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10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 KYLE MACHULIS, )  
13 )  
14 Plaintiff, ) **COMPLAINT**  
15 v. ) **DEMAND FOR JURY TRIAL**  
16 RICHARD SILVER, )  
17 )  
18 Defendant. )  
19 )  
20 )  
21 )  
22 )  
23 )

24 1. This is a civil action seeking injunctive relief and damages for misrepresentation of  
25 copyright claims under the Digital Millennium Copyright Act (“DMCA”); and for declaratory  
26 relief.

27 2. This case arises out of a legal threat of copyright infringement issued by the  
28 Defendant. The threat has successfully induced the removal of Plaintiff’s original work of  
videography from the popular Internet media website YouTube.

29 **PARTIES**

30 3. Plaintiff Kyle Machulis (“Machulis”) is an individual residing in Berkeley, CA.  
31 4. On information and belief, Defendant Richard Silver (“Silver”) is an individual  
32 residing in Groton, Connecticut.

33 **JURISDICTION AND VENUE**

34 5. This Court has subject matter jurisdiction over this claim pursuant to the Copyright

1 Act (17 U.S.C. §§ 101 et seq.), 28 U.S.C. §§ 1331 and 1338, and the Declaratory Judgment Act (28  
2 U.S.C. § 2291).

3 6. Plaintiff is informed, believes and thereon alleges that Defendant has sufficient  
4 contacts with this district generally and, in particular, with the events herein alleged, that he is  
5 subject to the exercise of jurisdiction of this Court.

6 **VENUE AND INTRADISTRICT ASSIGNMENT**

7 7. Venue is proper in this district under 28 U.S.C. § 1391.

8 8. Assignment to the San Francisco/Oakland division is proper pursuant to Local Rule 3-  
9 2(c) and (d) because a substantial portion of the events giving rise to this action occurred in this  
10 district and division.

11 **FACTUAL ALLEGATIONS**

12 9. On January 20, 2007, Machulis attended a concert performance by the band Sublevel 3  
13 in San Francisco, California. During the performance, he videotaped the audience, capturing  
14 various scenes of the band, the crowd, and the goings-on that occurred around him. As part of the  
15 five-minute long video, Machulis captured several concert-goers performing various improvised  
16 informal dance steps, including one group performing a set of line-dancing steps for just over ten  
17 seconds. He later transferred the video onto his computer and saved it as a video computer file  
18 (“Sublevel 3 Video”).

19 10. On January 27, 2007, Machulis uploaded the Sublevel 3 Video from his computer to a  
20 popular website on the Internet known as “YouTube” and available at the web address  
21 www.youtube.com. YouTube is a video-sharing site where millions of Internet users can post  
22 videos and make them available to others for viewing. These videos range from traditional home  
23 videos of personal events, to news reports, to advertisements and television programs.

24 11. Richard Silver is an individual who claims to have invented the dance steps for “The  
25 Electric” also known as “The Electric Slide,” a popular line dance from the 1970s and 1980s. He  
26 also allegedly holds a copyright registration for a single video performance of the dance (“Silver  
27 Video”). He maintains a website, <http://the-electricslidedance.com>, where he posts various  
28 information about his career in dance and his choreography.



1 the Sublevel 3 Video constitutes infringement of a copyright lawfully owned by Silver.

2 21. Machulis contends that, consistent with the Copyright Act of the United States of  
3 America, including those laws prohibiting direct, contributory or vicarious infringement, laws  
4 protecting fair use and the First Amendment to the United States Constitution, and judicial  
5 decisions construing such laws, doctrines, and provisions, posting of his footage was and is lawful;

6 22. Wherefore, Machulis requests that the Court determine and adjudge that each and  
7 every one of the above-stated propositions states the law applicable to the facts involved in this  
8 action.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Plaintiff prays for judgment as follows:

- 11 1. A declaratory judgment that the Sublevel 3 Video posted by Plaintiff does not  
12 infringe any copyright owned by Defendant;
- 13 2. Injunctive relief restraining the Defendant, his agents, servants, employees,  
14 successors and assigns, and all others in concert and privity with him, from bringing  
15 any lawsuit or threat against Plaintiff for copyright infringement in connection with  
16 the Sublevel 3 Video, including but not limited to its publication, distribution,  
17 performance, display, licensing, or the ability to host it online or link to it from any  
18 website;
- 19 3. Damages according to proof;
- 20 4. Attorneys fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act  
21 including Section 505, on a Private Attorney General basis, or otherwise as allowed  
22 by law;
- 23 6. Plaintiff's costs and disbursements; and
- 24 7. Such other and further relief as the Court shall find just and proper.

25 Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited  
26 to, those issues and claims set forth in any amended complaint or consolidated action.

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DATED: March 1, 2007

By \_\_\_\_\_  
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