Exhibit 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

BLAINE HARRINGTON III,

Plaintiff,

v.

PINTEREST, INC.,

Defendant.

Case No. 5:20-cv-05290-EJD

ORDER GRANTING MOTION TO DISMISS COUNTS II AND III OF PLAINTIFF'S FIRST AMENDED COMPLAINT

Re: Dkt. No. 24

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Pinterest, Inc. ("Pinterest") moves to dismiss with prejudice Counts II and III of the First Amended Complaint ("FAC"), for contributory copyright infringement and violation of the Digital Millennial Copyright Act ("DMCA"), 17 U.S.C. § 1202(b)). Def. Pinterest, Inc.'s Mot. to Dismiss Counts II and III of Pl.'s First Amend. Class Action Compl. ("Mot."), Dkt. No. 24. Harrington filed an Opposition ("Opp'n), Dkt. No. 25. Pinterest filed a Reply. Dkt. No. 27. The Court finds this matter appropriate for disposition without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons stated below, the Court grants the motion to dismiss with leave to amend.

I. BACKGROUND[1]

Plaintiff Blaine Harrington III ("Harrington") is a professional travel photographer and is the sole copyright owner of his photographic works ("Works"). FAC, Dkt. No. 21, ¶¶ 13, 15. Harrington gives the JPEG file of his Works an identifying name and adds metadata to his images. *Id.* ¶ 52. The metadata is known as EXIF and/or IPTC. *Id.* "The EXIF/IPTC is wrapped up and

[1] The Background is a brief summary of the allegations in the FAC.

encoded into the image file, using an encoding format known as Adobe XMP." *Id.* ¶ 53. Specifically, Harrington's digital works are embedded with a description; the creator; a copyright notice; and a credit line source. *Id.* ¶ 54. Harrington also embeds his address, phone, email, website, instructions, and "rights/use terms." *Id.* ¶ 55.

Pinterest is a social media platform that allows its users to create and share virtual bulletin boards ("boards") to which they have posted, or "pinned," digital images that have been uploaded. *Id.* ¶¶ 2, 23. A user's main Pinterest page is called a "home feed." *Id.* ¶ 24. The Pins in a user's "home feed" consist of not only Pins the user has selected, but also Pins displayed by Pinterest. *Id.* The Pins displayed by Pinterest are Pins from Pinterest's library of hundreds of billions of images consisting of Pins by users. *Id.* The images Pinterest displays to the user are personalized based on the user's boards, recent activity on Pinterest, and favorite topics. *Id.* The images users see on their home feed are integrated with advertisements designed to appear similar to or within the same theme as the user's Pins. *Id.* ¶¶ 24-25. Pinterest also distributes images directly to the user by email and/or through the Pinterest app. *Id.* ¶ 26. Pinterest generates its revenues through advertisements. *Id.* ¶¶ 25-26.

Harrington alleges that Pinterest does not have in place a system for screening Pins for copyright notices or other indicia of copyright ownership associated with the "pinned" images. *Id.* ¶ 27. Rather, Pinterest deliberately removes indicia of copyright ownership from pinned images "to render its paid advertisement more effective and to actively thwart the efforts of copyright owners, like [Harrington], to police the misuse of their works on and through Pinterest's website and app." *Id.* Pinterest allegedly strips the images of visible identifying source and/or copyright management information ("CMI"), as well as metadata. *Id.* ¶¶ 51-55, 60-64. When a user "pins" or uploads an image, Pinterest renames the image with a new JPEG name and strips the EXIF/IPTC from the image before storing and displaying that image. *Id.* ¶ 60. As a result, Pinterest is the source of "rampant infringement by third parties . . . ." *Id.* ¶ 73. Harrington has tens of thousands if not hundreds of thousands of images on Pinterest. *Id.* ¶¶ 75, 86. His Works

have been displayed without his consent by Pinterest to advertise a wide range of goods and services. *Id*. ¶¶ 29-34, 45-46. Based on these allegations, Harrington filed this putative class action suit, asserting claims for (1) direct copyright infringement; (2) contributory infringement; and (3) violation of the DMCA.[2]

II. STANDARDS

Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient specificity "to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted). A complaint which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, the 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*

When deciding whether to grant a motion to dismiss under Rule 12(b)(6), the court must generally accept as true all "well-pleaded factual allegations." *Id*. at 664. The court must also construe the alleged facts in the light most favorable to the plaintiff. *See Retail Prop. Trust v. United Bhd. Of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014) (providing the court must "draw all reasonable inferences in favor of the nonmoving party" for a Rule 12(b)(6) motion). Dismissal "is proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

[2] This case is an offshoot of a parallel action that Harrington's counsel has been litigating in the Northern District of California, *Davis v. Pinterest, Inc.*, No. 19-cv-7650-HSG. Judge Gilliam declined to relate the two cases because Harrington is pursuing a putative class action suit and Davis is not.

III. DISCUSSION

Pinterest seeks dismissal of Count II for contributory infringement and Count III for violation of the DMCA. As to Count II, Pinterest contends that Harrington fails to plead facts demonstrating that Pinterest: (1) (a) had actual knowledge of any specific instance of third-party direct infringement; and (b) materially contributed to that infringement by failing to employ simple measures for removing or halting it; or (2) induced users to use its service for the express purpose of promoting copyright infringement. As to Count III, Pinterest argues that Harrington fails to plead facts plausibly showing the requisite mens rea.

A. Count II: Contributory Copyright Infringement

Harrington's contributory infringement claim is premised on allegations that Pinterest materially contributed to the alleged infringement of his works by users who either (1) uploaded those images to Pinterest without authorization; or (2) downloaded them after they were uploaded by others. FAC ¶¶ 65-90.

To establish a claim for contributory copyright infringement, a plaintiff "must establish that there has been direct infringement by third parties." *See Perfect 10, Inc. v. Amazon.com, Inc.* ("*Amazon*"), 508 F.3d 1146, 1169 (9th Cir. 2007). Once this threshold issue has been established, a plaintiff must also allege that the defendant "(1) has knowledge of another's infringement and (2) either (a) materially contributes to or (b) induces that infringement." *Perfect 10, Inc. v. Giganews, Inc.* ("*Giganews*"), 847 F.3d 657, 670 (9th Cir. 2017) (quotation omitted). In the online context, a computer system operator can be held liable for contributory copyright infringement if it has "actual knowledge that specific infringing material is available using its system, and . . . simple measures [would] prevent further damage to copyrighted works, yet [the defendant] continues to provide access to infringing works." *Id.* at 671 (quotation omitted). Inducement requires the defendant to "distribute[] 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." *See id.* at 672.

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