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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

STEPHANIE LENZ,

Plaintiff,

v.

UNIVERSAL MUSIC CORP., UNIVERSAL
MUSIC PUBLISHING, INC., and UNIVERSAL
MUSIC PUBLISHING GROUP,

Defendants.

Case Number C 07-3783 JF

ORDER DENYING MOTION TO
DISMISS

[re: docket no. 38]

Defendants Universal Music Corp., Universal Music Publishing, Inc., and Universal Music Publishing Group (collectively, “Universal”) move to dismiss the instant case for failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). The Court has read the moving papers and has considered the oral arguments of counsel. For the reasons set forth below, the motion will be DENIED.

I. BACKGROUND

On February 7, 2007, Plaintiff Stephanie Lenz (“Lenz”) videotaped her young children dancing in her family’s kitchen. The song “Let’s Go Crazy” by the artist professionally known as Prince (“Prince”) played in the background. The video is twenty-nine seconds in length, and

1 “Let’s Go Crazy” can be heard for approximately twenty seconds, albeit with difficulty given the
2 poor sound quality of the video. The audible portion of the song includes the lyrics, “C’mon
3 baby let’s get nuts” and the song’s distinctive guitar solo. Lenz is heard asking her son, “what do
4 you think of the music?” On February 8, 2007, Lenz titled the video “Let’s Go Crazy #1” and
5 uploaded it to YouTube.com (“YouTube”), a popular Internet video hosting site, for the alleged
6 purpose of sharing her son’s dancing with friends and family.¹ YouTube provides “video
7 sharing” or “user generated content.” The video was available to the public at
8 <http://www.youtube.com/watch?v=N1KfJHFW1hQ>.

9 Universal owns the copyright to “Let’s Go Crazy.” On June 4, 2007, Universal sent
10 YouTube a takedown notice pursuant to Title II of the Digital Millennium Copyright Act
11 (“DMCA”), 17 U.S.C. § 512 (2000). The notice was sent to YouTube’s designated address for
12 receiving DMCA notices, “copyright@youtube.com,” and demanded that YouTube remove
13 Lenz’s video from the site because of a copyright violation. YouTube removed the video the
14 following day and sent Lenz an email notifying her that it had done so in response to Universal’s
15 accusation of copyright infringement. YouTube’s email also advised Lenz of the DMCA’s
16 counter-notification procedures and warned her that any repeated incidents of copyright
17 infringement could lead to the deletion of her account and all of her videos. After conducting
18 research and consulting counsel, Lenz sent YouTube a DMCA counter-notification pursuant to
19 17 U.S.C. § 512(g) on June 27, 2007. Lenz asserted that her video constituted fair use of “Let’s
20 Go Crazy” and thus did not infringe Universal’s copyrights. Lenz demanded that the video be re-
21 posted. YouTube re-posted the video on its website about six weeks later. As of the date of this
22 order, the “Let’s Go Crazy #1” video has been viewed on YouTube more than 593,000 times.

23 In September 2007, Prince spoke publicly about his efforts “to reclaim his art on the
24 internet” and threatened to sue several internet service providers for alleged infringement of his
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28 ¹ Lenz has posted other home videos on YouTube, allegedly for the same purpose. These additional videos are not at issue in this action.

1 music copyrights.² Lenz alleges that Universal issued the removal notice only to appease Prince
2 because Prince “is notorious for his efforts to control all uses of his material on and off the
3 Internet.” Lenz’s Opposition Brief at 3. In an October 2007 statement to ABC News, Universal
4 made the following comment:

5 Prince believes it is wrong for YouTube, or any other user-generated site, to
6 appropriate his music without his consent. That position has nothing to do with
7 any particular video that uses his songs. It’s simply a matter of principle. And
8 legally, he has the right to have his music removed. We support him and this
important principle. That’s why, over the last few months, we have asked
YouTube to remove thousands of different videos that use Prince music without
his permission.³

9 Second Amended Complaint (“SAC”), ¶ 30; *see also* J. Aliva et al., *The Home Video Prince*
10 *Doesn’t Want You to See*, ABC NEWS, Oct. 26, 2007, <http://abcnews.go.com/print?id+3777651>
11 (last viewed July 23, 2008). Lenz asserts in her complaint that “Prince himself demanded that
12 Universal seek the removal of the [“Let’s Go Crazy #1”] video . . . [and that] Universal sent the
13 DMCA notice at Prince’s behest, based not on the particular characteristics of [the video] or any
14 good-faith belief that it actually infringed a copyright but on its belief that, as ‘a matter of
15 principle’ Prince ‘has the right to have his music removed.’” SAC ¶ 31.

16 On July 24, 2007, Lenz filed suit against Universal alleging misrepresentation pursuant to
17 17 U.S.C. § 512(f) and tortious interference with her contract with YouTube. She also sought a
18 declaratory judgment of non-infringement. Universal filed a motion to dismiss, which the Court
19 granted on April 8, 2008. Lenz was given leave to amend her complaint to replead her first and
20 second claims for relief. On April 18, 2008, Lenz filed the operative SAC, alleging only a claim
21 for misrepresentation pursuant to 17 U.S.C. § 512(f). On May 23, 2008, Universal filed the
22 instant motion.

23 II. LEGAL STANDARD

24 “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a

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26 ² *See, e.g.,* M. Collett-White, *Prince to Sue YouTube, eBay Over Music Use*, REUTERS,
27 Sept. 13, 2007, http://www.reuters.com/article/internetNew/idUSL1364328420070914?feedtype=RSS&feedName_InternetNews&rpc=22&sp=true (last visited July 23, 2008).

28 ³ Lenz has dubbed this alleged pattern of activity the “Prince Policy.”