2025 WL 1383547
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United States District Court, C.D. California.

GLOBAL WEATHER PRODUCTIONS, LLC, Plaintiff,
v.
Leonardo DICAPRIO, Defendant.

Case No 2:23-cv-09279-ODW (SSCx)
|
Signed April 4, 2025

[redacted]

ORDER DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT [28]

OTIS D. WRIGHT, II, UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

***1** Plaintiff Global Weather Productions, LLC ("GWP") brings this suit against Defendant Leonardo DiCaprio for direct copyright infringement. (*See* First Am. Compl. ("FAC") ¶ 51–60, ECF No. 26.) GWP asserts that DiCaprio copied and displayed a video to which GWP owns the rights and licenses. (*Id.* ¶¶ 2, 4.) DiCaprio now moves to dismiss the First Amended Complaint in its entirety pursuant to Federal Rule of Civil Procedure ("Rule" or "Rules") 12(b)(6). (Mot. Dismiss ("Motion" or "Mot."), ECF No. 28.) For the following reasons, the Court **DENIES** DiCaprio's Motion to Dismiss. [1]

II. BACKGROUND [2]

GWP is a professional videography company that commercially licenses its videos for others' use. (FAC ¶ 10.) DiCaprio is an American actor and film producer. (*Id.* ¶ 3.) He owns and operates the Instagram account "@leonardodicaprio" (the "Account"), which he uses to promote his artistic works to his 61.2 million followers. (*Id.* ¶¶ 3, 24–25.)

On September 3, 2019, Michael Brandon Clement created a video showing aerial footage of Hurricane Dorian's damage to the Bahamas' Abaco Islands (the "Video"). (*Id.* ¶¶ 2, 14.) When Clement created the Video, he intended to use it commercially for display or public distribution. (*Id.* ¶ 18.)

On September 4, 2019, DiCaprio posted a copy of the Video (the "Post") to the Account. (*Id.* ¶ 26; FAC Ex. A (the "Post"), ECF No. 26-2.) Thereafter, Instagram users viewed the Post more than 1.6 million times. (FAC ¶ 28.) Though DiCaprio's copy of the Video contained a "CNN" watermark, it was otherwise an exact copy of GWP's original video recording. (*Id.* ¶¶ 29, 37.) DiCaprio copied and displayed the Video without license or permission from Clement. (*Id.* ¶¶ 19, 34.)

On September 25, 2019, Clement registered the Video with the United States Copyright Office under Registration No. PA 2-214-139. (*Id.* ¶ 17.) Approximately three years later, GWP discovered that DiCaprio had copied and displayed the Video. (*Id.* ¶¶ 34–35.) Clement subsequently assigned GWP the rights to the Video in writing. (*Id.* ¶ 20.)

Based on these facts, on November 3, 2023, GWP filed suit against DiCaprio for direct copyright infringement. (Compl., ECF No. 1.) After DiCaprio moved to dismiss GWP's initial complaint, GWP filed the First Amended Complaint. (FAC.) DiCaprio now moves to dismiss the First Amended Complaint for failure to state a claim pursuant Rule 12(b)(6). (Mot.) The Motion is fully briefed. (*See* Mem. P. & A. ISO Mot. ("Mem."), ECF No. 28-1; Opp'n, ECF No. 29; Reply, ECF No. 30.)

III. LEGAL STANDARD

A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support an otherwise cognizable legal theory. *Balistreri*

v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). To survive a dismissal motion, a complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plaint statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual "allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

***2** The determination of whether a complaint satisfies the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. A court is generally limited to the pleadings and must construe all "factual allegations set forth in the complaint ... as true and ... in the light most favorable" to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). However, a court need not blindly accept conclusory allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

IV. DISCUSSION

DiCaprio moves to dismiss GWP's First Amended Complaint in its entirety, arguing that GWP's copyright claim fails because the fair use doctrine shields DiCaprio's use of the Video. (Mem. 1.) However, DiCaprio's fair use defense relies on facts found outside the four corners of GWP's First Amended Complaint that are not properly incorporated by reference in the pleadings. As such, evaluation of a fair use defense at this pleading stage is premature.

A. Copyright Infringement and Fair Use

To bring a successful direct copyright infringement claim, "the plaintiff must prove (1) ownership of the copyright, and (2) 'copying' of protectible expression by the defendant." *Baxter v. MCA, Inc.*, 812 F.2d 421, 423 (9th Cir. 1987). These rights include the exclusive right to reproduce the copyrighted work. 17 U.S.C. § 106(1).

However, the "fair use" doctrine shields particular uses of a copyrighted work from infringement claims. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 576–77 (1994). Congress codified this doctrine, recognizing that some limited uses of copyrighted works are essential to serve copyright's core purpose—"to promote the Progress of Science and useful Arts." *See id.* at 575 (discussing 17 U.S.C. § 107); *see also Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 527 (2023) ("The fair use doctrine permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster." (internal quotation marks omitted)).

In determining whether a particular use of a copyrighted work constitutes fair use, courts consider four non-exclusive factors: (1) "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes"; (2) "the nature of the copyrighted work"; (3) "the amount and substantiality of the portion used in relation to the copyrighted work as a whole"; and (4) "the effect of the use upon the potential market for or value of the copyrighted work." *Campbell*, 510 U.S. at 577 (quoting 17 U.S.C. § 107(1)–(4)). "[T]he analysis is a flexible one" that courts "perform on a case-by-case basis." *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 529 (9th Cir. 2008). Courts weigh these factors together, "in light of the copyright law's purpose 'to promote the progress of science and art by protecting artistic and scientific works while encouraging the development and evolution of new works.' " *Id.* (quoting *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 799–800 (9th Cir. 2003)).

As a threshold matter, GWP argues that "[t]his Court has routinely held that affirmative defenses may ... generally not be raised in a motion to dismiss ... [and] courts rarely analyze fair use on a 12(b)(6) motion." (Opp'n 8–9 (internal citations and quotation marks omitted).) GWP is correct. Because " '[f]air use is a mixed question of law and fact' ... [it] is usually adjudicated either at trial or on a motion for summary judgment where no material facts are in dispute." *Dr. Seuss Enters., L.P. v. ComicMix LLC*, 256 F. Supp. 3d 1099, 1104 (S.D. Cal. 2017) (quoting *Leadsinger*, 512 F.3d at 530). Thus, a fair use defense may be resolved on a motion to dismiss only when no material facts are in dispute. *See id.*

***3** Here, the parties dispute several key facts and have provided fulsome briefing. However, the Court cannot engage in such a comprehensive inquiry on a Rule 12(b)(6) motion to dismiss, where its "analysis of the plaintiff's claims is limited

to its allegations in the complaint." *Browne v. McCain*, 611 F. Supp. 2d 1073, 1130 (C.D. Cal. 2009) (citing *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001)). Given this limitation, the Court finds it dispositive at this stage that the very basis of DiCaprio's fair use defense—the Post was made "for DiCaprio's environmentalist efforts, confirming the purpose and the transformative and educational nature of the Post," (Mem. 1)—does not arise out of, and indeed conflicts with, the facts alleged in the GWP's First Amended Complaint. (*See* FAC ¶ 31 ("Defendant's purpose of publishing the Video was for the same purpose in which Defendant intended it to be used, news reporting on the hurricane.")); *see also Leadsinger*, 512 F.3d at 530 (finding that the court may consider fair use on a motion to dismiss when the defense is apparent from the facts alleged in the complaint, which must be accepted as true).

DiCaprio's reliance on disputed and extrinsic facts in his arguments under the first and fourth fair use factors underscores with particular force why the Court cannot resolve the fair use defense at this stage. (*See* Mem. 9–14, 17–19.) Notably, the Ninth Circuit has regarded these two factors as the most dominant in the fair use analysis. *See Monge v. Maya Mags., Inc.*, 688 F.3d 1164, 1171 (9th Cir. 2012) ("The relative importance of factor one—the purpose and character of the use—and factor four—the effect of the use upon the potential market—has dominated the case law." (internal quotation marks omitted)).

DiCaprio argues under the first factor that the Post served an educational and transformative purpose by raising awareness about climate change. (Mot. 13.) DiCaprio claims this purpose is transformative because it is distinct from the original Video's purpose "to demonstrate the severity and aftermath of Hurricane Dorian on Great Abaco Island in the Bahamas." (*Id.* at 13–14; FAC ¶ 16.). However, given the content of the Post's caption,[3] DiCaprio's characterization of its purpose (raising awareness about climate change) is no more plausible than GWP's (reporting on the hurricane). (*See* FAC ¶ 16; Post; Mot. 13–14.) Importantly, "[i]f there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) ("Plaintiff's complaint may be dismissed only when defendant's plausible alternative explanation is so convincing that plaintiff's explanation is *im*plausible."). DiCaprio attempts to bolster his characterization of the Post by arguing that climate change is "an ongoing educational topic addressed on the Account." (Mot. 13.) But this argument is fatal to DiCaprio's Motion because it relies on facts outside of the First Amended Complaint. (*See* Mot. 10 ("[M]any other posts by the Account also address environmental issues."); Decl. Robert M. Barta ("Barta Decl.") ¶ 2, Ex. A, ECF Nos. 28-2, 28-3 (linking to the Account and attaching images, bio description, and thumbnails of past and recent posts); *see generally* FAC.)

Similarly, DiCaprio's arguments under the fourth factor fail at this pleading stage on two fronts. First, DiCaprio argues that there are no "material facts supporting any effect on the market for the Video whatsoever." (Mot. 18.) However, GWP alleges both that "[DiCaprio's] use of the Video harmed the actual market for the Video" and that "[DiCaprio's] use of the Video, if widespread, would harm [GWP's] potential market for the Video." (FAC ¶¶ 48–49.) Requiring more would impermissibly shift the burden to GWP, as the burden in demonstrating the fair use defense falls squarely on the proponent. *Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 459 (9th Cir. 2020) ("[F]air use is an affirmative defense, thus requiring the defendant to bring forward favorable evidence about relevant markets." (internal quotation marks omitted)). Moreover, DiCaprio's assertion that Instagram users do not rely on his Account for news or weather—and thus that the Post posed no market harm—again rests on extrinsic factual claims. (Mot. 18–19.)

***4** Accordingly, because DiCaprio's fair use defense relies on factual assertions that fall outside the scope of the First Amended Complaint, it cannot be resolved at this stage unless the Court incorporates facts outside the pleading by reference.

B. Incorporation by Reference

DiCaprio predicates his affirmative defense of fair use on the notion that the Court should incorporate his entire Instagram account by reference into GWP's pleading. (*See id.* 6.) DiCaprio argues that GWP's references to the Post is such that the entire Account, and not just the specified post containing the alleged infringement, is central to GWP's copyright claim. (*Id.*) The Court does not agree.

Courts considering a Rule 12(b)(6) motion to dismiss are generally limited to information contained in the complaint. *Lee*, 250 F.3d at 688. However, courts may, through judicial notice and incorporation by reference, consider information outside of the complaint without converting the motion into one for summary judgment.[4] *Hsu v. Puma Biotech., Inc.*, 213 F. Supp. 3d 1275, 1279–81 (C.D. Cal. Sept. 30, 2016) (citing *Ritchie*, 342 F.3d at 908). Here, DiCaprio argues only for incorporation by reference. (*See* Mem. 6.) Under this doctrine, courts may consider documents that are physically attached to the complaint or those on which the complaint necessarily relies and are attached to the Rule 12(b)(6) motion. *Hsu*, 213 F. Supp. 3d at 1281. A complaint "necessarily relies" on a document when it is (1) referenced in the complaint, (2) "central to the plaintiff's claim," and (3) of unquestioned authenticity. *Hsu*, 213 F. Supp. 3d at 1281 (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)).[5]

DiCaprio contends the Court may consider the entirety of the Account because "Plaintiff refers throughout the Amended Complaint to the Account on which the Post was made" and "relies on DiCaprio's ownership and the context and use of the Account in its allegation of damages." (Mem. 6.) Not quite. In actuality, GWP only references the Account to establish DiCaprio's control over it and that DiCaprio primarily "uses the Account to promote his artistic works." (FAC ¶¶ 3–4, 21–25, 38, 42–43.) GWP's passing reference to the movies *Don't Look Up, Fin*, and *Killers of the Flower Moon* merely illustrates some of the artistic works DiCaprio has used the Account to promote. (*See id.* ¶ 24.)

***5** Furthermore, GWP must only prove two elements to establish a prima facie showing of copyright infringement: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). Viewed in this light, GWP's claim arises out of DiCaprio "actively cop[ying] and display[ing] the Video" to which GWP owned a valid copyright. (FAC ¶¶ 4, 20.) Thus, the Account in its entirety is not central to GWP's claim because it is not needed to establish either of the two requisite elements. To the contrary, as "the [Account] merely creates a defense to the well-pled allegations in the complaint, [the Account does] not necessarily form the basis of the complaint." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). Incorporation by reference is not appropriate in this case.

None of the case law on which DiCaprio relies suggests otherwise. (*See* Mem. 6 (citing cases).) Indeed, in *Brownmark Films, LLC v. Comedy Partners*, the court declined to answer the incorporation-by-reference question and, instead, held that "the only two pieces of evidence needed to decide the question of fair use" were the original copyrighted work and the allegedly infringing work. 682 F.3d 687, 690–91 (7th Cir. 2012). In *Wright v. Associated Insurance Cos.*, the court found that an entire insurance agreement was incorporated by reference where the plaintiff cited specific sections, but additionally claimed the agreement granted him disputed property interests; the agreement was central to his claims. 29 F.3d 1244, 1247–48 (7th Cir. 1994). Finally, in *Duckhole Inc. v. NBC Universal Media LLC*, the court found that specific episodes of an allegedly infringing work were incorporated by reference in the complaint because the plaintiff "reference[d] the treatment and content and specific episodes" in the pleading such that the allegedly infringing works "form[ed] the basis of [p]laintiff's claim of copyright infringement." No. 2:12-cv-10077-BRO (CWx), 2013 WL 5797279, at *4 (C.D. Cal. Sept. 6, 2013). DiCaprio's proposal to incorporate the entire Account by reference is distinct from these cases because he seeks to incorporate a host of unreferenced material on which GWP does not rely in its pleading.

As GWP has shown that it owns a valid copyright of an original work and that DiCaprio, in his Instagram post, copied the constituent elements of that original work, the allegations at this stage are sufficient to allow GWP's copyright infringement claim to proceed. (*See generally* FAC.) Limited to the four corners of the First Amended Complaint, the facts now before the Court are simply insufficient to conduct the thorough analysis required by the fair use defense. Whether the material DiCaprio offers supports a fair use defense may be more appropriately considered at summary judgment.

V. CONCLUSION

For the reasons discussed above, the Court **DENIES** DiCaprio's Motion to Dismiss. (ECF No. 28.)

IT IS SO ORDERED.

All Citations

Slip Copy, 2025 WL 1383547

Footnotes

1 Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

2 The facts are drawn from Plaintiff's Complaint and the Court accepts as true for this Motion all well-pleaded allegations. *See* *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

3 The Post's caption reads:

> As climate change continues to heat up our oceans and air, storms like Atlantic hurricanes will only become stronger and more destructive. #Regram #RG. @cnn: This aerial footage of the Bahamas shows the devastation left by Hurricane Dorian on Great Abaco Island. Dangerous winds and life-threatening storm surge were expected to continue through Tuesday evening. Dorian was expected to skirt the east coast of Florida as it crawls north.

(Post.)

4 Neither party has suggested that this Motion should be converted into one for summary judgement and the Court declines to do so. The parties have not had a "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b); *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003).

5 In *Knievel v. ESPN*, the Ninth Circuit took a broader approach to incorporation by reference that allowed the court to incorporate documents even though the plaintiff did not explicitly reference the documents in his complaint. 393 F.3d 1068, 1076 (9th Cir. 2005). Specifically, in *Knievel*, the plaintiff brought a defamation claim which required him to show as a threshold matter that the allegedly defamatory "statement [was] reasonably capable of sustaining a defamatory meaning" when interpreted "from the standpoint of the average reader, judging the statement not in isolation, but within the context in which it is made." *Id.* at 1074. Because of this requirement, the court incorporated surrounding webpages that a viewer would necessarily have seen and that provided context essential to understanding the average reader's perspective of the alleged defamatory statement, even though they were not referenced in the complaint. *Id.* at 1076. There is nothing about the copyright infringement claim at issue here that requires such an expansive application of incorporation by reference, and DiCaprio makes no argument to suggest otherwise.