposes. And since the VCR was capable of "commercially significant noninfringing uses," the Court declined to attach liability based on the product's capacity to be misused for infringement. 464 U.S. at 439, 442.

[3] Mr. Greer proceeded under a *contributory infringement* theory of liability, *see* RI.85 ("[Mr. Greer] isn't claiming vicarious infringement, which is a completely separate issue from contributory infringement."), but we discuss all three forms of secondary copyright infringement to emphasize certain elemental distinctions.

common law doctrine of *respondeat superior*. *Fonovisa, Inc.* v. *Cherry Auction, Inc.*, 76 F.3d 259, 262 (9th Cir. 1996).

Under the *inducement rule*, the Supreme Court has held "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." *Grokster*, 545 U.S. at 936–37. Inducement requires a showing of "affirmative intent," such as "active steps . . . taken to encourage direct infringement" or "advertising an infringing use." *Id.* at 936 (quoting *Oak Indus., Inc.* v. *Zenith Elec. Corp.*, 697 F. Supp. 988, 992 (N.D. Ill. 1988)); *see also id.* at 937 ("The inducement rule . . . premises liability on purposeful, culpable expression and conduct. . . .").

Mr. Greer proceeds under a third theory, *contributory liability* (or *contributory infringement*). Applying this theory in *Diversey*, we explained "contributory liability attaches when the defendant causes or materially contributes to another's infringing activities and knows of the infringement." 738 F.3d at 1204 (citation omitted); *see also Grokster*, 545 U.S. at 930, ("One infringes contributorily by intentionally inducing[4] or encouraging direct infringement. . . .") (citation omitted).

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[4] "Although the traditional test for contributory infringement refers to *inducement*, inducement liability under the test articulated by the U.S. Supreme Court in *MGM Studios, Inc.* v. *Grokster* should be considered as analytically related but a distinct form of secondary liability." 1 E-Commerce & Internet Law § 4.11(3)(A) (2020).

From our holding there, we identify three elements to a claim of contributory infringement: (1) *direct infringement* ("another's infringing activities"); (2) *knowledge of direct infringement* (the defendant "knows of the infringement"); and (3) *contribution to direct infringement* ("the defendant causes or materially contributes").

"One way of establishing contributory liability is by showing a defendant 'authorized the infringing use.'" *Diversey*, 738 F.3d at 1204 (quoting *Softel, Inc.* v. *Dragon Med. & Scientific Comms., Inc.*, 118 F.3d 955, 971 (2d Cir. 1997)); *see also* 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 12.04[A][3][a] (2023) ("[I]n order to be deemed a contributory infringer, the authorization or assistance must bear some direct relationship to the infringing acts, and the person rendering such assistance or giving such authorization must be acting in concert with the infringer.").

B

Mr. Moon owns and operates Kiwi Farms, a site "built to exploit and showcase those Moon and his users have deemed to be eccentric and weird. . . ." RI.12–13.[5] Many of Kiwi Farms' targets are physically or

[5] When reviewing a granted motion to dismiss, we draw the background from the complaint, accepting the facts alleged within as true. *Brokers' Choice of Am., Inc.* v. *NBC Universal, Inc.*, 861 F.3d 1081, 1123 n.69 (10th Cir. 2017) (citing *Mayfield* v. *Bethards*, 826 F.3d 1252, 1255 (10th Cir. 2016)).

mentally disabled, RI.13 (quoting Mr. Moon describing "the mushmouthed autistic people we make fun of"), and Mr. Greer himself suffers from a form of facial paralysis. Kiwi Farms users allegedly "stalk and harass" these and other individuals. RI.13. According to Mr. Greer's complaint and request for a preliminary injunction, Mr. Moon and Kiwi Farms users have been implicated in three suicides, a school shooting in New Mexico, and a clash with New Zealand authorities over information about terrorist attacks at mosques in Christchurch.

After he sued a well-known pop star in 2016, Kiwi Farms users turned their attention to Mr. Greer and began "a relentless harassment campaign"; this effort included "direct harassment via phone, email, and social media," "schemes that successfully got him fired from his workplace and evicted," and the creation of "false social media profiles that impersonate him with names . . . that mock his physical and developmental disabilities." Appellant Br. at 19 (citing RI.13–15, ¶¶ 18–19, 21, 24, 28).

To "explain his side of things and to hopefully clear up the slander surrounding him," Mr. Greer wrote a book. RI.15. He self-published and copyrighted the book, *Why I Sued Taylor Swift and How I Became Falsely Known as Frivolous, Litigious and Crazy*, around November 2017. By January 2018, Mr. Greer discovered "his book had been illegally put onto Kiwi Farms." RI.18. Under the title "Rusty's Tale," Kiwi Farms users provided a Google Drive link to a full copy of Mr. Greer's book. RI.18. "[W]ishing to avoid litigation," Mr.

Greer sent Mr. Moon email "requests to have his book removed." RI.18. Mr. Moon refused the requests and then "published [Mr. Greer's] requests onto Kiwi Farms and explained there was so 'much wrong' with [the] request for it to even be considered." RI. 18. Other Kiwi Farms users "created unauthorized audio recordings of Greer's books and have put them on various sites," including one user operating with the hashtag "Spaz Face as a direct, discriminatory insult against Greer." RI.19. Through the Google Drive link, "anybody [can] view and . . . save" Mr. Greer's book "onto their devices"; Mr. Greer alleged this activity has "purposely deprived Greer of making money. . . ." RI.19.

After "his book had hit a snag because of the bad reviews" allegedly left by Kiwi Farms users, Mr. Greer opted "to write a song because he felt he could bring awareness better with a song." RI.19. He "[i]nvest[ed] his own money writing and producing the song with professionals. . . ." RI.19. He registered his copyright to the song, *I Don't Get You, Taylor Swift*, in mid-April 2019.

Within days, however, Mr. Greer discovered his new song had been uploaded to Kiwi Farms. A Kiwi Farms user under the name "Russtard" encouraged its dissemination on the site "so no one else accidentally gives Russell [Greer] money." RI.20.

Convinced now that Kiwi Farms users "willfully infringed on [his] copyright" and "openly conspired to steal [his] works and deprive [him] of money," Mr. Greer "decided to prepare for legal action." RI.20.

Pursuant to the procedures described in the Digital Millennium Copyright Act,[6] on April 28, 2019, Mr. Greer sent the following takedown notice to Mr. Moon. The notice identified the infringing material and the location of the "unauthorized and infringing copies. . . ." RI.201.

[6] The Digital Millennium Copyright Act requires service providers to "'expeditiously . . . remove . . . material that is claimed to be infringing,' or disable access to it, whenever the service provider (1) receives a notice of infringing material on the service provider's site or (2) otherwise becomes aware of the infringement or of circumstances making the infringement apparent." *Capitol Records, LLC* v. *Vimeo, LLC*, 826 F.3d 78, 83 (2d Cir. 2016) (quoting 17 U.S.C. § 512(c)(1)(C), (A)(iii)). The notice must identify the protected material and give the service provider "information reasonably sufficient to permit the service provider to locate the material." 17 U.S.C. § 512(c)(3)(A)(iii).

DMCA Takedown Notice

04/28/2019

Dear Joshua Moon,

My name is Russell Greer. A website that you own is infringing on at least two copyrights owned by me. Two copyrights that I own, a song and an electronic copy of my book, were copied onto your site without permission. They are as follows:

"Why I Sued Taylor Swift and How I Became Falsely Known as Frivolous, Litigious and Crazy." It has a copyright number of TX0008469519. A book. (https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=Greer+Russell+&Search_Code=NALL&PID=516B3eU1psHogiJyEHxUpUmMXooz&SEQ=20190418103504&CNT=25&HIST=1).

"I Don't Get You, Taylor Swift". A song. It is distributed through CD Baby and can be found on https://store.cdbaby.com/New. It has a copyright application number of 7596396601.

The unauthorized and infringing copies can be found at: https://kiwifarms.net/threads/russell-greer-theofficialinstaofrussellgreer.30488/. In this link, you will find my book contained in a Google Drive link (https://drive.google.com/drive/folders/0B2VdH79IRT1RN1pydnJ1cTk2cUU). The link for my song is here: https://kiwifarms.net/threads/russell-greer-theofficialinstaofrussellgreer.30488/page-1448#post-4579377.

This letter is official notification under Section 512(c) of the Digital Millennium Copyright Act ("DMCA"), and I seek the removal of the aforementioned infringing material from your servers. I request that you immediately notify the infringer of this notice and inform them of their duty to remove the infringing material immediately, and notify them to cease any further posting of infringing material to your server in the future.

Please also be advised that law requires you, as a service provider, to remove or disable access to the infringing materials upon receiving this notice. Under US law a service provider, such as yourself, enjoys immunity from a copyright lawsuit provided that you act with deliberate speed to investigate and rectify ongoing copyright infringement. If service providers do not investigate and remove or disable the infringing material, this immunity is lost. Therefore, in order for you to remain immune from a copyright infringement action, you will need to investigate and ultimately remove or otherwise disable the infringing material from your servers with all due speed should the direct infringer, your user, not comply immediately.

I am providing this notice in good faith and with the reasonable belief that rights that I own are being infringed. Under penalty of perjury, I certify that the information contained in the notification is both true and accurate. Please email me at [redacted] when this material has been removed. You have until Monday, the 29th, to comply.

Thank you.
Russell Greer
[redacted]

On receipt, Mr. Moon published Mr. Greer's notice onto Kiwi Farms, along with Mr. Greer's contact information. He replied to Mr. Greer's email "derid[ing] him for using a template," RI.22, and said "he would not be removing Greer's copyrighted materials," RI.23. Since that time, Mr. Greer alleges Kiwi Farms "has continued harassing [him]" and has "continued to exploit [his] copyrighted material," including two additional songs and a screenplay. RI.23.

C

In September 2020, Mr. Greer sued Mr. Moon and Kiwi Farms in federal district court in Utah. He alleged contributory copyright infringement under federal law and several claims under Utah law: electronic communications harassment, false light, defamation, and defamation by implication. He simultaneously moved for a preliminary injunction enjoining Mr. Moon from operating Kiwi Farms during the pendency of this case "and/or removing every webpage about Greer" from the site. RI.41. As relevant to his contributory infringement claim, Mr. Greer alleged:

> Defendants have knowingly and willfully permitted, and continue to permit, the infringement of Greer's works by materially contributing to the infringement by running and managing a website that allows users to steal and dump everything about Greer. Moon has even defended such action on his website's FAQs page and has even explained to Greer through email why he believes he is

> allowed to infringe on his works, claiming Fair Use, and has posted the email conversation for many people to see and comment on, and in turn, harass Greer.

RI.29.[7]

In April 2021, Mr. Moon and Kiwi Farms moved to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). As relevant here, they contended Mr. Greer "has not alleged any facts that support an inference that Defendants induced or encouraged any users of Kiwi Farms to infringe on [Mr. Greer's] copyright material before the material was posted online." RI.55.

On September 21, 2021, the district court granted Mr. Moon and Kiwi Farms' motion to dismiss. The district court explained contributory infringement required allegations of "(1) direct copyright infringement by a third party; (2) the defendant knew of the direct infringement; and (3) the defendant intentionally caused, induced, or materially contributed to the direct infringement." RI.134 (citation omitted). Applying those principles to the complaint before it, the district court held:

> Mr. Greer has sufficiently alleged prongs (1) and (2) of contributory copyright infringement. What is missing is the Defendants'

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[7] While alleging contributory infringement of later songs, Mr. Greer only sought damages for the book and the song *I Don't Get You, Taylor Swift*, as "those works have suffered the most damage." RI.29.

> intentionally causing, inducing, or materially contributing to the infringement. It is not enough for contributory liability for a defendant to have merely "permitted" the infringing material to remain on the website, without having "induc[ed] or encourage[ed]" the initial infringement. The Tenth Circuit has not held otherwise.

RI.135 (citation omitted) (alterations in original). Accordingly, the district court dismissed the case.

On October 26, 2021, the district court denied Mr. Greer's Rule 59(e) motion to alter or amend the judgment. Mr. Greer appealed to this court the same day.

II

On appeal, Mr. Greer argues his *pro se* complaint, construed liberally, adequately "alleged facts demonstrating [Mr. Moon and Kiwi Farms] had knowingly induced, encouraged, and materially contributed to direct infringements," and so "stated a claim for contributory copyright infringement" sufficient to survive a motion to dismiss. Appellant Br. at 26. As we explain, we agree.

A

We review *de novo* the district court's dismissal of Mr. Greer's *pro se* complaint under Rule 12(b)(6). *Serna*

v. *Denver Police Dep't*, 58 F.4th 1167, 1169 (10th Cir. 2023).[8]

When deciding a Rule 12(b)(6) motion, a court "accept[s] as true all well-pleaded factual allegations . . . and view[s] these allegations in the light most favorable to the plaintiff." *Smith* v. *United States*, 561 F.3d 1090, 1098 (10th Cir. 2009). At this stage, we "resolve all reasonable inferences" in Mr. Greer's favor. *Morse* v. *Regents of the Univ. of Colo.*, 154 F.3d 1124, 1126–27 (10th Cir. 1998). Still, Mr. Greer's complaint cannot rely on labels or conclusory allegations—a "formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 555 (2007). Rather, his complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009). "When analyzing plausibility, a plaintiff's allegations are 'read in the context of the entire complaint,'" *Chilcoat* v. *San Juan Cnty.*, 41 F.4th 1196, 1218 (10th Cir. 2022) (quoting *Ullery* v. *Bradley*, 949 F.3d 1282, 1288 (10th Cir. 2020)), and a plaintiff need only "nudge[]" their claim "across the line from conceivable to plausible," *id.* (quoting *Twombly*, 550 U.S. at 570).

In the course of this review, we construe Mr. Greer's *pro se* complaint liberally and hold him "to a less stringent standard than formal pleadings drafted by lawyers." *Hall* v. *Bellmon*, 935 F.2d 1106, 1110 (10th

[8] While Mr. Greer proceeded *pro se* before the district court, he is counseled on this appeal.

Cir. 1991) (citing *Haines* v. *Kerner*, 404 U.S. 519, 520–21 (1972)). While we do not act as Mr. Greer's advocate, if we "can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, [we] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories . . . or his unfamiliarity with pleading requirements." *Id.*

B

For his complaint to survive a motion to dismiss under a contributory liability theory, Mr. Greer had to plausibly allege: (1) his copyrighted work was directly infringed by a third party, (2) Mr. Moon and Kiwi Farms "kn[ew] of the infringement," and (3) Mr. Moon and Kiwi Farms "cause[d] or materially contribute[d] to [third parties'] infringing activities." *Diversey*, 738 F.3d at 1204.[9] We address each in turn.

1

The district court correctly concluded Mr. Greer "sufficiently alleged" "direct copyright infringement by a third party." RI.134–35.

Mr. Greer's complaint alleged copyright violations related to his book and music. Mr. Greer provided the registration numbers and effective dates for both. RI.15, 17 (providing registration number of

[9] Mr. Moon and Kiwi Farms appear to challenge only whether the complaint satisfies (3), the material contribution element.

TX0008469519 and registration date of October 2017 for the book); RI. 19 (providing registration number of SRu001366535 and registration date of April 2019 for the song). He included certificates from the United States Register of Copyrights. And Mr. Moon and Kiwi Farms do not dispute these copyrights were validly registered and their certificates appropriately issued pursuant to 17 U.S.C. §§ 408–410.

Recall, the Copyright Act grants copyright holders like Mr. Greer the generally exclusive rights "to reproduce the copyrighted work in copies" and "to distribute copies . . . of the copyrighted work to the public. . . ." 17 U.S.C. § 106(1), (3). Usually, when a third party reproduces or distributes a copyrighted work without authorization, they infringe on the exclusive rights of a copyright holder under 17 U.S.C. § 501.

In his complaint, Mr. Greer alleged he discovered the book "had been illegally put onto Kiwi Farms" in January 2018. RI.18. "Somebody," he explained, "created a copy of [his] book and put it in a Google Drive that is accessible on Kiwi Farms." RI.18. The complaint also included allegations "[o]ther users on Kiwi Farms have created unauthorized audio recordings of" the book "and have put them on various sites." RI.19. Kiwi Farms, Mr. Greer continued, "has links to these audio recordings." RI. 19. As to the song, Mr. Greer alleged he found an "MP3 of his song was . . . on Kiwi Farms" in April 2019. RI.20. A Kiwi Farms user posted the song with the comment "Enjoy this repetitive turd." RI.20. Another user commented, "Upload it here so no one accidentally gives [Mr. Greer] money." RI.20.

The complaint also alleged "Mr. Moon's users spread Greer's song across different sites." RI.21.

Based on the complaint, we conclude, like the district court, Mr. Greer plausibly alleged direct, third-party infringement of copyright under 17 U.S.C. § 501.[10]

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[10] On appeal, Mr. Moon and Kiwi Farms suggest the copyright infringement here may have been "for purposes such as criticism and/or comment" and is thus protected under the "fair use" limitation of 17 U.S.C. § 107. Appellees Br. at 33. The paragraph discussion identifies the four factors in 17 U.S.C. § 107 but fails to explain what those factors are or why they apply here. We do not address this passing mention of a novel issue. *See Day* v. *SkyWest Airlines*, 45 F.4th 1181, 1192 (10th Cir. 2022) (declining "to consider [a] newly raised, inadequately briefed, and analytically complex issue in the first instance on appeal").

In any case, Mr. Moon and Kiwi Farms did not plead the affirmative defense of fair use, and, "[a]s a general rule, a defendant waives an affirmative defense by failing to plead it." *Burke* v. *Regalado*, 935 F.3d 960, 1040 (10th Cir. 2019) (citing *Bentley* v. *Cleveland Cnty. Bd. of Cnty. Comm'rs*, 41 F.3d 600, 604 (10th Cir. 1994)); *see also* Fed. R. Civ. P. 8(c) (explaining "a party must affirmatively state any avoidance or affirmative defense").

Perhaps to get around the bar of waiver, Mr. Moon and Kiwi Farms describe fair use as "more than an affirmative defense; the language of the statute makes it clear that fair use is not infringement at all." Appellees Br. at 33 (citing 17 U.S.C. § 107). But we decline the invitation to transfigure fair use into an un-waivable defense. *See Andy Warhol Found. for the Visual Arts, Inc.* v. *Goldsmith*, 598 U.S. 508 (2023) (explaining "fair use is an affirmative defense" and the party invoking it "bears the burden to justify its taking" of the protected work); *id.* at 1288 (Gorsuch, J., concurring) (discussing a party's invocation of "the affirmative defense of `fair use' to a claim of copyright infringement").

2

The district court also concluded Mr. Greer "sufficiently alleged" "the defendant[s] knew of the direct infringement." RI. 134–35. Here, too, we agree.

Mr. Greer's takedown notices complied with 17 U.S.C. § 512(c)(3). A takedown notice under the DMCA needs to identify "the copyrighted work claimed to have been infringed" and "the material that is claimed to be infringing or to be the subject of infringing activity. . . ." 17 U.S.C. § 512(c)(3)(A)(ii)-(iii). Here, Mr. Greer's original email and DMCA notices identified the book and song protected by copyright, pointed to the locations on Kiwi Farms where these works were being copied and shared without authorization, and requested Mr. Moon, as site administrator, remove the infringing materials.

While Mr. Moon debated the merits and style of Mr. Greer's takedown notices—claiming in emails the infringements were protected under fair use and mocking the use of a "template" for the DMCA request—the complaint sufficiently alleged that Mr. Moon knew of the alleged direct infringement.

3

For contributory liability to attach, the final *Diversey* prong requires a defendant to "cause" or "materially contribute to" third-parties' direct infringement. *Diversey*, 738 F.3d at 1204. The Supreme Court has described "contributory infringers" as those who are "in

a position to control the use of copyrighted works by others" and who "authorize [ ] the use without permission from the copyright owner." *Sony Corp.*, 464 U.S. at 437. As applied here, Mr. Greer was required to plausibly allege Mr. Moon and Kiwi Farms caused, materially contributed to, or authorized the direct infringement by Kiwi Farms users and other third parties of Mr. Greer's book and song. We conclude he did so.

The district court correctly explained the *Diversey* factors and rightly identified the liberal *pro se* pleading standard. Nevertheless, it dismissed Mr. Greer's contributory infringement claim after concluding, "[w]hat is missing is the Defendants' intentionally causing, inducing, or materially contributing to the infringement." RI.135. "It is not enough," the district court continued, "for a defendant to have merely 'permitted' the infringing material to remain on the website, without having 'induc[ed] or encourage[ed]' the initial infringement."[11] RI.135 (citing *Grokster*, 545 U.S. at 930).

On appeal, Mr. Greer contends he "sufficiently pleaded factual allegations of inducement" and encouragement. Appellant Br. at 46–52. Mr. Moon and Kiwi Farms reply they simply "allow[ed] an infringing use

[11] The district court referenced an "initial infringement," but we remain unsure what the district court meant by the addition of the qualifying "initial." RI.135. Mr. Moon and Kiwi Farms claim the district court meant "Mr. Moon needed to have taken steps to encourage the initial infringement" by Kiwi Farms users. Appellees Br. at 33. We cannot understand "initial" to be a literal requirement supported by applicable law, otherwise contributory infringement liability would rarely, if ever, lie for ongoing, repeated infringements.

to exist on their website" and so cannot be "liable for the actions of [their] users, even if [they] knew about the alleged infringement." Appellees Br. at 35.[12]

We discern no error in the district court's explanation that contributory liability requires more than "merely 'permitting' the infringing material to remain on the website." RI.135. And we conclude Kiwi Farms and Mr. Moon accurately state the law when they argue "a website owner or operator must do something other than allow an infringing use to exist on their website." Appellees Br. at 35.

But these general principles of law are of little help here, where the record shows—and Mr. Greer's complaint plausibly alleged—far more than "a failure to take affirmative steps to *prevent* infringement. . . ." *Grokster*, 545 U.S. at 939 n.12 (emphasis added).

When Mr. Greer discovered the book had been copied and placed in a Google Drive on Kiwi Farms, he "sent Mr. Moon requests to have his book removed. . . ." RI.18. Mr. Moon pointedly refused these requests.

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[12] The parties debate the meaning and applicability of the Ninth Circuit's test for contributory infringement, as expressed in *Perfect 10, Inc.* v. *Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007) and *A&M Records* v. *Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001). Mr. Greer argues the district court erred in refusing to follow persuasive authority from a sister circuit and expressly urges this court to adopt the *Perfect 10*/*Napster* test. Appellant Br. at 32-34.

Because we conclude the issue is resolved under controlling precedent in this circuit—including *Grokster* and *Diversey*—we express no view of the Ninth Circuit's contributory infringement framework.

RI.18. In fact, instead of honoring the requests, Mr. Moon posted his email exchange with Mr. Greer to Kiwi Farms, belittling Mr. Greer's attempt to protect his copyrighted material without resort to litigation. RI.18–19.

After the email request, Kiwi Farms users continued to upload audio recordings of Mr. Greer's book, followed by digital copies of his song. When Mr. Greer discovered the song on Kiwi Farms, he sent Mr. Moon a takedown notice under the DMCA. Mr. Moon not only refused to follow the DMCA's process for removal and protection of infringing copies, he "published [the] DMCA request onto [Kiwi Farms]," along with Mr. Greer's "private contact information." RI.22. Mr. Moon then "emailed Greer . . . and derided him for using a template for his DMCA request" and confirmed "he would not be removing Greer's copyrighted materials." RI.23. Following Mr. Moon's mocking refusal to remove Mr. Greer's book and his song, Kiwi Farms users "have continued to exploit Greer's copyrighted material," including two additional songs and a screenplay. RI.23.

Construing the *pro se* complaint liberally and drawing all reasonable inferences in Mr. Greer's favor, we find Mr. Moon's alleged conduct to fit within our understanding of material contribution.[13] Mr. Greer sent

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[13] Because we find Mr. Greer's complaint plausibly alleged contributory infringement, we do not reach the district court's denial of Mr. Greer's motion for leave to amend. Nor do we express an opinion about Mr. Greer's appellate contention the "original complaint pleaded sufficient factual allegations that make out a

repeated requests to Mr. Moon, identifying the materials on which he held the copyright, as well as where and how his rights were being infringed. Mr. Moon not only expressly refused to remove the materials, he mockingly posted the correspondence to Kiwi Farms. Under the circumstances, this is not the passive behavior of one "merely permitting" infringing material to remain on his site. Rather, we conclude a reasonable inference from the facts alleged is that the reposting of the takedown notice, combined with the refusal to take down the infringing material, amounted to encouragement of Kiwi Farms users' direct copyright infringement.

Mr. Greer's complaint alleged Mr. Moon knew Kiwi Farms was an audience that had been infringing Mr. Greer's copyrights and would happily continue to do so. Indeed, Kiwi Farms users had been uploading Mr. Greer's copyrighted materials with the explicit goal of avoiding anyone "accidentally giv[ing] [Mr. Greer] money." RI.20. Further infringement followed—encouraged, and materially contributed to, by Mr. Moon. *See Diversey*, 738 F.3d at 1204.

IV

We hold Mr. Greer has stated plausible claims of contributory copyright infringement against Mr. Moon and Kiwi Farms. The judgment of the district court is

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showing of direct copyright infringement, and, likely, vicarious copyright infringement as well." Appellant Br. at 53.

REVERSED and this case is **REMANDED** for further proceedings.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RUSSELL G. GREER, Plaintiff - Appellant, v. JOSHUA MOON, an individual; KIWI FARMS, a website, Defendants - Appellees.	No. 21-4128 (D.C. No. 2:20-CV-00647-TC) (D. Utah)

JUDGMENT

(Filed Oct. 16, 2023)

Before **BACHARACH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

This case originated in the District of Utah and was argued by counsel.

The judgment of that court is reversed. The case is remanded to the United States District Court for the District of Utah for further proceedings in accordance with the opinion of this court.

Entered for the Court

/s/ Christopher M. Wolpert
CHRISTOPHER M. WOLPERT,
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

RUSSELL G. GREER, Plaintiff, v. JOSHUA MOON, an individual, and KIWI FARMS, a website, Defendants.	**ORDER AND MEMORANDUM DECISION** Case No. 2:20-cv-00647-TC-JCB District Judge Tena Campbell (Filed Sep. 21, 2021)

Pro se plaintiff Russell Greer brings this lawsuit against Defendants Joshua Moon and Kiwi Farms,[1] seeking monetary damages and injunctive relief. In his complaint, Mr. Greer raises five causes of action against the Defendants: contributory copyright infringement, electronic communications harassment, false light, defamation, and defamation by implication. (Compl., ECF No. 3.) The Defendants now move to dismiss all five claims under Federal Rule of Civil

[1] Kiwi Farms is a website. Kiwi Farms, https://kiwifarms.net (last visited Sept. 21, 2021). Perplexingly, the Defendants do not raise the issue that Kiwi Farms, as a website, is not a legal entity capable of being sued. Cf. Schiavone v. Fortune, 477 U.S. 21 (1986) (holding that Fortune magazine is a trademark, not a legal entity that could be sued); Teamsters Loc. Union No. 727 Health & Welfare Fund v. L & R Grp. of Cos., 844 F.3d 649, 651 (7th Cir. 2016) ("You can't sue a 'rubric' any more than you could sue the Chicago River or the Magnificent Mile as a proxy for the City of Chicago."); Gerardy v. Seventh Dist. Ct., No. 2:17-CV-945 RJS, 2019 WL 1979665, at *2 (D. Utah May 3, 2019) (holding that a plaintiff cannot sue a state court).

Procedure 12(b)(6). (Mot. to Dismiss, ECF No. 20.) For the following reasons, the court GRANTS the motion to dismiss and DENIES all other motions.

FACTUAL ALLEGATIONS[2]

Defendant Joshua Moon operates Kiwi Farms, an online forum where users "exploit and showcase those . . . deemed to be eccentric and weird." (Compl. ¶¶ 13–14, ECF No. 3.) Some users go beyond discussing people online and purportedly "stalk and harass" their subjects. (Id. ¶ 14.) Plaintiff Russell Greer became the target of Kiwi Farms users' acrimony after he filed a lawsuit against a famous pop star in late 2016. (Id. ¶ 16.) Some users began harassing him, even going so far as to call his employer. (Id. ¶¶ 17–24.) In response to the harassment, Mr. Greer self-published a book about the lawsuit, hoping to tell his side of the story. (Id. ¶¶ 25–27.) The harassment only intensified. (Id. ¶¶ 28–36.) After his book received numerous negative online reviews, Mr. Greer recorded a song and placed it for sale online. (Id. ¶¶ 48–60.) His book and his song ended up being posted on Kiwi Farms without his consent, causing Mr. Greer to become the target of even more derision. (Id. ¶¶ 47, 53.)

In April 2019, Mr. Greer sent Kiwi Farms a takedown notice under the Digital Millennium

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[2] All factual allegations come from Mr. Greer's complaint. The court accepts them as true for the purposes of this order. See Albers v. Bd. of Cnty. Comm'rs of Jefferson Cnty, 771 F.3d 697, 700 (10th Cir. 2014).

Copyright Act (DMCA), requesting that the site take down any posts that infringed on his copyrights. (Id. ¶¶ 65–66.) Mr. Moon refused, claiming protection under "fair use," and he mocked Mr. Greer's DMCA notice. (Id. ¶¶ 67–71.) Since then, Kiwi Farms users have uploaded more of Mr. Greer's songs without his consent. (Id. ¶ 74.)

In early 2020, Mr. Greer was a defendant in an unrelated criminal case. (Id. ¶ 146.) This case came to the attention of Kiwi Farms users and soon became a new discussion topic. (Id. ¶ 157.) Kiwi Farms' news page even advertised one of the court hearings: "July 2020: Russell [Greer] has a date . . . in court, with one of his victims." (Id. ¶ 163.) Mr. Moon has also allegedly appeared on YouTube to discuss Mr. Greer's case. (Id. ¶¶ 160–161, 164.) As part of the proceedings, Mr. Greer was required to undergo a mental health evaluation, but the prosecution ended up dropping that requirement. (Id. ¶¶ 150–152.) Kiwi Farms users claimed that Mr. Greer had refused the evaluation. (Id. ¶ 159.) Finally, in September 2020, Mr. Greer filed the present action against Mr. Moon and Kiwi Farms, seeking monetary and injunctive relief for alleged copyright violations, harassment, and various speech torts. In April 2021, the Defendants jointly moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6).

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff's complaint "must plead facts sufficient to

state a claim to relief that is plausible on its face." Slater v. A.G. Edwards & Sons, Inc., 719 F.3d 1190, 1196 (10th Cir. 2013) (internal quotation marks omitted) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). A claim is facially plausible when the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Burnett v. Mortg. Elec. Registration Sys., Inc., 706 F.3d 1231, 1235 (10th Cir. 2013) (quoting Iqbal, 556 U.S. at 678). The court must accept all well-pleaded allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Albers, 771 F.3d at 700. The court's function is "not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." Sutton v. Utah Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999) (quoting Miller v. Glanz, 948 F.2d 1562, 1565 (10th Cir. 1991)).

A pro se plaintiff's complaint should be construed liberally, and it should be held to a less stringent standard than formal pleadings drafted by lawyers. Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520–21 (1972). This rule requires the court to look beyond a failure to cite proper legal authority, confusion of legal theories, and poor syntax or sentence construction. See Hall v. Bellmon, 935 F.2d 1106, 1110 & n.3 (10th Cir. 1991). Liberal construction does not, however, require the court to assume the role of advocate for the pro se plaintiff—Mr. Greer is

expected to construct his own arguments and theories. See id.

ANALYSIS

In his complaint, Mr. Greer raises five causes of action against the Defendants: contributory copyright infringement, electronic communications harassment, false light, defamation, and defamation by implication. The court will consider each in turn.

I. Contributory Copyright Infringement

Mr. Greer's first cause of action is for contributory copyright infringement. "Contributory copyright infringement is derivative of direct copyright infringement." Savant Homes, Inc. v. Collins, 809 F.3d 1133, 1146 (10th Cir. 2016). As the Supreme Court explained, "One infringes contributorily by intentionally inducing or encouraging direct infringement." Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 930 (2005). To establish contributory infringement, a plaintiff must allege: (1) direct copyright infringement by a third party; (2) the defendant knew of the direct infringement; and (3) the defendant intentionally caused, induced, or materially contributed to the direct infringement. See Diversey v. Schmidly, 738 F.3d 1196, 1204 (10th Cir. 2013); Boatman v. U.S. Racquetball Ass'n, 33 F. Supp. 3d 1264, 1273 (D. Colo. 2014). A plaintiff can establish contributory liability by "showing a defendant 'authorized the infringing use.'" Diversey, 738 F.3d at 1204 (quoting Softel, Inc. v. Dragon

Med. & Sci. Commc'ns., Inc., 118 F.3d 955, 971 (2d Cir. 1997)).

Mr. Greer alleges the Defendants are liable for contributory infringement because (1) Kiwi Farms users have posted Mr. Greer's copyrighted book and songs on the website, (2) the Defendants knew of the infringement because Mr. Greer sent them a DMCA takedown notice and Mr. Moon acknowledged it, and (3) the Defendants have "knowingly and willfully permitted" Mr. Greer's copyrighted works to remain on the site. (Compl. ¶¶ 40–42, 52–55, 63–69, 111, ECF No. 3.) In response, the Defendants argue that Mr. Greer's contributory infringement claim fails because his complaint does not allege that the Defendants "induced or encouraged any users of Kiwi Farms to infringe on Plaintiff's copyright material before the material was posted online." (Mot. to Dismiss at 5, ECF No. 20.)

Mr. Greer has sufficiently alleged prongs (1) and (2) of contributory copyright infringement. What is missing is the Defendants' intentionally causing, inducing, or materially contributing to the infringement. It is not enough for contributory liability for a defendant to have merely "permitted" the infringing material to remain on the website, without having "induc[ed] or encourag[ed]" the initial infringement. See Grokster, 545 U.S. at 930. The Tenth Circuit has not held otherwise.[3] Accordingly, Mr. Greer's first cause of action is DISMISSED with prejudice.

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[3] Because the Tenth Circuit has not expressed its view on the issue, the court declines to adopt the Ninth Circuit's contributory

II. Electronic Communications Harassment

Mr. Greer's second cause of action is for electronic communications harassment. It fails as a matter of law because as the Defendants point out, and as Mr. Greer concedes, Utah Code Ann. § 76-9-201 does not authorize a private cause of action. Nunes v. Rushton, 299 F. Supp. 3d 1216, 1238 (D. Utah 2018). Mr. Greer's second cause of action is therefore DISMISSED with prejudice.

III. Kiwi Farms and Section 230 of the Communications Decency Act

Mr. Greer's third, fourth, and fifth causes of action are for false light, defamation, and defamation by implication. The Defendants raise as a defense the Communications Decency Act (CDA), 47 U.S.C. § 230, which states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." § 230(c)(1).

In order to qualify for immunity under the CDA, a defendant must show that (1) it is a provider or user or an "interactive computer service," (2) its actions as a "publisher or speaker" form the basis for liability, and (3) "another information content provider" provided the information that forms the basis for liability. Silver v. Quora, Inc., 666 F. App'x 727, 729 (10th Cir. 2016).

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infringement test from Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1172 (9th Cir. 2007).

The purpose of this immunity is to "facilitate the use and development of the Internet by providing certain services an immunity from civil liability arising from content provided by others." F.T.C. v. Accusearch Inc., 570 F.3d 1187, 1195 (10th Cir. 2009).

First, Kiwi Farms qualifies as an interactive computer service. An interactive computer service is "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet." 47 U.S.C. § 230(f)(2). Kiwi Farms squarely fits within this definition because it enables computer access by multiple users to computer servers via its website. Mr. Moon operates Kiwi Farms, but he also posts on the website, making him both a provider and a user of the interactive computer service.

Second, Mr. Greer seeks to hold the Defendants liable for the posts of Kiwi Farms users. In other words, Mr. Greer seeks to treat Kiwi Farms and Mr. Moon as the "publisher or speaker" of third-party information—"a result § 230 specifically proscribes." Ben Ezra, Weinstein, & Co. v. Am. Online Inc., 206 F.3d 980, 986 (10th Cir. 2000).

Third, the content that provides the basis for liability here—the statements about Mr. Greer's mental health treatment and his alleged "victims"—was not created by Kiwi Farms. Rather, a third party provided the information, and Mr. Greer accessed it through Kiwi Farms' website. "A service provider must

'specifically encourage[] development of what is offensive about the content' to be 'responsible' for the development of offensive content." Silver, 666 F. App'x at 729–30 (quoting Accusearch, 570 F.3d at 1199). Mr. Greer has not alleged that Kiwi Farms played any part in creating the content that he accessed. However, the third prong is unmet for Mr. Moon's own statements on Kiwi Farms' website, where he is both the "information content provider" and the provider–user.

As the Tenth Circuit has remarked, "The prototypical service qualifying for [Section 230] immunity is an online messaging board (or bulletin board) on which Internet subscribers post comments and respond to comments posted by others." Accusearch, 570 F.3d at 1195. Kiwi Farms fits the bill. Mr. Greer's claims for false light, defamation, and defamation by implication seek to hold Kiwi Farms, and Mr. Moon as its operator, liable for information originating with a third party. Those claims are barred by the CDA. Accordingly, Mr. Greer's third, fourth, and fifth causes of action against Kiwi Farms are DISMISSED with prejudice.

IV. False Light, Defamation, and Defamation by Implication Against Mr. Moon

Because Mr. Moon is not immune from liability for his own statements, the court turns to assess the

merits of Mr. Greer's third, fourth, and fifth causes of action against Mr. Moon.[4]

A. False Light

"A prima facie case for false light requires a plaintiff to demonstrate that (1) the defendant publicized a matter concerning the plaintiff that placed the plaintiff before the public in a false light, (2) the false light in which the plaintiff was placed would be highly offensive to a reasonable person, and (3) the defendant knew or recklessly disregarded the falsity of the publicized matter and the false light in which the plaintiff was placed." Jacob v. Bezzant, 2009 UT 37, ¶ 21, 212 P.3d 535, 544.

Mr. Greer alleges two sets of facts that give rise to his false light claim against Mr. Moon. First, he alleges that Mr. Moon said that he was refusing to enter a plea deal because he did not want to receive a mental health evaluation. (Compl. ¶¶ 159–162, ECF No. 3.) This statement apparently came from Mr. Moon's appearance on a "random YouTube show." (Id. ¶ 160.) Second, Mr. Greer claims that Kiwi Farms' news page said that he had "a date . . . in court, with one of his victims." (Id. ¶¶ 163–171.) Mr. Moon's purported connection to the

[4] Mr. Moon raises as a defense the statute of limitations, which is one year for false light and defamation claims. Utah Code Ann. § 78B-2-302(4); Jensen v. Sawyers, 2005 UT 81, ¶ 34, 130 P.3d 325, 333. In response, Mr. Greer argues that his causes of action are only based on statements made in 2020, which is within the limitations period. (Opp'n to Mot. to Dismiss at 3, ECF No. 26.) The court agrees with Mr. Greer.

second statement is that he "has given publicity to this case." (Id. ¶ 166.) In Mr. Greer's view, the statement "puts [him] in a false light that he has many victims." (Id. ¶ 168.)

As stated above, Mr. Moon cannot be held vicariously liable for any statements but his own. For example, Mr. Greer does not allege that Mr. Moon wrote the "victims" statement from Kiwi Farms' news page, but merely that Mr. Moon "has surely seen the statement." (Compl. ¶ 164, ECF No. 3.) As a result, Section 230 would shield Mr. Moon from liability for this third-party statement. Mr. Greer makes little mention of any statements that Mr. Moon has personally made. One such remark is from August 20, 2020. Mr. Moon left the following comment on a Kiwi Farms thread: "I'll be on Nick's show in a few hours. I feel very under prepared [sic] for it, so if anyone wants to cheat and send me some cliff notes [sic] about this case or anything in the last year that'd be ebin [sic] thank you[.]" (Compl. Ex. A1, ECF No. 3-2.) Nothing about this statement places Mr. Greer in a false light. Nor has Mr. Greer alleged anything specific that Mr. Moon may have said on the YouTube show that would put him in a false light. Merely discussing his ongoing criminal case would not rise to this level. While the court must generally accept as true well-pleaded factual allegations in the complaint, the court may properly disregard legal conclusions such as "Moon is now personally liable for spreading false information about Greer by going onto a show" (Compl. ¶ 161) and irrelevant allegations such

as "Mr. Moon . . . has said in the past that Greer stalks women" (Id. ¶ 166).[5]

All in all, Mr. Greer has not stated a claim for false light on these facts. For the first set of facts, it is not enough for Mr. Greer to have been personally offended by the alleged false light—a reasonable person must find it highly offensive. As the Defendants point out, there could be "many non-offensive reasons why someone would not want a mental health evaluation." (Mot. to Dismiss at 7, ECF No. 20.) Mr. Greer has not met this burden. For the second set of facts, Mr. Greer has not alleged that Mr. Moon personally made the "victims" statement, just that his affiliation with Kiwi Farms should be enough for liability. This type of speech is at the core of what Section 230 protects. For those reasons, the court DISMISSES Mr. Greer's third cause of action against Mr. Moon with prejudice.

B. Defamation

"To state a claim for defamation, [a plaintiff] must show that [the defendant] published the statements concerning him, that the statements were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault, and that their publication resulted in damage." West v. Thomson Newspapers, 872 P.2d 999, 1007–08 (Utah 1994) (footnotes omitted).

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[5] It is doubtful whether this statement was made within the one-year limitations period for a false light claim.

In his defamation claim against Mr. Moon, Mr. Greer realleges the facts from his false light claim. (Compl. ¶ 174, ECF No. 3.) He also claims that Mr. Moon has gone on YouTube shows to make false statements about him. For the same reasons that Mr. Moon's statement from August 20, 2020, did not put Mr. Greer in a false light, it was not defamatory. And again, Mr. Greer has not specifically alleged that Mr. Moon said anything defamatory on YouTube. His conclusory allegations about Mr. Moon's presence on YouTube shows cannot support a claim for defamation. There are simply not enough facts for the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." Burnett, 706 F.3d at 1235. For this reason, the court DISMISSES Mr. Greer's fourth cause of action against Mr. Moon with prejudice.

C. Defamation by Implication

Under Utah law, defamation and defamation by implication are "more or less different sides of the same coin." Hogan v. Winder, 762 F.3d 1096, 1105 (10th Cir. 2014). Essentially, "it is the implication arising from the statement and the context in which it was made, not the statement itself" that is defamatory. West, 872 P.2d at 1011. To prevail here, Mr. Greer must thus show that the "gist of [Mr. Moon's] statement, rather than its literal meaning[,] is 'false, defamatory, and not subject to any privilege.'" Hogan, 762 F.3d at 1105 (quoting West, 872 P.2d at 1007).

In his defamation by implication claim against Mr. Moon, Mr. Greer realleges the facts from his defamation claim, which reiterate those from his false light claim. (Compl. ¶ 186, ECF No. 3.) And like for the defamation claim, there are not enough facts here for the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." Burnett, 706 F.3d at 1235. Mr. Greer has not alleged that Mr. Moon personally made any statements that implied something defamatory. Alleging that Mr. Moon went on a YouTube show to say false things about him is legally insufficient. For this reason, the court DISMISSES Mr. Greer's fifth cause of action against Mr. Moon with prejudice.

V. Leave to Amend

After the Defendants filed their motion to dismiss, Mr. Greer filed a motion for leave to file a supplemental brief (ECF No. 31). Before the court ruled on this motion, Mr. Greer filed a second motion for leave to file a supplemental memorandum brief (ECF No. 35.) Generally, "the standard used by courts in deciding to grant or deny leave to supplement is the same standard used in deciding whether to grant or deny leave to amend." Fowler v. Hodge, 94 F. App'x 710, 714 (10th Cir. 2004). Leave to amend should be given "freely" and "when justice so requires." Fed. R. Civ. P. 15(a)(2). The court has "wide discretion to recognize a motion for leave to amend in the interest of a just, fair or early resolution of litigation." Bylin v. Billings, 568 F.3d 1224, 1229 (10th Cir. 2009) (quoting Calderon v. Kan.

Dep't of Soc. & Rehab. Servs., 181 F.3d 1180, 1187 (10th Cir. 1999)). "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." Id. (quoting Frank v. U.S. W., Inc., 3 F.3d 1357, 1365 (10th Cir. 1993)). A proposed amendment is futile if it "would be subject to dismissal for any reason, including that the amendment would not survive a motion for summary judgment or a motion to dismiss." Midcities Metro. Dist. No. 1 v. U.S. Bank Nat'l Ass'n, 44 F. Supp. 3d 1062, 1068 (D. Colo. 2014) (citing Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1239 (10th Cir. 2001).

Here, Mr. Greer's first proposed "supplemental brief in support of [his] motion for preliminary injunction and [his] complaint" is entirely futile. In his own words, Mr. Greer is "not trying to supplement his complaint, but rather file a memorandum brief." (Pl.'s Reply in Supp. at 4, ECF No. 34.) The "memorandum brief" contains no new facts in support of his causes of action, nor does it seek to supplement the legal arguments in his complaint. Instead, it contains irrelevant facts, like allegations of a suicide allegedly connected to Kiwi Farms. Additionally, the "memorandum brief" is replete with bad-faith accusations lodged against the Defendants' attorney, Mr. Skordas. This brief is wholly improper. It does nothing to shore up Mr. Greer's case, nor does it give the court pause about granting the Defendants' motion to dismiss.

Similarly, his second memorandum brief only introduces an anonymous email Mr. Greer received from someone claiming to have inside information about his lawsuit. Not only was the email not sent by Mr. Moon or Kiwi Farms, but it also has no bearing on any of his causes of action against the Defendants. For those reasons, the court DENIES Mr. Greer's motion for leave to file a supplemental brief (ECF No. 31) and DENIES his motion for leave to file a second supplemental memorandum brief (ECF No. 35).

VI. Motion for Preliminary Injunction

Before the Defendants filed their motion to dismiss, Mr. Greer filed a motion for a preliminary injunction (ECF No. 7). Because Mr. Greer has failed to state any claims upon which relief can be granted, there is no need to address his request for a preliminary injunction. Mr. Greer's motion for a preliminary injunction (ECF No. 7) is therefore DENIED as moot.

CONCLUSION

The court sympathizes with Mr. Greer's plight. Based on his complaint, it sounds like people on Kiwi Farms have said vile things about him and made his life miserable. However, Section 230 protects defendants like Kiwi Farms and Mr. Moon from the conduct of their users, and Mr. Greer has not sufficiently connected Mr. Moon's own words and actions with any valid causes of action. For the foregoing reasons, the court DENIES Mr. Greer's motion for leave to file a

supplemental brief (ECF No. 31), DENIES Mr. Greer's motion for leave to file a second supplemental memorandum brief (ECF No. 35), and GRANTS the Defendants' motion to dismiss (ECF No. 20). Mr. Greer's motion for a preliminary injunction (ECF No. 7) is DENIED as moot.

DATED this 21st day of September, 2021.

BY THE COURT:

/s/ Tena Campbell
TENA CAMPBELL
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RUSSELL G. GREER, Plaintiff - Appellant, v. JOSHUA MOON, an individual, et al., Defendants - Appellees.	No. 21-4128 (D.C. No. 2:20-CV-00647-TC) (D. Utah)

ORDER

(Filed Dec. 4, 2023)

Before **BACHARACH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

Appellees' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Christopher M. Wolpert
CHRISTOPHER M. WOLPERT,
Clerk

Russell Greer
PO BOX 46602
LAS VEGAS, NV 89114
801-895-3501
russellgreer30business@gmail.com
Pro Se Litigant

IN THE UNITED STATES DISTRICT COURT DISTRICT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RUSSELL G. GREER, Plaintiff v. **JOSHUA MOON,** publisher of the website Kiwi Farms, **and KIWI FARMS**, a website Defendants	**NOTICE OF APPEAL TO THE 10th CIRCUIT COURT OF APPEALS** (Filed Oct. 26, 2021) Case No.: 2:20-cv-00647 Judge Tena Campbell Magistrate Judge Jared C. Bennett

Notice is hereby given pursuant to Fed. R. App. P. 3 that Plaintiff respectfully appeals to the United States Court of Appeals for the Tenth Circuit the District Court's 09-21-2021 final judgement, Dkt. 38, and order rejecting motion to alter, Dkt. 44, insofar as they grant the motion to dismiss filed by Defendant Kiwi Farms and Joshua Moon, Dkt. 20, and rejecting Plaintiff's motion to alter, Dkt 40 and plaintiff's motion to file amended complaint, Dkt 41.

The statutory basis for this appeal is 28 U.S.C. § 1291.

Respectfully

DATED: October 26th, 2021

Respectfully submitted

By:

Russell Greer
Pro Se Litigant
/rgreer

CERTIFICATE OF SERVICE

An electronic copy of the Notice of Appeal has been sent to the following attorneys, Greg Skordas, via the court electronic filing system.

Gregory G. Skordas (#3865)
Gabriela Mena (#17087)
Michelle Phelps (#17096)
SKORDAS & CASTON, LLC
124 South 400 East, Suite 220
Salt Lake City, UT 84111
Telephone: (801) 531-7444
Facsimile: (801) 665-0128
Attorneys for Defendant
gskordas@schhlaw.com
gmena@schhlaw.com
mphelps@schhlaw.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RUSSELL G. GREER, Plaintiff, v. JOSHUA MOON, an individual, and KIWI FARMS, a website. Defendant.	**12(b)(6) MOTION TO DISMISS ALL CLAIMS** Case No. 2:20-CV-00647 Judge Tena Campbell (Filed Apr. 9, 2021)

Defendants, Joshua Moon and Kiwi Farms, by and through their counsel of record, Gregory G. Skordas, hereby move this Court to dismiss all the claims against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants base this motion on the following:

RELEVANT FACTS

1. Joshua Moon is the owner of Kiwi Farms.
2. Kiwi Farms is a website composed of various forums where people across the world can create an account and post their opinions on various topics.
3. Some of Kiwi Farms' account holders have entered into discussions about Plaintiff.
4. Kiwi Farms has never instructed any account holder to personally contact Plaintiff, in fact Kiwi Farms has expressly discouraged any account holder from doing so.
5. Kiwi Farms did not induce or instruct any of the account holders to display any portion of Plaintiff's published books or music.
6. Plaintiff has known about his image and conduct being discussed on Kiwi Farms since late 2016 or early 2017.

ARGUMENT

To grant a 12(b)(6) motion the defendant must show that the Plaintiff has "fail[ed] to state a claim upon which relief can be granted." Fed. R. Civ. Pro. 12(b)(6). When determining whether to grant the motion "the Court presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Beauchaine v. Winder*, 2009 U.S. Dist. LEXIS 86981, 8 (D. Utah 2009) (quoting *Hall v. Bellmon*, 935 F.2d 1106, 1109) (quotation marks

omitted). When the Plaintiff is a pro se litigant "the Court must construe the pleadings liberally and hold them to a less stringent standard." *Id*. However, this less stringent standard "does not relieve [Plaintiff] of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id* (quoting *Hall v. Bellmon*, 1109). These facts "must be enough to raise a right to relief above the speculative level." *Id* at 9 (quoting *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008)). "The court's function on a Rule 12(b)(6) motion is . . . to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Hatfield v. Cottages on 78th Cmty. Ass'n*, 2021 U.S. Dist. LEXIS 39345, *9 (quotation marks omitted).

I. PLAINTIFF'S DEFAMATION AND FALSE LIGHT CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

A. Defamation and False Light claims have a one-year statute of limitations

Under Utah Code, the statutes of limitations for defamation claims is one-year. UTAH CODE ANN. §78B-2-302(4). "The statute of limitations . . . begins to run on the date the statement is published and the publication is known or reasonably discoverable." *Diamond Ranch Acad., Inc. v. Filer*, 2016 U.S. Dist. LEXIS 19210, *22 (D. Utah). Statements posted on the Internet are considered an aggregate publication. *Id*. "In Utah, as a matter of law, a statement in an aggregate publication is known or reasonably discoverable when it is initially

published and widely disseminated to the public." *Id* at *23. In an aggregate publication, the court applies the "single publication rule." *Id*. "Under the single publication rule, for any statement made through a mass publication . . . a plaintiff has a single cause of action." *Id*

In his complaint, Plaintiff admits he knew of the alleged defamatory language on Kiwi Farms, as early as late 2016. By the summer of 2017, Plaintiff had been told by others of the alleged defamatory language on Kiwi Farms. Plaintiff's complaint was received by the court on September 16, 2020 and filed on September 24, 2020. Therefore, any alleged defamatory statements or alleged false light statements made before September 24, 2019 are barred from the court's consideration.

Plaintiff tries to skirt the statute of limitations by asserting he is only bringing in alleged defamatory and false light statements that were brought in 2020. But the only statement he specifically lists under his Defamation claim is a statement found on goodreads by a Richard Springer. Plaintiff includes the review as an exhibit but fails to include the date of the review. This review was published on goodreads on March 3, 2019, more than six (6) months before the September 24, 2019 deadline. https://www.goodreads.com/book/show/36536339-why-i-sued-taylor-swift. Not only is this statement barred under the statute of limitations, but this statement also has nothing to do with Defendants or their online forums.

Because Plaintiff's defamation and false light claims are barred by the statute of limitations, Plaintiff has failed to state a claim upon which relief can be granted and his claims should be dismissed.

II. DEFENDANTS QUALIFY FOR IMMUNITY UNDER THE COMMUNICATIONS DECENCY ACT

"In order to qualify for immunity under the CDA, a defendant must show that 1) it is an interactive computer service; 2) its actions as a publisher or speaker form the basis for liability; and 3) another information content provider provided the information that forms the basis for liability." *Seaver v. Estate of Cazes*, 2019 U.S. Dist. LEXIS 85056 (D. Utah) (quotation marks omitted). An interactive computer service is defined as "any information service . . . that . . . enables computer access by multiple users to a computer server." 47 U.S.C. §230(f)(2).

Kiwi Farms is an interactive computer service in that it allows access of multiple users to post and interact on a computer server. Plaintiff asserts that Defendants have published defamatory and false light statements about Plaintiff on his website yet fails to provide any specific defamatory and false light statements that Defendants themselves published. All of the alleged defamatory and false light statements that Plaintiff specifically mentions in his complaint were clearly provided by another information content provider, or user of Kiwi Farms.

Because Kiwi Farms qualifies for immunity under the CDA, the court cannot grant Plaintiff any relief under his defamation or false light claims. Therefore, Plaintiff's claims should be dismissed.

III. DEFENDANTS DID NOT INTENTIONALLY INDUCE OR ENCOURAGE DIRECT INFRINGEMENT OF PLAINTIFF'S WORK

To be "liable for contributory copyright infringement . . . the defendant" must have "cause[d] or materially contribute[d] to another's infringing activities and kn[ew] of the infringement." *Martin v. SGT, Inc.*, 2020 U.S. Dist. LEXIS 71047, *27 (D. Utah). In other words, "one infringes contributorily by intentionally inducing or encouraging direct infringement." *Id*.

In *Martin*, the court found that the "contributory infringement claim fail[ed] because the [Plaintiff did] not allege [Defendant] intended to induce or encourage . . . infringement at the time of the transaction." *Id* at *28.

In our case, Plaintiff has not alleged Defendants intended to induce or encourage infringement at the time of the transaction. Plaintiff has not alleged any facts that support an inference that Defendants induced or encouraged any users of Kiwi Farms to infringe on Plaintiff's copyright material before the material was posted online.

Because Plaintiff has failed to show Defendants intended to induce or encourage copyright infringement

at the time Plaintiff's book and songs were published on Kiwi Farms, Plaintiff has failed to state a prima facie case for contributory copyright infringement. Therefore, Plaintiff has failed to state a claim upon which relief can be granted and his contributory copyright infringement claim should be dismissed.

IV. UTAH CODE §76-9-201 DOES NOT AUTHORIZE A CIVIL CAUSE OF ACTION

In his complaint, Plaintiff asserts that Utah Code §76-9-201 "allows" for a civil cause of action. This a clear misstatement of Utah law. In fact, "[t]here is no express language in the statute authorizing civil claims" the statute merely "creates an implied right to sue." *Nunes v. Rushton*, 299 F.Supp.3d 1216, 1237 (D. Utah 2018). The courts have declared that "[t]he statutory language . . . in [§76-9-201] . . . fails to meet the high bar for creating an implied cause of action. . . . The plain language of the statute confirms only that a criminal prosecution does not prevent the victim from bringing an existing civil claim." *Id* at 1237-1238. In fact "Utah Code §76-9-201 does not authorize a private cause of action . . . a claim for electronic communication harassment under this statute fails as a matter of law." *Id* at 1238.

Therefore, Plaintiff's claim for electronic communications harassment fails as a matter of law and this claim should be dismissed.

V. DEFENDANTS DID NOT PUBLICIZE A MATTER THAT CREATED A FALSE IMPRESSION OF PLAINTIFF

"A prima facie case for false light requires a plaintiff to demonstrate that the defendant (1) publicized a matter concerning the plaintiff that placed the plaintiff before the public in a false light, (2) the false light . . . would be highly offensive to a reasonable person, and (3) the defendant knew or recklessly disregarded the falsity of the publicized matter." *Porter v. Staples the Office Superstore, LLC*, 2021 U.S. Dist. LEXIS 33497, *16-17. "[T]he 'publicity' requirement . . . means that the matter is made public, by communicating it to the public at large." *Id* at * 17.

Plaintiff seems to allege that the statements on Kiwi Farms stating Plaintiff did not want to receive a mental health evaluation and that he had victims cast Plaintiff in a false light.

A. False Light Based on Refusal to Receive Mental Health Evaluation

Plaintiff alleges that Defendant posted on Kiwi Farms that Plaintiff was refusing to enter a plea deal because Plaintiff did not want to receive a mental health evaluation. Kiwi Farms, while it is a public website, has a limited readership. Furthermore, anything that is posted on Kiwi Farms must be searched for through myriads of links. As Plaintiff himself admits, he has been unable to find the alleged false light statements on the site. Once a statement is posted on Kiwi

Farms it can quickly become buried under comments and responses. Posting any sort of statement on Kiwi Farms should not be considered communicating it to the public at large. Therefore, Plaintiff's claim fails under the first prong of a false light claim.

Plaintiff does not show how the knowledge that someone not wanting a mental health evaluation would be highly offensive to a reasonable person. There are many non-offensive reasons why someone would not want a mental health evaluation. Someone may not want to take the time to be evaluated or they may not have the money to pay for such an evaluation. Indeed, it is hard to think of a way this statement would be highly offensive to a reasonable person. Because not wanting a mental health evaluation is not highly offensive, Plaintiff's claim fails the second prong of a false light claim.

Plaintiff also contends that because users of Kiwi Farms did not see the email the prosecutor sent Plaintiff's defense attorney, they did not know if there were other provisions in the plea deal that may have caused Plaintiff not to take it. Therefore, Plaintiff's claim that Defendants knew or recklessly disregarded the truth fails. As Plaintiff himself states, the Defendants had not seen the email and therefore did not know. Defendants did know that the prosecutor was now asking for a mental health evaluation as part of the plea deal. Therefore, they were not acting with reckless disregard of the truth. Therefore, Plaintiff's claim fails the third prong of a false light claim.

Because Plaintiff fails all three prongs of a prima facie case for false light, Plaintiff fails to state a claim upon which relief can be granted. Therefore, the court should grant Defendants' motion to dismiss on the false light claim.

A. False Light Based on Using the Term Victims

As shown above, posting statements on Kiwi Farms should not be construed as publicizing to the public at large. Furthermore, Plaintiff does not allege that Defendants themselves have publicized that Plaintiff has "victims." Plaintiff merely states the word is mentioned on Kiwi Farms in connection with his court case. Therefore, Plaintiff fails the first prong of a prima facie false light claim with the "victims" statement.

Plaintiff again does not show how the word "victims" is highly offensive to the reasonable person. Plaintiff admits he has one victim from his court case and admits he has made unsolicited contact with celebrities, including suing Taylor Swift. Plaintiff never states clearly how using the term "victims" has offended him. Therefore, Plaintiff again fails the second prong for a prima facie false light claim.

Plaintiff admits in his complaint that users of Kiwi Farms find his way of flirting and conversing with women victimizes them. Plaintiff seems to believe that because some men are even worse than him in how they treat women, users of Kiwi Farms should give him a pass. Plaintiff believes that by putting the word

"victims" on his page he is portrayed as having many victims. But victims means only, more than one victim. Plaintiff himself asserts in his complaint that Defendants and other users of Kiwi Farms believe he has more than one victim. Defendants did not know or recklessly disregard the fact that Plaintiff may not have more than one victim. Users of Kiwi Farms posted their opinion that Plaintiff had more than one victim. Therefore, Plaintiff again fails the third prong of a prima face case for false light.

Because Plaintiff fails all three prongs for a prima facie case of false light regarding the term victims, Plaintiff fails to state a claim upon which relief can be granted. Therefore, the court should grant Defendants motion to dismiss Plaintiff's false light claim.

VI. DEFENDANTS HAVE NOT PUBLISHED FALSE STATEMENTS OF FACT ABOUT PLAINTIFF

For a claim of Defamation, the "plaintiff must show that the defendant published statements" about the plaintiff that "were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault, and that their publication resulted in damage." *Hattfield*, 2021 U.S. Dist. LEXIS 39345, *24. To be defamatory, the statement must be more than a mere opinion. *Id* at 24.

In our case, Kiwi Farms is a forum were multiple users get together and discuss their opinions on various matters. The statements regarding Plaintiff on

Kiwi Farms are mere opinions of Plaintiff's conduct and the course of his legal matters. Therefore, the statements do not fall within the definition of defamatory speech. The only statements Defendants have made regarding Plaintiff are Defendants' opinions. It was Defendants' opinion that Plaintiff refused the plea deal because of the mental health evaluation and it was Defendants' opinion Plaintiff has had more than one victim.

VII. PLAINTIFF HAS NOT ALLEGED SUFFICIENT FACTS TO SHOW DEFENDANTS INTENDED ANY DEFAMATORY IMPLICATIONS

To have a prima facie case for Defamation by Implication the plaintiff must "allege facts sufficient to show that Defendants intended the implications." *Hogan v. Winder*, 2012 U.S. Dist. LEXIS 137399, *27. Plaintiff must also show "the statements are susceptible to a defamatory interpretation." *Id*.

In his complaint, Plaintiff asserts no facts that show Defendants intended any defamatory implications nor does Plaintiff explain why the statements are susceptible to a defamatory interpretation.

Therefore, Plaintiff fails to assert a prima facie claim for Defamation by Implication and the court should grant Defendants' motion to dismiss this claim.

CONCLUSION

Because Plaintiffs' defamation and false light claims are barred by the statute of limitations, Defendants qualify for immunity under the CDA, there is no civil action for electronic communications harassment, and Plaintiff fails to state a prima facie case for his claims, the court should grant Defendants' motion and Plaintiff's claims should be dismissed with prejudice.

DATED this the 9th day of April 2021.

SKORDAS & CASTON, LLC

/s/ Gregory G. Skordas
Gregory G. Skordas

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using CM/ECF system. I also served a true and correct copy of the foregoing to the following via USPS mail and email:

Russell Greer
7901 South 3200 West
P.O. Box 152
West Jordan, UT 84088
russellgreer30business@gmail.com

/s/ Michelle Phelps
Michelle Phelps
Attorney for Defendants

Russell Greer
7901 South 3200 West
P.O. Box 152
West Jordan, Utah 84088
801-895-3501
russmark@gmail.com
Pro Se Litigant

IN THE UNITED STATES DISTRICT COURT DISTRICT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RUSSELL G. GREER, Plaintiff v. **JOSHUA MOON**, publisher of the website Kiwi Farms, **and KIWI FARMS**, a website Defendants	**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR CONTRIBUTORY COPYRIGHT INFRINGEMENT, ELECTRONIC COMMUNICATIONS HARASSMENT and DEFAMATION** (Filed Sep. 24, 2020) Case No.: Case: 2:20–cv–00647 Assigned To : Campbell, Tena Assign. Date : 9/16/2020 Description: Greer v. Moon et al Judge

Plaintiff Russell G. Greer comes forward now with his Complaint against Defendants named above and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking to put an immediate stop to, and to obtain redress for, Defendants' blatant and purposeful contributory infringement of Plaintiff's copyrights, which are a book entitled, "*Why I Sued Taylor Swift and How I Became Falsely Known as Frivolous, Litigious and Crazy*" and for songs Greer also copyrighted, "*I Don't Get You, Taylor Swift*" and other songs. All works are copyrighted with the United States Copyright Office.

2. Traditionally, websites have not been liable for third party conduct, in accordance with the *Communications Decency Act* and Safe Harbor Digital Laws. However, websites are NOT immune from federal copyright infringement claims when they know about such claims, but refuse to remove the copyrighted material, as has been the case here.

3. Additionally, separate from the copyright claims, Defendant's website, Kiwi Farms, is a hub for harassment, stalking and doxing. The site's lies and harassment have ruined Greer's reputation and have caused him and those close to him to fear for their lives. Mr. Moon has encouraged this by allowing for said conduct to occur. He has even participated in the conduct by engaging in commentary and encouraging the infringing activity.

4. While typically upheld by courts, the Communications Decency Act is an outdated law and wasn't intended to protect sites such as Defendant's. Thus, the law should be found that it does not give immunity to Defendant in this case for the non-copyright claims.

5. Defendants' conduct is causing, and unless immediately enjoined, will continue to cause enormous and irreparable harm to Plaintiff.

6. Plaintiff requests statutory damages for willful copyright infringement, as found in *17 U.S. 504(C)(1)*, in the amount of $150,000, for each copyright infringed upon. Further, Plaintiff requests damages for the harassment and defamation he has had to endure at the hands of Defendant's site.

JURISDICTION AND VENUE

7. This is a civil action seeking damages and injunctive relief for copyright infringement under the *Copyright Act* of the United States, *17 U.S.C. § 101, et seq.*

8. This Court has subject matter jurisdiction over this copyright infringement action pursuant to *28 U.S.C. §§ 1331 and 1338(a).*

9. As for the harassment claims, this Court has jurisdiction because there is complete diversity between both parties. *28 U.S.C. § 1332*.

10. Venue is proper in this district pursuant to *28 U.S.C. §§ 1391(b)* and *(c)*, *and/or § 1400(a)*.

PERSONAL JURISDICTION

11. This Court has personal jurisdiction over Defendants, as Defendant has purposely availed himself into this Court's jurisdiction, as he has caused, directly and indirectly, for his users to infringe on Greer's intellectual property; to harass Plaintiff by running a site that mocks and harasses people he deems to be weird; participating in the commentary on Greer; posting Greer's letters asking Defendant to stop; talking about Greer on random YouTube shows, which draws attention and contact to Greer. EXHIBIT A.

PARTIES

12. Plaintiff Russell G. Greer resides in the State of Utah. Plaintiff's life and livelihood have been severely damaged by Defendants and the users on the site that Defendant manages. Greer also has a facial disability and that is in-part why Moon's site harasses Greer.

13. Defendant Joshua Moon resides in Florida. He manages Kiwi Farms, a site founded on exploiting people for amusement purposes. Defendant Joshua Moon is the owner of a website/forum. Kiwi Farms was built to exploit and showcase those Moon and his users have deemed to be eccentric and weird, terming them "Lolcows". Moon frequently interacts with the site, using the username "Null". EXHIBIT B

14. Classifying Moon's site as a "forum" is being extremely kind. His users don't debate and discuss like a traditional forum does. His site goes far beyond that:

they stalk and harass. Moon and his site have caused three people to commit suicide. *Woman who set self on fire in Portland park remembered as 'brilliant and tortured' artist*. Oregon Live. (2018) (https://www.oregonlive.com/portland/2018/06/woman_who_set_self_on_fire_in.html) (article says, "Sagal, a transgender woman, ***became the target of hate mob Kiwi Farms, an online group New Yorker magazine described as "the web's biggest community of stalkers"*** that "specializes in harassing people they perceive as being mentally ill or sexually deviant in some way. ").

15. Defendant Kiwi Farms is a site Defendant Moons runs. In his very own words, Moon has described his site as having nothing to do with New Zealand (the land of the Kiwis), saying, "Our name is a pointed jab at some of the mushmouthed autistic people we make fun of." Found on a thread entitled, "*A Truly American Response to Censorship*." Ar15.com (March 17th, 2019). (https://www.ar15.com/forums/General/A-truly-American-response-to-censorship/5-2203190/).

GENERAL ALLEGATIONS

16. Greer caught Kiwi Farms attention after he was on the news for a lawsuit Greer had filed against pop star Taylor Swift in late 2016.

17. Shortly after the event, Greer Googled himself and found that he had been put onto Kiwi Farms. At the time, Greer thought it was just a random, forum site and ignored said site.

18. It wasn't until Greer began receiving harassing messages through phone, email and social media that he realized how difficult that site was becoming, with links of the site being sent to him. The users on Kiwi Farms began to put Greer on other troll sites, like Encyclopedia Dramatica (which is a libelous and bizarre form of Wikipedia) and twisted Reddit threads. This is a pattern that Kiwi Farms does to all of its victims, which is well-documented.

19. On February of 2017, Greer's employer, a law firm, pulled him into an office and explained that they were being inundated with emails that were saying how "horrible" Greer was. One message falsely claimed Greer was using a work phone to look at pornography. Greer even received links to websites on his work email, which Greer found surprising because he had not disclosed his work email address. This all is linked back to Kiwi Farms.

20. Videos began to pop up on YouTube, warning people that if they didn't date Russell Greer, he would sue you, an obvious reference to the twisted news stories. Greer was able to remove the video, but other videos of him began to pop up.

21. Fake profiles began to pop up on social media of Greer, using his pictures with derogatory names such as "Moebious Shit Lips" and "Rat Face". On Kiwi Farms, there are users who use Greer's pictures for their user profiles, with some of the usernames being "Ugly Troll 4 U", "ZombieFace" and "Russtard", which is a combination of Plaintiff's name and the word

"retard". Other profiles have included defamatory names, such as "Rapey Russ" and have included photos of Plaintiff with his hair photoshopped off, oddly making him look bald, when in fact, Plaintiff has a full set of hair. EXHIBIT C.

22. Having his hair photoshopped isn't defamatory or particularly concerning to Greer, but it must be pointed out to show the bizarreness of Moon's users.

23. Even walking around downtown in Greer's city of Salt Lake, people would exclaim that Greer was the guy who sued Taylor Swift. Some people caused scenes in stores or screamed at him from cars.

24. Because of the harassment, Greer has had to change email addresses, phone numbers and delete social media profiles. EXHIBIT D.

25. Realizing that things were getting out of hand, Greer decided that he was going to write a book about the event to explain his side of things and to hopefully clear up the slander surrounding him. His goal was to get a publisher to pick up the book.

26. No book publishers or agents were interested in his book, so Greer decided to self-publish the book on Amazon and he would do his own marketing. Greer copyrighted the book with the Copyright Office, as found in *17 USC 408-410*. The book has the registration number of TX0008469519. He received a Certificate of Registration. EXHIBIT D. A copyright application was filed before the infringement began.

27. The book was entitled, "*Why I Sued Taylor Swift and How I Became Falsely Known as Frivolous, Litigious and Crazy*." Numbering at 175 pages, Greer invested nearly a year writing the book and even hired an animator to draw a comic intro. He wanted his story to be as appealing as possible. EXHIBIT E.

28. In late October of 2017, Greer was fired from his job and evicted because of the trolls on Kiwi Farms, with his landlord expressing fear that the trolls would ruin the landlord's business, which was a gym facility. The landlord also didn't understand the Swift situation. The trolls had already sent pizza delivery guys to the landlord's house.[1]

29. Kiwi Farms has doxxed Greer's addresses and contact information and displayed it on that site for people to disparage him. The users on that site have openly called for harassment against Greer. Other users have asked for people to put everything about Greer onto that site, so that they can trash it, copyrighted or not. EXHIBIT F.

30. As a consequence of those postings of encouraging harassment, Greer has received packages through the mail, which have contained very scary and frightening letters. Some contained powder. EXHIBIT G

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[1] The users on Moon's site have subscribed Greer to magazines he has not subscribed to. They have spammed emails of his with junk subscriptions. He's had to keep a tight lid on his social media because they harass him.

31. The users on Kiwi Farms have also harassed Greer's family.

32. In the summer of 2017, Greer received a phone call from a separated relative who informed Greer that she no longer wanted to communicate with Greer because of all of the trash on Kiwi Farms. From Plaintiff's understanding, the family member was upset because a person had pretended to be Greer and had posted information about this family member on various forums. However, the family member thought (and still thinks) it was Greer doing the harassing, although Greer vehemently denies ever doing such a thing. Kiwi Farms has caused family damage to Greer.

33. Greer has struggled to find and keep jobs because of Kiwi Farms. Many employers and potential employers have came across the site and have taken the smear and the twisted narratives as fact and have thus fired and denied work to Greer. Skimming through the site himself, Greer has found many half-truths and lies about himself. Other people have looked on that website and claim that how Kiwi Farms portray him is nothing to how Greer is in person.

34. In addition to misunderstandings involving Swift, Greer has been engaged in other causes, like trying to legalize prostitution, which Kiwi Farms has dubbed Greer a "sex pest" because of it. They have even harassed businesses that Greer has frequented, warning the businesses about Greer and have caused him to be banned from a few places. EXHIBIT H

35. The users on Kiwi Farms have weaponized that site against Greer, warning people who are complete strangers to those users, to stay far away from Greer and to Google him. One of Moon's users posed as a reporter and wanted to interview Greer for Medium. The guy had bogus credentials and he ended up writing the article about Greer after Greer refused and his article got quite a bit of traction and portrayed Greer in a false light. *The Fan Who Sued Taylor Swift*, Medium.com. Other users have pretended to be real people (like entertainment agents and reporters and sympathetic fans) to dupe Greer.

36. The harassment is linked to Kiwi Farms because Greer's social media handle is listed in his featured section on the site. Also, the trolls screenshot everything Greer does and put it on the site, which encourages the users to harass Greer. And because harassers have linked Kiwi Farms to the harassment. EXHIBIT I. **As a a point to clarify:** Defendant Moon *has*, per an editorialized disclaimer dated 01/2018, warned his users not to contact Greer, however, it seems Moon has either forgotten about the editorialization or it's a decorative disclaimer and it's not enforced because as demonstrated below, people still harass Greer and Moon has contributed to the harassment. Another victim of Kiwi Farms puts it more poignantly: "The website is filled with admonitions to not contact people in real life, but these have a tongue-in-cheek feel, as if the real message is, "If you do this, you're a deviant. Please, oh please, be a deviant." Spend much time reading through the Kiwi forums and you'll quickly see that

the "rule" is not enforced." *Hunting for Trolls on an Anonymous Forum*. Medium. (2018). (https://medium.com/s/darkish-web/hunting-for-trolls-on-an-anonymous-forum-7b721 d3bd1 99).

COPYRIGHT INFRINGEMENT OF GREER'S BOOK

37. Greer filed an application for copyright on 10/22/2017, before the infringement occurred, and the certificate lists that day as the effective date of registration. EXHIBIT J.

38. In November of 2017, Greer published his book. Unsurprisingly, the Kiwi Farms users gave his book bad reviews on various fronts. On Good Reads, a site where readers can review books, the users on Kiwi Farms have left very mean and hate filled messages about Greer and his book. It currently holds a 1.5 star rating out of 5 stars. EXHIBIT K.

39. Greer knows that the reviews are from Kiwi Farms because the comments have included links to Kiwi Farms and other obscure sites, inviting people to go read the book illegally. EXHIBIT L.

40. In January of 2018, Greer was informed that his book had been illegally put onto Kiwi Farms.

41. The following link shows where the book is at on Kiwi Farms, with a heading entitled, "*Rusty's Tale.*" (https://kiwifarms.net/threads/russell-greer-theofficialinstaofrussellgreer.30488/). The book's location has

since been moved to a different page and is also accessible on the front page about Greer. Exhibit M.

42. Below the title, "*Rusty's Tale*", is a Google Drive link to Greer's book. (https://drive.google.com/drive/folders/0B2VdH79IRT1RN1pvdnJ1cTk2cUU). Somebody created a copy of Greer's book and put it in a Google Drive file that is accessible on Kiwi Farms.

43. Infuriated and hurt, Greer sent Mr. Moon requests to have his book removed, but Moon refused. The notices weren't in the form of a DMCA Takedown notice. Rather, they were emails wishing to avoid litigation. Litigation hadn't really crossed Greer's mind, based mostly on Moon's website FAQ, which states that Moon is an "insane person" with "no assets", and so it made no sense to try suing him and so only email requests were made, not legal requests, like a DMCA notice. EXHIBIT N.

44. In turn, Moon published Plaintiff's requests onto Kiwi Farms and explained that there was so "much wrong" with Greer's request for it to even be considered. That is harassment and contributing to the harassment.

45. Greer has tried everything to get the site to stop harassing him, such as getting the police involved because of the site harassment, but the Salt Lake City police wouldn't pursue a case because they wouldn't allow Greer to file a complaint over email, although Officer Hernandez, an officer Greer spoke with, said to ask Moon once more to remove his stuff. The police only allowed phone complaints, which Greer was not

comfortable doing because of his disability and so a complaint was never filed. A year earlier, Greer had filed a police complaint against a specific user, but nothing ever resulted from that. It should be noted that other victims of Kiwi Farms have called the police because of the atrocious behavior coming from the site, so seeking the site harassment to stop is nothing peculiar.

46. Other users on Kiwi Farms have created unauthorized audio recordings of Greer's books and have put them on various sites. One infringer used the hashtag, "Spaz Face" as a direct, discriminatory insult against Greer. Kiwi Farms has links to these audio recordings. EXHIBIT O.

47. The copyright infringement hasn't been your "run-of-the-mill" infringement. They have put a copy of his book on the site for anybody to view and to save onto their devices, via the Google Drive link listed on the site and on the front page, and have thus purposely deprived Greer of making money and have deprived him of having the ability to try to clear his name with a book that was written for the express purpose of doing just that. This has been demonstrated with marketers refusing to market the book because it has bad reviews, not understanding that Kiwi Farms is behind the reviews. EXHIBIT P.

COPYRIGHT INFRINGEMENT OF GREER'S SONG

48. Seeing that his book had hit a snag because of the bad reviews, Greer decided to write a song because he felt he could bring awareness better with a song. He wanted to bring awareness to celebrity misrepresentation and cyber bullying. Of course, that is his opinion he has gathered after doing research and talking with people,

49. Investing his own money writing and producing the song with professionals, Greer finished the song in April of 2019. The song was entitled, "*I Don't Get You, Taylor Swift*" and is registered with the United States Copyright Office with the number SRu001366535. EXHIBIT Q. He filed an application for copyright on 4/12/2019, before the infringement occurred, and the certificate lists that day as the effective date of registration.

50. Greer paid CD Baby, a music distributor that publishes and distributes the music of independent artists, to publish his song and to place it onto major music platforms, like Spotify and Apple Music.

51. CD Baby also has an online store, where they sell the artists' music in the form of MP3 downloads. Greer was not happy with his song being on the store because he knew a troll would buy it and place it onto the website . . . and that's just what happened.

52. On April 15th, 2019, Greer was informed that his song had been put onto Kiwi Farms, a routine those

users have been diligent about, and an uncomfortable reality Greer has had to cope with.

53. Upon investigating, Greer was horrified to find that the MP3 of his song was indeed on Kiwi Farms. The link can be found here: https://kiwifarms.net/threads/russell-greertheofficialinstaofrussellgreer.30488/page-1448#post-4579377.

54.. The user who posted the song, "Moseph.Jartelli", wrote, "Enjoy this repetitive turd."

55. Greer's frequent harasser, "Russtard", remarked, "Holy Shit! It is. ***Upload it here so no one else accidentally gives Russell money.***" EXHIBIT R. This comment cements Greer's claims of the trolls seeking to ruin his life. Not only have they willfully infringed on Greer's copyright, they have openly conspired to steal Greer's works and deprive Greer of money. This is harassment.

56. With the truth finally out in the open of the users intent to harm Greer, Plaintiff decided to prepare for legal action by sending Mr. Moon a DMCA Takedown Notice.

57. The infringement of his song was harmful because his song wasn't on streaming services yet and he hadn't advertised the CD Baby store location, thus hundreds, if not thousands, of plays on Greer's song was being had and Greer wasn't being compensated for it.

58. Greer waited an entire month for his song to be out on streaming services.

59. Plaintiff then discovered that CD Baby didn't want to distribute the song, so Greer had his song removed from the CD Baby store. He ended up hiring another distributor to distribute the song onto different streaming services, which they did.

60. However, during that gap of time, from waiting for his song to be officially put online to it finally being put onto streaming services, Mr. Moon's users, with Moon's knowledge, have spread Greer's song across different sites and have even put the song onto a lyric site, where they brag about Greer "accidentally" publishing the song and then they derided it.

DIGITAL MILLENNIUM COPYRIGHT ACT

61. The Digital Millennium Copyright Act was signed into law in 1998 to shield websites from liability arising from copyright infringement claims, with the caveat being that websites follow and honor takedown requests from copyright holders. *THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 U.S. Copyright Office Summary.* (1998). Copyright.gov. (https://www.copyright.gov/legislation/dmca.pdf). Since Defendant manages a website, he is expected to honor all properly formed DMCA requests.

GREER'S DMCA NOTICE

62. *17 U.S. 512(C)* allows for a copyright holder to send notification of infringement to a designated agent of a service provider. Subsection 3 of the statute (*17*

USC 512(C)(3)) lists the elements of a proper DMCA Notice.

63. Greer turned to several sample DMCA Notices to make sure he was doing the format of the Notice correctly and then he drafted his Notice. Exhibit S.

64. On Defendant's website, Mr. Moon has a section about removing copyrighted material, which states: "We do not host well-known copyrighted content." Moon's site then wrongfully states, "What copyrighted content we do host is usually covered under Fair Use, but if you are the copyright holder of something, email legal@kiwifarms.net with the appropriate documents. I do not respond to emails without sufficient proof of a legal claim." (https://kiwifarms.net/help/removing-content/). Moon's copyright statement is wrong because all copyright, famous or non-famous, is protected by *17 U.S.C. 106*, with the copyright holder determining how he or she will distribute his works.

65. Upon reading that, Plaintiff sent his DMCA letter to the designated email address: legal@kiwifarms.net.

66. Greer had to send two versions of his DMCA Notice because he initially was unable to locate all of the infringing content because Defendants have over 1,000 threads on him, but his final DMCA Notice (included in Exhibit S) contained the exact links and locations of his copyrighted works, satisfying all of the elements of the federal statute.

67. Mr. Moon published Greer's DMCA request onto Moon's site, in the thread entitled, "Take that off the

God Damn Internet." EXHIBIT T. Along with publishing the DMCA request, Moon also published Greer's private contact information, and as a result, many of Moon's bizarre users began to harass Greer with messages sent to his email, including one with the email address titled, "Hitler Did Nothing Wrong". These users began telling Plaintiff that his song was horrible and that they had distributed the song elsewhere.

68. Mr. Moon then emailed Greer back and derided him for using a template for his DMCA request.

69. Even though the takedown notice was followed from a law website, it still followed the federal statute's guidelines for takedown notices: (i) a physical or electronic signature, (ii) Identification of the copyrighted work claimed to have been infringed, (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material, (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner and (vi) A statement that the information in the notification is accurate. *17 USC 512(C)(3)*. (https://www.law.cornell.edu/uscode/text/17/512)

70. Mr. Moon then went onto explain that he knew who Greer was (from his site) and that Moon was waiving Safe Harbor protections and would claim "Fair Use" and that he would not be removing Greer's copyrighted materials.

71. Greer replied that Moon evidently doesn't know what "fair use" is and Moon replied, "Try me," which inferred that Moon was daring Plaintiff to sue him..

72. Since that exchange, Mr. Moon's website has continued harassing Plaintiff and they have continued to exploit Greer's copyrighted material. They have inundated Greer's works with hate and have engaged in hate sprees to prevent anybody from buying Greer's song or book. For instance, when Greer was informed by his distributor that his song was available online, it had already received 1 star reviews and Greer had not even advertised its location, thus proving that Moon's site has notifications every time Greer's name pops up and they harass him at every chance they get. Greer believes they have Google Alerts turned on for him.

73. The DMCA letters were sent in 2019, but no action was taken against Moon because a lawyer advised that although Greer could prevail in a lawsuit, Moon probably had no assets and so Greer decided not to pursue action.

74. However, since that time, Moon's site has continuously harassed Greer and have misused his other copyrights, "Yo, Yovanna!" and "Julianne's Smile". Both copyrights were filed before their releases, but have not yet appeared on the Library of Congress site. Greer

has discovered that they have stolen other works of his and have put them on the site, namely a screenplay. Greer keeps posting and releasing things not intended for the bashing of Moon and his site, but with the hopes that Greer can break past the trolls. But the trolls have stifled all efforts of Greer trying to become musically successful. It is very scary and very annoying.

75. Because of the harassment and blatant violations of his copyrights, Greer brings forth this lawsuit within the three year statute of limitations. *17 U.S.C. §507(b)*

76. For the record, normal, productive people do not do what Moon's site does.

77. People who support Greer are frightened of being attacked by Moon's users and so they can't defend him. This is a noticeable pattern: other people who have been harassed by Moon's site have expressed the same fear. Many have lobbied for Kiwi Farms to be shut down. EXHIBIT U. Truthfully, Plaintiff has wanted to take his own life because of the damage Kiwi Farms has done to him. Additionally, the actions and words on that site constitute incitement, hate speech and fighting words, which has made Plaintiff want to physically track down Mr Moon to close down his site, but Plaintiff has refrained from doing so because despite the losses Kiwi Farms has inflicted on him, Greer still has much to lose if he were to do something stupid. Others have offered to hunt down Moon. That is how bad this site is. It has ruined many lives.

78. Admittedly, Greer is frightened with filing this Complaint, as he fears Moon will retaliate against him, but he hopes a judgement against Mr. Moon and his site will get Mr. Moon and his site to stop bothering Greer. Or even better yet, having Moon close down his site altogether. Greer is also petitioning this Court for a preliminary injunction, as he fears Moon's site will retaliate against him and his family for filing this Complaint.

FAIR USE

79. Before commencing this action, Greer considered and studied Moon's claims of fair use. As a cursory matter, Moon or Kiwi Farms do not have a prima facie claim for fair use.

80. Fair use is an affirmative defense found in *17 U.S.C. 107* and consists of four factors:

81. 1. The purpose and character of the use (including whether it is transformative, commercial, nonprofit, or educational).

82. 2. The nature of the copyrighted work.

83. 3. The amount and substantiality of the portion to be used.

84. 4. The effect upon the potential market for the copyrighted work.

85. All four factors must be weighed together to find fair use and is determined on a case by case basis.

Campbell, Aka Skyywalker, Et Al. v. Acuff-Rose Music, Inc., 510 U.S. at 578, 114 S. Ct at 1171 (1994).

86. Pertaining to the purpose and character of the use, although Mr. Moon may be allowing Greer's copyrighted works for criticism and commentary, and as far as Greer knows, non-profit use, Moon's users have stated openly that they seek to deny Greer of money. The first factor disfavors fair use.

87. Pertaining to the nature of the use, Greer's works are creative and for entertainment. Although written about true experiences, they were written in a creative manner. The second factor disfavors fair use.

88. Pertaining to the amount copied, Defendants are allowing the entirety of Greer's copyrighted materials to be infringed and copied from. The third factor disfavors fair use.

89. Lastly, pertaining to the effect on the market, the first factor can be tied in: Moon's users have openly stated that they seek to deprive Plaintiff of money and have been distributing the song to other sites. Moon's users have put his songs onto a lyric site and have added negative commentary about the song and about Greer, thus, dissuading anybody from listening to the song.

90. Defendants' claim of fair use do not survive, even at a prima facie glance.

THE COMMUNICATIONS DECENCY ACT SHOULD BE FOUND TO NOT PROTECT MOON'S SITE

91. In 1996, when Section 230 of the Communications Decency Act was enacted, which protects publishers of websites (Internet Service Providers or ISP) from third party conduct, hate sites and troll sites were not a thought in Congress's mind.

92. 24 years later, Congress is now mulling that hate sites, among other sites, need to lose their Section 230 protection because internet harassment is a growing problem. *Legal Shieldfor Websites Rattles Under Onslaught of Hate Speech.* The New York Times. (2019).

93. Sites of questionable character have already lost their Section 230 immunity, namely sites that host prostitution. *Trump Signs Bill Amid Momentum to Crack Down on Trafficking.* The New York Times. (2018). Animal crushing sites and sites that sell illegal drugs are also not protected under Section 230.

94. This Court should find that Section 230 immunity does not extend to hate/troll sites like Mr. Moon's for these two reasons: legislative intent and the mere fact that Moon is actively involved with his site.

LEGISLATIVE INTENT

95. As previously stated, Section 230 of the Communications Decency Act (henceforth referred to as the "CDA") was enacted in 1996 before the advent of the major sites we have today.

96. Courts have held that the CDA protects ISPs, which are blogs, forums and sites like Amazon and Facebook, from third party conduct. And rightfully so, because Facebook and Amazon were created for the sole purpose of selling items and having friends connect with each other.

97. And while harassment does happen on those sites by third parties, those sites do have options to report harassment and should not be held liable for the harassment because the sites were not designed to harass.

98. On the other hand, Kiwi Farms was designed to harass, which is even said in Moon's very own words: to make fun of people; to treat them less than human by referring to them as "Lolcows".

99. And while Mr. Moon has put up disclaimers for people to not contact Greer, they still do because Mr. Moon has allowed for Greer's social media to be displayed, which has caused his users to harass Greer because it's like an open door to contact Greer. Allowing that avails Moon to this jurisdiction. When Moon posted Greer's DMCA letters, some of Moon's users contacted Greer and harassed him.

100. Plaintiff receives about three harassing messages weekly in some form. Some intimidated Greer from filing this lawsuit, on August 27th, 2020, by claiming the lawyers for Moon would "ruin" Plaintiff and that "it's not too late to stop." EXHIBIT V. Greer also gets inundated with calls from unknown out of state numbers, which disrupts his phone. Other

messages are from bizarre, fake accounts, as shown in Exhibit V.

101. As explained in paragraph 67, Moon also partakes in the harassment by posting Greer's messages asking him to stop and engaging in the commentary. Moon patrols the forums, thus condoning the acts of his users. So it seems to be a bit of a paradox for Moon to urge civility, while condoning the harassment. The disclaimers that Moon posts are decorative. They are put up to seemingly save himself from liability, but he doesn't enforce the rule, as people still contact Greer; Moon allows Greer's social media to be displayed, which causes people to harass Greer; and Moon allows for Greer's intellectual property to be posted, which Greer feels the effects of. And lastly, Greer has posted openly on his social media that he wants the harassment to stop, but the trolls screenshot his pleas and post it onto Kiwi Farms and Moon would be aware of that.

102. In a way, Moon is implying that as long as one is civil in their harassment, it is OK. So despite his decorative disclaimers, Moon allows for the harassment to happen. If he truly didn't want people to harass or contact Greer, Moon would shut down his site, or at the very least, he would remove all links to Greer and not allow the screenshots on Greer to be posted onto the site, to prevent people from reaching out to Greer, because the users on Kiwi Farms will use "laughing" reaction buttons on Greer's social media, thus harassing him or send harassing messages. EXHIBIT W.

103. Legislative intent did not intend for sites, where users can dump everything about a person, even their intellectual property, and the site publisher is on it, to flourish with CDA immunity.

104. In fact, Section 230 contradicts itself. *47 U.S.C. 230b(5)* says that it is the policy of the United States to deter stalking and harassment by means of computer. That section is in contradiction of 230 (C) (1), which provides immunity to hate sites like Moon's.

105. For that very reason, legislative intent did not mean to protect Kiwi Farms.

MOON'S INVOLVEMENT

106. As stated above, Defendant is actively involved in the harassment by providing his own commentary, by allowing hateful comments to be made, by allowing Greer's intellectual property to be illegally used, by providing a hub for harassment. Moon has helped facilitate and condone the harassment and therefore, he should be liable for the acts of his users, especially since it would be a near impossible feat to track down his users.

107. Moon is aware of his CDA immunity and wears it like a badge of courage, boasting about his indestructibility and claims to not know of what goes on his site, when clear evidence shows that he monitors and engages with it.

108. Because of the two above mentioned reasons, Mr. Moon should lose his immunity for the harassment

and false light claims. Moon has already waived his immunity for the intellectual property claims, even though the CDA doesn't protect copyright infringement.

COUNT I

CONTRIBUTORY COPYRIGHT INFRINGEMENT

109. Russell Greer realleges each and every allegation in paragraphs 1 through 108 as if fully set forth herein.

110. Defendants have actual knowledge of the illegal acts from, among other things, written notification from Plaintiff. Defendants have therefore deliberately disregarded Greer's notifications of infringement. Defendant Moon even said that he was waiving Safe Harbor protections and that he would not remove Greer's copyrights, which shows knowledge.

111. Defendants have knowingly and willfully permitted, and continue to permit, the infringement of Greer's works by materially contributing to the infringement by running and managing a website that allows users to steal and dump everything about Greer. Moon has even defended such action on his website's FAQs page and has even explained to Greer through email why he believes he is allowed to infringe on his works, claiming Fair Use, and has posted the email conversation for many people to see and comment on, and in turn, harass Greer. All of Greer's songs, "Safari

Ride", "Yo, Yovanna!", "I Don't Get You", and "Julianne's Smile", all copyrighted, have all had their MP3s put onto Kiwi Farms in their entirety, robbing Greer of money for the thousands of dollars he put into creating those works.

112. Lastly, the way Kiwi Farms was built, it allows for people to see a user's interactive history on the site. Greer has evidence of Mr. Moon's profile looking at the sections on Greer, thus Moon would have been aware of the infringement and contributed by interacting with the infringing content.

113. Defendants have therefore materially encouraged, enabled, and contributed to the infringing.

114. Plaintiff has sustained, and will continue to sustain, substantial injuries, loss, and damage to his exclusive rights in his copyrights as a result of the Defendants' wrongful conduct in an amount to be determined to be no less than One Hundred and Fifty Thousand Dollars ($150,000), per copyright infringed. Plaintiff only asks for damages for "Why I Sued Taylor Swift" and "I Don't Get You, Taylor Swift" because those works have suffered the most damage. The other infringed copyrights only support the infringing claims.

COUNT II

ELECTRONIC COMMUNICATIONS HARASSMENT

115. Russell Greer realleges each and every allegation in paragraphs 1 through 114 as if fully set forth herein.

116. *Utah Code 76-9-201* allows for civil liability for electronic communications harassment.

117. Electronic communications harassment occurs when somebody posts and publishes private information about a person onto a public internet site or forum with the intent to abuse, threaten or disrupt said targeted person. *Utah Code 76-9-201(3)*.

118. Private information can be name, address, work place, mother's maiden name, a photograph or any other likeness. *Utah Code 76-6-1102*.

119. Greer would go further and argue that personal information would also be unpublished works that Greer never publicly released.

120. On 09/14/2018, a user, BadBoy2000, using Greer's face for his profile picture, posted an unpublished Holocaust script that Greer never publicly released, *October's Uprising*. Greer has only ever sent it to a few film agents and two friends. Greer discovered this on August 26th, 2020.

121. While it is unknown who BadBoy2000 is, what is known is that personal works that Greer worked

very hard on, were dumped onto the site to abuse Greer.

122. Greer chooses to pursue this as an electronic communications harassment claim to illustrate that the trolls purposefully put anything onto the site to make fun of and abuse Greer.

123. BadBoy2000 even writes, "These are the PDFs that I have, including his books." This illustrates purposeful intent.

124. Mr. Moon has liability upon the second part of what BadBoy2000 writes: "For the Mods [moderators]: please remove this if I broke any rules by posting these." Mr. Moon, a moderator, never removed it, even though probably seeing it, thus condoning it.

125. There is no point in continuously sending Moon DMCA letters, as he will post the letters and harass Greer by posting the letters with the intent to abuse, and in turn, his users will harass Greer.

126. Moon's intent is clearly to abuse Greer's rights by posting Greer's letters and allowing others to post Greer's stuff. He disguises it as commentary, but mocking one's request to remove personal property is clearly abusing and mocking, per the Utah Code.

127. It's also abuse because of the location on his website that he posted it on: his section entitled, "*Take That Off the God Damn Internet!*" The descriptor for the page reads: "Take-down notices and frivolous legal threats the Kiwi Farms receives." Clearly, the page is

meant to be abusing to those who make honest requests.

128. There are thousands of pages about Greer that are rife with abusing comments by Moon and by his users, some whom have posted Greer's baby pictures, saying such cruel and depraved things, which Moon has knowledge of. Per the Utah Code, baby pictures would be private information. Moon and his users' conduct has caught the eyes of local prosecutors, who passed a complaint onto the federal agency that handles internet crimes. But the problem arises again with catching individual users and the *CDA* shielding Moon.

129. Further, to bolster harassment, the users on Moon's site have contacted members of Greer's family; those he wishes to do business with, warning them of the apparent crazy person they have falsely portrayed Greer to be.

130. Most recently, one of Moon's users, a girl named Rachel, contacted one of Greer's vocalists for a hit job article on Greer. Moon's users have previously published defaming "articles" about Greer and have weaponized those articles. It was very bizarre because Greer never listed the singer's real name, which proves they did something illegal to find it, such as intruding upon Greer's privacy.

131. Rachel asked the singer what she thought of Greer and said that the singer could hide his identity, implying he could say something nasty about Greer. She further mentioned she had other people lined up.

The singer was caught off guard and asked Greer about it. Greer was petrified for the mere fact that he never released the singer's name. EXHIBIT Y. Greer confronted Rachel and she cited her First Amendment rights – but stalking, defamation and harassment aren't covered under the First Amendment. The trolls on Moon's site, as does Moon, claim protection when there is none. Their "rights" have infringed upon Greer's right of privacy; his right to control his intellectual property; his right to expression without everything he says being put on the site.

132. This harassment has been scary for Greer, his family and his friends.

133. The trolls have skewed internet search results to display articles and statements that trash Greer. Some of these statements are things Greer said years ago and have apologized for. Some were said because he wasn't taking his anxiety medicine and is why he made the statements.

134. Greer is very hurt and very confused why this war of hate is being waged against him. Because he looks different? Because he thinks differently? Because he's been in situations that nobody has given him the chance to explain, thus why he wrote his book?

135. What is known is that Greer has suffered damages and that the harassment is stemming from Moon's site.

136. Greer asks for this Court to find Moon liable for the harassment he made against Greer.

137. Greer further asks that CDA protection not be found for Moon and that he be held liable for his users' conduct.

138. This claim is not preempted by the infringement claims, as the harassment has been separate from infringing.

COUNT III

FALSE LIGHT

139. Russell Greer realleges each and every allegation in paragraphs 1 through 138 as if fully set forth herein.

140. To state a claim for false light, the Plaintiff must prove the following elements: (1) giving publicity to a matter concerning another, (2) that places the other in a false light, (3) the false light would be highly offensive to a reasonable person, and (4) the defendant had knowledge or acted in reckless disregard to the falsity of the publicized matter. *Russell v. Thompson Newspapers*, 842 P.2d 896, 907 (Utah 1992).

140. To state this claim fully, Greer will quickly explain the situation.

141. During the summer of 2019, Greer met a girl and they became close friends.

142. The girl had many issues, some very concerning, but Greer stuck by her because he has issues of his own and so he had empathy for her.

143. In October of 2019, the girl randomly exploded on Greer and shamed him with her religion. Greer had no idea what was going on. He had a panic attack and tried reaching out to her to see what was wrong.

144. Through the course of three months, Greer sent the girl very polite emails asking if she was OK and some of these emails were misconstrued against him.

145. In December 2019, the girl finally replied and told Greer to stop and so he did.

146. Greer reached out one last time in January 2020 to work things out. The girl went to the police and a criminal summons for a Class B cyber harassment misdemeanor was filed.

147. Greer retained an attorney in March 2020, as that is when he learned of the charge.

148. A plea deal was made in June 2020 where Greer pled no contest and was placed on unofficial probation. If he would have stayed out of trouble, the conviction would have been dismissed.

149. Two weeks later, the girl's lawyer filed a motion to reconsider the judgement.

150. A new hearing was granted. The girl gave a very one-sided, misleading version of events. Greer wrote a note to his attorney during the hearing that she was twisting the truth. Greer didn't have a chance to share his peace. Because of her testimony, the judgment was set aside and the Court wanted Greer to undergo a mental health evaluation.

151. Greer was very fine with the mental health evaluation and the deal. Greer contacted a mental health center and inquired of the costs on July 21st, 2020. Greer and his lawyer were fine with the costs and ready to present their mental health plan to the judge. EXHIBIT Z.

152. On August 4th, a day before the third hearing where Greer would have made a no contest plea and accepted a mental health eval, Mr. Summers, the prosecutor for Orem City, Utah, sent Greer's attorney an email stating that he had learned new information about Greer (assuming a troll harassed the prosecutor with slanderous information) and so he was throwing out the plea deal and would make Greer accept a guilty plea with very extreme conditions, not just a mental health evaluation.

153. Greer has not yet obtained permission from the prosecutor to show the email, as he isn't sure if it's a legally privileged communication, but Greer will be happy to provide the email if this Court requires it.

154. Greer was devastated when he saw the email. He was sad because he was ready to accept the mental health evaluation and move on with his life.

155. Greer was mad because Moon's users once again harassed somebody connected to Greer.

156. On August 5th, 2020, the third hearing was held and Greer's attorney informed the judge that they would go to a jury trial because Greer could not plead guilty with the added conditions.

157. The trolls watched the web based hearing and took screenshots of it to ruin Greer.

158. These facts set the false light claim into two claims for false light.

REFUSING MEDICATION

159. Because the trolls didn't see the prosecutor's email and because it wasn't mentioned at the third hearing, they began recklessly and falsely saying that Greer was refusing mental health treatment, thus portraying Greer in a false light and presenting Greer as the unstable character they have painted him as. There is a two page thread claiming Greer didn't want a mental health evaluation. Even on the day after the trial, on the "news" section of Kiwi Farms, it announced that Greer was going to a jury trial because he didn't want an evaluation. EXHIBIT A1.

160. On August 20t', Defendant Moon stated on the thread concerning Greer's third hearing that he was going to be going onto a random YouTube show and he asked for the "cliff notes" about the case. EXHIBIT A1.

161. Thus Moon is now personally liable for spreading false information about Greer by going onto a show.

162. Moon is liable because (1) he is giving publicity concerning Greer's court case, (2) he placed Greer in a false light by going onto a show and reiterated the above mentioned false set of information, (3) a reasonable person would find it highly offensive to be accused of not wanting mental treatment, when Greer did seek

out and plan mental health treatment, and (4) Mr. Moon acted in reckless disregard to the falsity by relying on the "cliff notes", as Moon puts it.

"VICTIMS"

163. With it established that Moon has interacted with the thread on Greer, on the first page about Greer, it states: "July 2020: Russell has a date . . . in court with one of his ***victims***." Exhibit A2.

164. Mr. Moon has surely seen the statement and has clearly interacted with the case by going onto a show to talk about the case.

165. This places Greer in a false light because while it is true that he is in a criminal court case, he does not have multiple victims, as the statement alleges. There is only one victim who actually was a friend to Greer and their relationship soured, which led to the current state of events.[2]

166. Mr. Moon has given publicity to this case and has said in the past that Greer stalks women.

167. Kiwi Farms has misconstrued flirty, friendly, warm conversations as stalking, which is ironically said by a website that stalks people. Exhibit A4 contains some of Greer's so called "stalking behavior". In the exhibit, it is plainly seen that there is respectful

[2] As this Complaint is written, the criminal case, *Orem City v. Russell Greer*, is still ongoing.

conversation going on. There is no perversion; no harassment; no belittling.

168. Greer has reached out to female celebrities to impress, which is normal for fans to do. But he has never stalked them, which would be showing up at their homes, following their movements, trespassing, etc. He's never done any of that.

168. Greer is like any other young man: he flirts with women. Even older men do it. Some men are much more crude and disgusting than anything Greer has said. But to single out Greer's behavior is ignoring the millions of others who do the same thing and puts Greer in a false light that he has many victims.

169. Mr. Moon has recklessly allowed for that statement to remain on the front page and has spread that Greer stalks women in the past. Greer can't find the exact page, as there are thousands, but he remembered Null talking about Greer on a thread. He could find it if it was satisfactory to this Court.

170. This false light has caused a few people to cut off contact with Greer.

171. These facts set forth a claim of false light against Defendant Moon.

COUNT IV

DEFAMATION

172. Russell Greer realleges each and every allegation in paragraphs 1 through 171 as if fully set forth herein.

173. The elements of defamation are: 1) that the defendants "published the statements"; (2) that the "statements were false, defamatory, and not subject to any privilege"; (3) "that the statements were published with the requisite degree of fault"; and (4) that "their publication resulted in damage" to the plaintiff. *West v. Thomson Newspapers*, 872 P.2d 999, 1007–08 (Utah 1994).

174. Plaintiff uses the allegations from his false light claim to also claim defamation.

175. Moon and his users published statements onto Kiwi Farms and Moon took those statements and went onto a show and published them orally.

176. The statements are false and defamatory because there are not multiple victims and Greer never refused any mental health treatment.

177. Since Kiwi Farms views Greer as a limited public figure, for suing Swift and for advocating for prostitution, Greer needs to show actual malice, which is easily proven by the fact that Moon is going onto shows and spreading the false information. He's doing it to ruin Greer. There's no other reason he is ding it. That's

why he runs his website. His site published the information maliciously. His site is malicious.

178. As stated in his false light claims, Greer has suffered damages by losing friends. Dozens, if not many more, of people are spreading the false information, which ruins Greer's reputation.

179. Other false statements have been made by Moon's users. As an example of such a statement: One was made by a Richard Springer of Australia on Good Reads. Many of Moon's users are international. Richard stated in his random troll review that Greer is schizophrenic, which is false. It is also telling that Richard created his account in November 2017: the date of Greer's book's release. Richard has harassed Greer on other platforms. Exhibit A4.

180. There are thousands of pages on Greer on Kiwi Farms and it is impossible to sift through each page, but even the handle for Greer is defamatory.

181. The handle identifier for Greer on the site lists him as "a sex-pest" and "Swift-obsessed". Greer is neither. The handle is defamatory because it implies that Greer is a sexual deviant and it intrudes on his sex life.[3] The Swift-obsessed statement is defamatory because it implies that he stalks Taylor Swift, which as

[3] Moon's users have managed to track down Greer's dating profiles and have uploaded them to Kiwi Farms. They have body-shamed him and his sex life. This shows the level of stalking and depravity his users go to.

explained earlier, he does not and has never stalked her. Exhibit A5

182. Kiwi Farms has ruined Greer's reputation, as shown, and thus Defendant Moon should be liable for his own defamation and for his users'.

COUNT V

DEFAMATION BY IMPLICATION

183. Russell Greer realleges each and every allegation in paragraphs 1 through 182 as if fully set forth herein.

184. Even if a statement is not defamatory, it can be defamatory by implication.

185. In a defamation by implication action, "it is the implication arising from the statement and the context in which it was made, not the statement itself, which forms the basis of [the] claim." *Id.*

186. Plaintiff incorporates the facts from the defamation claim and applies them here, on the chance they are found not to be defamatory.

187. Implying that Greer has many victims and that he refused a mental health evaluation is indeed defamatory by implication, as they are false statements, which impeach his virtue and reputation and has exposed him to public hatred and contempt.

188. Greer asks for liability for the statements made by Moon and made by his users.

PRAYER FOR RELIEF

WHEREFORE, Russell Greer prays for judgement against Defendants:

189. For statutory damages in an amount of $300,000 for contributory copyright infringement.

190. For Claims II-V, Plaintiff requests $5,000,000 for reputational and emotional damages.

191. For a preliminary injunction and a permanent injunction enjoining Defendants and their users, and all persons acting under, in concert with, or for them, from continuing to reproduce, distribute, display, disseminate, transmit, make available for download or otherwise use the copyrighted book and song in any manner whatsoever appropriating or in violation of Plaintiff's copyrights. Greer requests immediate removal of his copyrighted material, which is: "Safari Ride", "Yo, Yovanna!", "I Don't Get You", "Julianne's Smile", "Why I Sued Taylor Swift."

192. For a preliminary injunction that would temporarily freeze Kiwi Farms for the duration of this case. This injunction is requested because the users conspire and analyze each and every detail about Greer. Greer is nervous that the site as a whole or an individual on the site would retaliate against Greer for filing this lawsuit. This has been proven time and time again, as shown in this Complaint. Freezing the site would be in the best interest of both parties.

193. Alternatively, if the requested preliminary injunction cannot be given, Plaintiff requests a

permanent restraining order to have Mr. Moon delete each and every thread on Greer, including any wikis.

194. Attorneys' fees and costs, pursuant to 17 U.S.C. §§502-505;

195. For a declaration that the Communications Decency Act does not protect Kiwi Farms or Defendant Moon.

DATED: September 16th, 2020

Respectfully submitted,

By: /s/ RG

Russell Greer
Pro Se Litigant
/rgreer/