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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIA SCHNEIDER, et al.,  
Plaintiffs,  
v.  
YOUTUBE, LLC, et al.,  
Defendants.

Case No. 20-cv-04423-JD

**ORDER RE COUNTERCLAIMS**

Counterclaim defendant Pirate Monitor Ltd. (PML) was once a plaintiff in this case, but dismissed all of its claims against defendants YouTube and Google (YouTube) with prejudice. *See* Dkt. Nos. 1, 66. YouTube filed counterclaims against PML, Pirate Monitor LLC, and Gabor Csupo for breach of contract, fraud, and violation of 17 U.S.C. § 512(f) of the Digital Millennium Copyright Act (DMCA). Dkt. No. 160. PML and Csupo ask for summary judgment on the counterclaims. Dkt. No. 260.

The case is on the eve of a jury trial. This order is based on the Court’s review of the summary judgment motion, and the parties’ pretrial filings.

**I. PIRATE MONITOR LLC**

Counterdefendants say that Pirate Monitor LLC does not exist, which YouTube now acknowledges. *See* Dkt. No. 295-1 at 4. Pirate Monitor LLC is dismissed as a party in all respects.

**II. CONTRACT AND FRAUD COUNTERCLAIMS**

YouTube did not take substantive issue with PML and Csupo’s challenges to the breach of contract and fraud counterclaims. To some extent, YouTube appeared to acknowledge that the video uploads were authorized, and stated that the “fraudulent takedowns (rather than the uploads)

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1 are the focus of the counterclaims.” *Id.* at 10. In any event, the parties’ pretrial filings indicate  
 2 that YouTube does not intend to pursue the contract and fraud counterclaims. They are dismissed  
 3 without prejudice.

### 4 **III. DMCA COUNTERCLAIM**

5 Summary judgment is denied for the counterclaim under section 512(f) of the DMCA, 17  
 6 U.S.C. § 512(f). Section 512(f) contemplates liability for persons that abuse the notice and  
 7 takedown procedures in the DMCA. *See* Dkt. No. 330 at 13-15 (DMCA takedown procedures).  
 8 Section 512(f)(1) applies when a person knowingly misrepresents in a takedown notice that the  
 9 accused material or activity is infringing. 17 U.S.C. § 512(f). Section 512(f)(2) applies when a  
 10 user knowingly misrepresents in a counternotice that the accused material or activity was removed  
 11 or disabled by mistake or misidentification. *Id.* In either case, the offending party may be liable  
 12 for damages, including attorneys’ fees and costs. *Id.*; *see also Lenz v. Universal Music Corp.*, 815  
 13 F.3d 1145, 1151 (9th Cir. 2016).

14 YouTube’s counterclaim is alleged under Section 512(f)(1). Dkt. No. 160 ¶¶ 80-81. An  
 15 argument can be made that summary judgment should be denied because YouTube did not have a  
 16 full and fair opportunity to obtain discovery before the motion was filed. *See* Fed. R. Civ. P. 56(d)  
 17 (the Court may deny summary judgment “[i]f a nonmovant shows by affidavit or declaration that,  
 18 for specified reasons, it cannot present facts essential to justify its opposition”). Intellectual  
 19 Property LLC (IPLLC) -- an entity owned and controlled by Csupo that he says was responsible  
 20 for submitting the allegedly fraudulent takedown notices -- did not complete its production to  
 21 YouTube until May 13, 2023. *See YouTube, LLC et al. v. Intellectual Property LLC*, No. 3:23-cv-  
 22 01100-JD, Dkt. No. 23 (N.D. Cal. May 15, 2023).


23 Even so, the main barrier to summary judgment is the myriad of genuine disputes of fact  
 24 with respect to the DMCA counterclaim. Among other material issues, the parties dispute  
 25 Csupo’s involvement with the submission of the fraudulent takedown notices. Csupo testified that  
 26 he had nothing to do with submitting the notices, and that his instruction to remove videos after  
 27 YouTube froze his Pirate Monitor LLC and IPLLC accounts was misinterpreted by his associate  
 28 as a command to file takedown notices. *See* Dkt. No. 296:68 at 191:15-22, 208:11-23, 216:5-

1 217:16. YouTube says the takedown notices bear Csupo's name, electronic signature, phone  
2 number, and home address, and that the fraudulent notices were submitted before his Pirate  
3 Monitor LLC and IPLLC accounts were suspended. *See* Dkt. No. 295-1 at 11-12. The parties also  
4 dispute whether PML is an alter ego of Csupo or otherwise vicariously liable for the violations of  
5 section 512(f). *See Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 677 (9th Cir. 2017)  
6 (describing elements of alter ego liability under California law).

7 These issues are representative of a host of other factual disagreements with respect to the  
8 DMCA counterclaim that a jury will need to decide. *See FTC v. D-Link Sys., Inc.*, No. 17-cv-  
9 00039-JD, 2018 WL 6040192, at \*1 (N.D. Cal. Nov. 5, 2018).

10 **IT IS SO ORDERED.**

11 Dated: May 31, 2023

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16 JAMES DONATO  
17 United States District Judge  
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