

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JOHN VAN STRY,

Plaintiff,

v.

TRAVIS ROBERT McCREA AND
FRANCISCO HUMBERTO DIAS, DOING
BUSINESS AS “FRANTECH
SOLUTIONS,”

Defendants.

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Case No. 2:19-CV-00104-WCB

MINUTE ORDER

On August 6, 2019, the Court held a telephonic Fed. R. Civ. P. 16(b) scheduling conference. During the teleconference, the Court also addressed what it interpreted as the defendant’s motion to vacate the default, Dkt. No. 16-2, the defendant’s motion for a change of venue to the Western District of Washington, Seattle Division, Dkt. No. 16-4, the defendant’s motion to dismiss, Dkt. No. 16-5, and the plaintiff’s supplemental briefing regarding personal jurisdiction, Dkt. No. 17. During the teleconference, the Court made the following oral rulings:

1. Defendant’s Motion to Vacate the Default Judgment and Allow Participation. The Court granted what it interpreted to be the defendant’s motion to vacate the default, Dkt. No. 16-
2. The defendant is no longer foreclosed from contesting the merits of the question of liability.

2. Defendant’s Motion for a Change of Venue and Plaintiff’s Supplemental Briefing Regarding Personal Jurisdiction. The Court held that, under *Penguin Group (USA) Inc. v. American Buddha*, 640 F.3d 497 (2d Cir. 2001), the situs of injury for purposes of determining long-arm jurisdiction in a copyright infringement case, such as this case, involving the alleged

uploading of a copyrighted printed literary work onto the Internet, is the location of the copyright holder. Based on the evidence before the Court, the location of the copyright holder is his current residence within the Eastern District of Texas. Therefore, with respect to personal jurisdiction and venue, the Court has personal jurisdiction over the defendant, and venue is proper in the Eastern District of Texas.

3. Defendant's Motion to Dismiss. The defendant raised an affirmative defense under the Digital Millennium Copyright Act (DMCA) safe harbor, claiming a lack of proper notification of claimed infringement under 17 U.S.C. 512(c)(3). The Court denied the motion to dismiss, holding that the complaint, which alleges proper notification of claimed infringement under 17 U.S.C. 512(c)(3) and other facts challenging the applicability of the DMCA safe harbor, is sufficient to state a claim for copyright infringement at the pleading stage. Additionally, the Court requested that the plaintiff re-submit, in readable (i.e., plain text) format, exhibits A and C from Dkt. No. 16-5, and submit a copy of exhibit B from Dkt. No. 16-5.

4. Proposed Docket Control Order. The Court stated that it will email a proposed docket control order to the parties. The parties have been instructed to inform the Court by email as to any objections to the proposed dates.

IT IS SO ORDERED.

SIGNED this 6th day of August, 2019.



WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE