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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

MEDICAL PRIORITY CONSULTANTS,
INC. dba PRIORITY DISPATCH CORP., a
Utah corporation,

Plaintiff,

v.

RADIOREFERENCE.COM, LLC, a Texas
limited liability company, and LINDSAY
BLANTON, an individual,

Defendants.

**DEFENDANTS' COMBINED RULE 12(b)
MOTION TO DISMISS**

Case No. 2:22-cv-00594-CMR

Judge Cecilia M. Romero

Pursuant to Federal Rules of Civil Procedure (the “Rule” or “Rules”) 7(b) and 12(b) and DUCivR¹ 7-1(a), Defendants Radioreference.com, LLC (“Radioreference”) and Lindsay Blanton (“Blanton”) (collectively “Defendants”), by and through undersigned counsel of record, hereby respectfully move the Court to dismiss Plaintiff Medical Priority Consultants, Inc.’s (“Plaintiff” or “Priority Dispatch”) Complaint [Dkt. No. 2] in its entirety for lack of personal jurisdiction or, in

¹ The Rules of Practice for the United States District Court for the District of Utah are hereinafter referred to as the “Local Rule” or “Local Rules.”

the alternative, Defendant Blanton for failure to state a claim. Defendants provide below a memorandum in support of the instant motion to dismiss (the “Motion”).

PRECISE RELIEF SOUGHT AND SPECIFIC GROUNDS THEREFORE

Pursuant to Local Rule 7-1(a)(1)(A), Defendants respectfully seek dismissal of Plaintiff’s entire Complaint for lack of personal jurisdiction over Radioreference and Blanton. Such relief is authorized pursuant to, *inter alia*, Rule 12(b)(2) because neither Radioreference nor Blanton have the continuous and systematic affiliation or the minimum contacts with Utah necessary to support personal jurisdiction over Defendants in this forum.

Alternatively, without waiving personal jurisdiction, Defendants respectfully seek dismissal of Plaintiff’s only cause of action for Copyright Infringement under 17 U.S.C §§ 1010 *et seq.* against Blanton pursuant to Rule 12(b)(6) inasmuch as Plaintiff has failed to state a claim that relief can be granted against him.

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

Notwithstanding Priority Dispatch’s *legal* assertion of personal jurisdiction over Radioreference and Blanton, Plaintiff neglects to allege sufficient *facts* to support this conclusion. Accordingly, Plaintiff’s Complaint should be dismissed for a facial lack of jurisdiction. Moreover, and without converting the instant Motion into one for summary judgment, the attached declaration of Blanton clearly demonstrates that there is no jurisdiction over Radioreference and Blanton, given both Radioreference’s and Blanton’s lack of contacts with Utah. While Blanton is the owner and CEO of Radioreference, that alone is insufficient to obtain jurisdiction over him. Likewise, while Radioreference maintains a website that may be viewed in Utah, this fact alone is not enough to obtain jurisdiction over Defendants. On the contrary, as Defendants do not conduct business

from a physical location in Utah, have never directly sold any products into Utah, and have never targeted residents of this District, traditional personal jurisdiction doctrines require dismissal of Priority Dispatch's Complaint under Rule 12(b)(2).

Alternatively, Plaintiff's copyright claim against Blanton cannot survive under Rule 12(b)(6). To avoid dismissal under Rule 12(b)(6), a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Complaint's principal allegation on which personal liability against Blanton rests is as follows: "Defendant Blanton is personally liable for the ongoing infringement of Priority Dispatch's Copyright Registrations because 'corporate officers and limited liability members who participate in a corporation's tortious acts are personally liable' for such acts under Utah law. *Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, 20, 70 P.3d 35; (See Compl. ¶ 16.) Bald assertions of fact like Blanton being a corporate officer or Blanton "actively participating in the ongoing infringement of Priority Dispatch's Copyright Registrations" fall woefully short of the requisite pleading standards. Nowhere does the Complaint allege facts as to Blanton's action regarding the alleged copyright infringement, nor is its reliance on a fraud case applying Utah state law an appropriate basis for asserting Blanton's personal liability in a federal copyright case.

STATEMENT OF RELEVANT FACTS AND BACKGROUND

Radioreference is an out-of-state LLC with Virtually No Connection to Utah; Blanton is a Texas resident with no connection to Utah and who only acted in his capacity as CEO of

Radioreference; nor did Radioreference or Blanton copy or post any content owned by Plaintiff.

1. Defendant Radioreference is a Texas limited liability company with its sole office in Texas. (*See* Declaration of Lindsay Blanton in Support of Radioreference and Blanton’s Motion to Dismiss (the “Blanton Decl.”), attached as **Exhibit “A”** hereto, ¶ 3.)

2. Defendant Blanton resides in Texas. (*See id.* ¶ 2.)

3. Blanton is the co-owner and CEO of Radioreference. (*See id.* ¶ 3.)

4. Radioreference is a radio communications data provider. It maintains a website located at <http://www.Radioreference.com>(the “Radioreference.com Website”). The website offers a complete frequency database, trunked radio system information, FCC license data and technical data on communications systems used worldwide. It also hosts forums that include discussions with its users on radio communications related topics. (*See id.* ¶ 4.)

5. Radioreference also operates a separate user-generated Wiki website located at www.wiki.radioreference.com (the “Radioreference Wiki”) and a separate affiliated website located at www.broadcastify.com (the “Broadcastify Website”) (collectively, along with the website located at www.radioreference.com, the “Radioreference Websites.”). (*See id.* ¶ 5.)

6. The only content alleged to be infringed (the “Alleged Content”) is comprised of Priority Dispatch’s alphanumeric first responder codes and their short descriptors in plain text (not any of the protocols, questions, procedures, the look and feel, color, design, or other content from Priority Dispatch’s works), which was posted by registered users on the Radioreference Wiki. (*See id.* ¶¶ 6-7.)

7. An example of the Alleged Content that was actually posted is as follows:

Protocol 2: Allergies (Reactions)/Envenomations (Stings/Bites)
2-E-1 Ineffective breathing
2-D-1 Not alert
2-D-2 Difficulty speaking between breaths
2-D-3 Swarming attack (bee, wasp, hornet)
2-D-4 Snakebite

- 2-C-1 Difficulty breathing or swallowing
- 2-C-2 History of severe allergic reaction
- 2-B-1 Unknown status
- 2-A-1 No difficulty breathing or swallowing (rash, hives or itching may be present)
- 2-A-2 Spider bite

(*See id.* ¶ 9.)

8. The Alleged Content was not copied or posted by Blanton or anyone employed by Radioreference. (*See id.* ¶ 10.)

9. The Alleged Content was posted by a member of the public on the Radioreference Wiki. (*See id.* ¶ 6.)

10. A wiki is a website that allows collaborative editing of its content and structure by its users. (*See id.* ¶ 24); *see also* <https://www.lawinsider.com/dictionary/wiki>.

11. Similarly, the Radioreference Wiki is an open-editing model that consists of a collection of user-generated content that can be created, edited, and updated by any Radioreference registered user. As such, the Radioreference Wiki provides an open-source dynamic place to exchange radio communications information – a collaborative platform for public safety communication professionals and hobbyists. (*See id.* ¶ 24.)

12. Any registered user can post to the Radioreference Wiki. (*See id.* ¶ 25.)

13. The Radioreference Wiki has zero restrictions on the availability of its content to the public. This content is publicly available without pay. To be able to contribute to the content on the Radioreference Wiki, an individual only needs to register with Radioreference via Radioreference.com which simply requires the individual to provide Radioreference with an email address. Thus, to create, edit, update or exchange information on the Radioreference Wiki, the user does not need to purchase a *Radioreference.com* premium subscription, nor are they required to provide Radioreference with a name or physical address. (*See id.*)

14. Radioreference generates no revenue directly from the Radioreference Wiki. (*See id.* ¶ 26.)

15. Blanton views the Radioreference Wiki as a public service that Radioreference supports and hosts. (*See id.* ¶ 27.)

16. The Broadcastify Website broadcasts public safety live audio communications feeds, hosting thousands of live audio broadcasts of Police, Fire, EMS, Railroad, and aircraft communications. (*See id.* ¶ 28.)

17. Neither Radioreference nor Blanton: (a) conducts or engages in business in Utah; (b) is licensed to do business in Utah; (c) has an office or corporate presence in Utah; (d) holds, owns, leases, or controls any property (real or personal) or assets that are corporate-owned or personally-owned by Blanton in Utah; (e) maintains any bank accounts in Utah; (f) maintains a phone listing in Utah; (g) advertises or solicits customers in Utah; (h) travels to Utah by way of salespersons; or (i) pays taxes in Utah. (*See id.* ¶ 29.)

18. Neither does Radioreference or Blanton systematically or otherwise specifically target persons or companies as potential customers in the state of Utah for the sale of subscriptions to the Radioreference Website. (*See id.* ¶¶ 30-32.)

19. The Radioreference Websites can be viewed in any state and any country. Radioreference does not intentionally direct the activity on, or operation of these websites at Utah. (*See id.* ¶¶ 32-33.)

20. The Radioreference Websites are geographically neutral. The content on these websites is accessible worldwide as Radioreference is targeting a worldwide audience. (*See id.* ¶ 33.)

21. The Radioreference.com Website does host geographic-specific content for all 50 states, including Utah, and many countries, but it does not otherwise single-out or specifically target Utah. *See* <https://www.radioreference.com/db/browse/>. (*See id.* ¶ 34.)

22. The Radioreference.com Website's registered users come from numerous states within the United States and multiple countries across the world. (*See id.* ¶ 35.)

23. Radioreference values the privacy of all of its registered users, premium and complimentary, and it does not track the location of its users. (*See id.* ¶ 36.)

24. The vast majority of the data and information Radioreference receives comes from users located in the United States, Canada, and Australia. (*See id.* ¶ 37.)

25. To register as a Radioreference user, individuals are asked to choose a username, password, and email address. The individual is not required to enter any contact information other than an email address to register with Radioreference. (*See id.* ¶ 38.)

26. For its premium subscriptions, Radioreference accepts a variety of payment methods. The majority of premium subscribers, approximately ninety-eight percent (98%), pay using a credit card. Radioreference outsources the handling of these payments to Paypal. (*See id.* ¶ 39.)

27. Because Radioreference does not require that its premium subscribers provide their location when submitting payment, it is not possible to retrieve location information specific to Radioreference's premium subscribers. However, Radioreference has no reason to believe that its Utah-based premium subscribers represent a disproportionate percentage of its national and/or international userbase. (*See id.* ¶ 40.)

28. The Complaint makes no allegations regarding Radioreference's revenue streams other than its allegations generally referencing marketing and selling paid subscriptions to customers in this judicial district. (*See Compl.* ¶¶ 5, 9.)

29. There are no allegations regarding advertisements on the Radioreference.com Website or its affiliated Radioreference Websites. (*See gen. Compl.*)

30. The Radioreference.com Website contains no advertisements directed at Utah residents. (*See id.* ¶ 41.)

31. The Radioreference.com Website displays only one advertisement, for Scanner Master, a Massachusetts company. (*See id.* ¶ 42.)

32. The Radioreference Wiki contains no advertisements whatsoever. (*See id.* ¶ 43.)

33. The Broadcastify.com Website hosts ads that are exclusively controlled and maintained by Google. Radioreference has no control, or even input, regarding the content of those ads. (*See id.* ¶ 44.)

34. Radioreference also uses Google to advertise and promote its services. It does not, however, target its Google advertisements toward specific geographical locations, and it has never specifically targeted Utah with Utah-related keywords or Utah-centric geographical restrictions (e.g., advertisements that only appear in Utah). (*See id.* ¶ 45.)

35. Defendants' website evinces no intent to specifically target Utah residents to a degree greater than users in any other state and any other country. (*See id.* ¶ 46.)

Plaintiffs' Copyright Allegations and the Instant Litigation Have No Specific Ties to Utah

36. In its Complaint, Priority Dispatch states that it is the proprietor of the Priority Dispatch System ("PDS") for emergencies disciplines. The PDS® is an emergency protocol system licensed to emergency dispatch centers and Public Safety Answer Points ("PSAP") throughout the world. (Compl. ¶ 17.)

37. Priority Dispatch further states that PDS® is currently in use in 59 countries and is available in 28 languages. (*Id.* ¶ 18.)

38. Plaintiff alleges (albeit inaccurately) that Defendants posted for their subscribers Priority Dispatch's "copyrighted protocol systems and their determinant levels, codes, and descriptors," thereby infringing on Plaintiff's copyrights in the three registered works listed in the Complaint. (*See id.* ¶ 22.)

39. The alleged infringement happened on the Radioreference Wiki. (*See Blanton Decl.* ¶ 6.)

40. As mentioned above, the Alleged Content was *not* copied or posted by Defendants, but was posted and edited by registered users. (*See id.*)

41. The Radioreference.com Websites' Terms and Conditions, located at <https://www.radioreference.com/apps/content/?cid=2> (the "Radioreference Terms & Conditions"), contain a section dedicated to copyright concerns which provides procedures for Digital Millennium Copyright Act ("DMCA") takedown notices, including the name and address of Radioreference's designated agent to receive notifications of claimed infringement under the DMCA, Blanton, with a physical address located in San Antonio, Texas. (*See id.* ¶¶ 11-12, Ex. 1.)

42. On April 18, 2022, Priority Dispatch sent a DMCA takedown notice to Radioreference at the email address and physical address found in the Radioreference Terms & Conditions regarding the "'alphanumeric codes' and 'generic text descriptors for each code, and any applicable suffixes (special situations).'" (*See id.* ¶¶ 13-14, Ex. 2.)

43. In response, on April 19, 2022, Radioreference sent a counter-notice, stating that the DMCA Takedown was deficient, including that Priority Dispatch had not engaged in a proper fair use analysis of the Alleged Content that Radioreference Wiki users had posted and/or edited. (*See id.* ¶¶ 15-17, Ex. 3.)

44. On or around August 17, 2022, Priority Dispatch sent a DMCA takedown notice to Amazon Web Services ("AWS"), the webhosting service used by the Radioreference Wiki (the "August 17 DMCA Takedown"), regarding inaccurate allegations (that appear nowhere in the Complaint) of Radioreference making available for download Priority Dispatch's "copyrighted Flexi software." (*See id.* ¶¶ 18-19, Ex. 4.)

45. In response to the August 17 DMCA Takedown, Radioreference sent a counter-notice, which stated in part that Defendants consented to "the jurisdiction of the United States federal district court for the judicial district in which [their] address is located," which address was also provided in the counter-notice, is located in San Antonio, Texas, and matches the address from the Radioreference Terms & Conditions. (*See id.* ¶¶ 20-23, Ex. 5.)

46. Notwithstanding the foregoing, on September 12, 2022, Plaintiff filed its Complaint against Radioreference and Blanton in the United States District Court for the District of Utah. (Compl.[Dkt. No. 2].)

47. In its Complaint Plaintiff alleges on information and belief that a substantial number of Radioreference users are residents of the state of Utah. (*See id.* ¶ 10.)

48. Plaintiff also alleges on information and belief that a substantial number of Radioreference’s premium subscribers are residents of Utah. (*See id.* ¶ 11.)

49. Defendants are unclear as to Plaintiff’s basis for its “information and belief” of the location of Radioreference’s registered users and subscribers, when Radioreference itself does not have this information in its possession. (Blanton Decl. ¶¶ 36-40.)

50. While acknowledging that Radioreference is a Texas limited liability company and Blanton resides in Texas, Plaintiff contends in its Complaint that Defendants are subject to personal jurisdiction in Utah. (*See id.* ¶ 5.) This assertion appears to be based solely on an assumed number of Radioreference registered users and premium subscriber in Utah. (Compl. ¶¶ 8-11.)

51. Moreover, any reliance by Plaintiff on premium subscribers to establish personal jurisdiction is misplaced because, as noted above, the alleged infringement happened on the Radioreference Wiki page, which does not require a premium or paid subscription and is separate and distinct from the Radioreference.com Website and the Broadcastify Website. (*Compare* Compl. ¶¶ 8-11 *with* Blanton Decl. ¶¶ 6, 24-28.)

ARGUMENT

I. PRIORITY DISPATCH’S COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY FOR LACK OF PERSONAL JURISDICTION OVER RADIOREFERENCE AND BLANTON.

“Without jurisdiction the court cannot proceed at all in any cause.” *Sinochem Int’l Co. Ltd. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007) (citation and internal quotation marks omitted). Challenges to jurisdiction can either be “facial,” an attack on the sufficiency of the

complaint’s allegations of personal jurisdiction, or “factual,” a challenge to the facts upon which personal jurisdiction is based. *See Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). In the context of the former, *factual* allegations in the complaint are presumed to be true. *See id.* For the latter, “a district court may not presume the truthfulness of the complaint’s factual allegations” and instead “has wide discretion” to consider declarations or other evidence or documents without converting the motion into one for summary judgment. *See Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995). Here, Defendants challenge personal jurisdiction on both “facial” and “factual” grounds.

Rule 12(b)(2) authorizes dismissal for “lack of personal jurisdiction.” FED. R. CIV. P. 12(b)(2). Moreover, while the Court must “accept as true all of the [factual] allegations contained in a complaint” in the context of a facial attack on jurisdiction, this requirement is “inapplicable to legal conclusions.” *See Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011) (citation and internal quotation marks omitted). Indeed, “jurisdiction itself is a legal conclusion, a *consequence* of facts rather than a provable ‘fact.’” *McPhail v. Deere & Co.*, 529 F.3d 947, 954 (10th Cir. 2008) (citation and internal quotation marks and other alterations omitted; emphasis in original).

A. Priority Dispatch’s Complaint Facially Neglects to Allege Sufficient Facts to Demonstrate Personal Jurisdiction over Radioreference or Blanton.

Priority Dispatch’s Complaint is facially insufficient to establish personal jurisdiction over Radioreference or Blanton. *See Ruiz*, 299 F.3d at 1180. Plaintiff openly acknowledges that Radioreference is a Texas limited liability company with its principal place of business in San Antonio, Texas and that Blanton resides in Texas. (*See* Compl. ¶¶ 14-16.) Nevertheless, without explaining its factual predicate beyond the conclusory assumption that Radioreference targets Utah by “marketing and selling paid subscriptions on interactive websites to citizens of the State of

Utah,” Plaintiff asserts *Defendants* are subject to the personal jurisdiction of this Court. (*See* Compl. ¶¶ 5, 10-11.) Not only does this thin and factually inaccurate basis prove inadequate to support personal jurisdiction over Radioreference, Plaintiff’s sole factual basis for personal jurisdiction over Blanton appears to be that as CEO of Radioreference “Blanton is actively participating in the ongoing infringement of Priority Dispatch’s Copyright Registrations,” which falls even shorter of establishing the Court’s jurisdiction over Blanton. (*See* Compl. ¶ 15.)

Plaintiff is not entitled to any unstated factual assumptions that Defendants do indeed have “sufficient contacts with Utah.” *See Kansas Penn Gaming*, 656 F.3d at 1214. Priority Dispatch’s bald assertion as to the Court’s personal jurisdiction over Radioreference and Blanton, which are based solely on non-specific, assumed contacts should be flatly ignored. *See id.* Removing these improperly pled allegations from the analysis, Priority Dispatch’s Complaint facially neglects to allege sufficient facts to establish personal jurisdiction over Radioreference and Blanton, and, therefore, the Complaint should be dismissed in its entirety.

B. The Court Also Lacks Personal Jurisdiction Over Defendants on “Factual” Grounds.

“[T]o exercise jurisdiction in harmony with due process, defendants must have ‘minimum contacts’ with the forum state, such that having to defend a lawsuit there would not offend traditional notions of fair play and substantial justice.” *Fitn40, LLC v. Glanbia Nutritionals (Ireland) Limited, et al.*, Case No. 2:20-cv-00871-JNP-DAO, 2022 WL 79910, at *4 (D. Utah, Jan. 7, 2022) (unpublished) (quoting *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks omitted).² Moreover, the plaintiff “bears the burden of establishing personal

² *See Starways, Inc. v. Curry*, 980 P.2d 204, 206 (Utah 1999) (explaining that Utah’s long-arm statute extends to the fullest extent permitted by due process).

jurisdiction.” *Dudnikov*, 514 F.3d at 1069. To this end, minimum contacts may be established under the doctrines of either general or specific jurisdiction. *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1090-91 (10th Cir. 1998). Here, the Court has neither general nor specific jurisdiction over Radioreference or Blanton. As such, Priority Dispatch’s Complaint should be dismissed in its entirety.

1. Radioreference and Blanton Lack a Continuous and Systematic Affiliation with Utah Necessary to Subject Defendants to General Jurisdiction in Utah.

Plaintiff has not alleged facts sufficient to demonstrate, nor could it, that either Radioreference or Blanton have the necessary continuous and systematic affiliation with Utah to subject each of them to general jurisdiction in Utah. General jurisdiction may only be exercised over a defendant with “extensive, continuous and systematic” general business contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416-19 (1984). General jurisdiction lies only when a defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render [the defendant] essentially at home in the forum State.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 755 (2014) (citation and internal quotation marks omitted).

In evaluating general jurisdiction, courts consider a number of factors, none of which are independently dispositive, such as: (a) engaging in or being licensed to do business in the state; (b) owning, leasing, or controlling property or assets in the state; (c) maintaining offices or bank accounts in the state; (d) maintaining a phone listing in the state; (e) soliciting customers in the state; (f) traveling to the state by way of salespersons; and (g) paying taxes in the state and so forth (the “General Jurisdiction Factors”). *See Soma Medical Int’l v. Standard Chartered Bank*, 196 F.3d 1292, 1295-96 (10th Cir. 1999). It is only through pervasive general business contacts that a court can find the type of “substantial and continuous local activity” necessary to render a defendant at home in the forum state. *See id.* at 1296.

In this case, general jurisdiction does not exist over either defendant. Radioreference is a Texas limited liability company with its principal and only place of business in San Antonio,

Texas, and Blanton resides in Texas. (*See* SOF ¶¶ 1-2.) Furthermore, neither Radioreference nor Blanton is licensed to do business in Utah. (*See* SOF ¶ 17.) Likewise, none of the General Jurisdiction Factors weigh in favor of personal jurisdiction over either Defendant. (*See id.*) Indeed, Defendants have no connections to Utah other than possibly through a limited number of registered users and premium subscribers, some of whom may be located in Utah, but this fact is unknown to Radioreference or Blanton, as Radioreference does not collect personal data from its customers, and it outsources its credit card payments to Paypal. (*See* SOF ¶¶ 17-27.)

Where the exercise of general jurisdiction depends on the operation of a website, “[t]he maintenance of a website does not in and of itself subject the owner or operator to personal jurisdiction, even for actions relating to the site, simply because it can be accessed by residents of the forum state.” *See Shrader v. Biddinger*, 633 F.3d 1235, 1241 (10th Cir. 2011). Selling products to residents of a state can subject the seller to general jurisdiction if the commercial activity from the website is carried on with forum residents in such a sustained manner that it is tantamount to actual physical presence within the state. *Id.* at 1243, 1246. This is not the situation with Radioreference. Other than Plaintiff’s broad allegation that Defendants market and sell paid subscriptions to citizens of the State of Utah and that on information and belief a substantial number of “premium subscribers to *Radioreference.com* are residents of the State of Utah,” (*see* Compl. ¶ 11), Plaintiff has not alleged any particular marketing directed at or sales to Utah residents via any of the Radioreference Websites, and unquestionably not anything tantamount to actual physical presence in the state, nor could it. The Radioreference Wiki, the website where the alleged infringement took place, does not have any advertisements, (SOF ¶¶ 6, 14, 32, 40), nor does it require a premium subscription to access or post materials and information to the site (SOF ¶¶ 11-13). Radioreference does not track the location of its registered users. (*Id.* at ¶ 23.) Even if users first access the Radioreference.com Website to access the Radioreference Wiki, there is no

marketing specific to Utah on the Radioreference.com Website. (*Id.* at ¶¶ 30-31.) The only ad on the Radioreference.com website is for Scanner Master, a Massachusetts company. (*Id.* at ¶ 31.)

Plaintiff's allegations provide the Court with no tangible information about the marketing or the quantity or frequency of the Radioreference premium memberships purchased by Utah residents, nor do the allegations address how long Radioreference has sold the premium membership to Utahns. The allegations are insufficient to establish that Radioreference's contacts with Utah are sufficiently pervasive to constitute "substantial and continuous local activity." *See Soma Med.*, 196 F.3d at 1296. At a minimum, Plaintiff has not met, nor can it meet, its threshold burden to prove general jurisdiction as to both Defendants. *See Dudnikov*, 514 F.3d at 1069.

2. Neither Radioreference nor Blanton Has Purposefully Availed Itself/Himself of the Privilege of Conducting Business in Utah and is Not Subject to Specific Jurisdiction Here.

Radioreference or Blanton have not availed themselves to Utah's specific jurisdiction. As an alternative to general jurisdiction, specific jurisdiction is present where a defendant has purposefully directed its activities at the residents of the forum and the litigation results from injuries that arise out of, or are related to, those activities. *Great Bowery v. Best Little Sites*, -- F.Supp.3d---, Case No. 2:21-cv-00567-DBB, 2022 WL 2390934 (D. Utah, July 1, 2022) (unpublished) (citing *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895, 904 (10th Cir. 2017)). "[P]urposeful availment requires actions by the defendant which create a substantial connection with the forum state." *OMI Holdings*, 149 F.3d at 1092. Random, happenstance, fortuitous, or attenuated contacts will not be sufficient to establish jurisdiction. *Rusakiewicz v. Lowe*, 556 F.3d 1095, 1101 (10th Cir. 2009); *Ast Sports Sci.*, 514 F.3d at 1056-57 (purposeful availment ensures that a defendant will not be subject to the laws of a jurisdiction as a result of "unilateral activity of another party or third person."). To this end, "the exercise of jurisdiction depends on the *nature* of [the defendant's] contacts" and "whether they represent an effort by the defendant to purposefully avail itself of the privilege of conducting activities within the forum

state.” *Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1418-19 (10th Cir. 1988) (internal quotation marks omitted; emphasis in original).

a. The Radioreference Websites Do Not Provide the Requisite Contacts with Utah to Form the Basis of Personal Jurisdiction Over Radioreference.

In the context of “internet-based jurisdiction” solely through web-based activity, it has been held in this District that “traditional statutory and constitutional principles remain the touchstone of the inquiry.” *Kindig It Design, Inc. v. Creative Controls, Inc.*, 157 F. Supp. 3d 1167, 1171 (D. Utah 2016) (quoting *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 252 (2d Cir. 2007) (internal quotation marks omitted)). Although a company may have a public telephone number that can be dialed from every state, it is not necessarily subject to personal jurisdiction in every state. Rather, personal jurisdiction rising from telephonic contacts can only be based on *actual* phone calls. Similarly, personal jurisdiction arising from an interactive website should only be based on *actual* use of the site by forum residents. *See also Shrader*, 633 F.3d at 1230 & 1242 n.5.

Under traditional personal jurisdiction analyses, “one cannot purposefully avail oneself of ‘some forum someplace.’” *Kindig It Design*, 157 F. Supp. 3d at 1176 (quoting *Revell v. Lidov*, 317 F.3d 467, 475 (5th Cir. 2002) (internal quotation marks omitted)). Thus, while the internet allows businesses to create a presence visible throughout the world, a defendant’s web-based activities must still be “purposefully targeted” at the particular forum to render it subject to that forum’s personal jurisdiction. *Id.* Akin to “stream of commerce” cases in which “the placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State,” the mere availability of a website in the forum, alone, is not enough to establish specific personal jurisdiction. *See id.* (quoting *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 112 (1987) (internal quotation marks and alterations omitted)). Instead, the defendant’s website must “intentionally target[] Utah users” or there must be evidence that “Utah users actually interacted with [the] website.” *iAccess, Inc. v. WEBcard Techs., Inc.*, 182 F. Supp. 2d 1183, 1187 (D. Utah 2002). We are thus instructed to examine whether Radioreference

deliberately directed the Radioreference Wiki's messaging to an audience in Utah and intended harm to Priority Dispatch primarily or particularly in Utah. *See Fitn40*, 2022 WL 79910, at *5 (citation omitted). The emphasis and analysis are whether Radioreference intentionally directed its internet content or operations at the forum state. *See id.*

This Court's analysis in *Fitn40* is instructive; it found no specific personal jurisdiction over a defendant in a trademark case whose website targeted a nationwide audience. *See id.* The Court explained that the website included no Utah-specific content, nor any advertisements directed particularly at Utah residents. *See id.* In concluding there was no personal jurisdiction, the Court examined the Tenth Circuit's case *Shrader v. Biddinger*, where the Tenth Circuit similarly found no specific personal jurisdiction over a defendant in a defamation case where the defendant posted "geographically-neutral content" on a "geographically-neutral ... forum," with no suggestion that the defendant targeted his post at the forum state. *See id.* (citing *Shrader*, 633 F.3d at 1245-46). The *Shrader* Court observed, "every indication is that [defendant] targeted the post at a nationwide or world-wide audience of market traders with no inherent interest in or tie to [the forum state]." *See id.*

Here, Radioreference targeted its websites to a national / international audience of individuals interested in the broadcasting of public safety live audio communications, with no inherent interest in, or tie to, Utah. *See Shrader*, 633 F.3d at 1246; (SOF ¶¶ 4, 18-22.) This is illustrated by the fact that the only content hosted by Radioreference that is specifically relevant to Utah is in the context of the Radioreference.com Website, not the Radioreference Wiki, functioning as a worldwide database that therefore, like all other 49 states, has some Utah-specific content. (*See id.* ¶ 21.) Plaintiff does not point, nor can it, to any instances where Radioreference intentionally directs any of the Radioreference Websites' activity toward Utah. More specifically, Radioreference's Wiki, where the alleged infringement took place, is unreferenced in the

Complaint with respect to allegations of personal jurisdiction, and unquestionably directs no activity toward Utah. (*See gen. Compl.*)

The majority of the data and information Radioreference receives comes from users located in the United State, Canada and Australia; however, Radioreference does not track the location of its users nor the location of its premium subscribers. (*See* SOF ¶¶ 23-27.) Specifically, Radioreference outsources the handling of credit card payments for premium subscribers to Paypal, (*see id.* ¶ 26), and because Radioreference does not ask its users to provide their location when submitting payment, it is not possible to retrieve location information for Radioreference’s premium subscribers (*see id.* ¶ 27). However, Radioreference has no reason to believe that its Utah-based premium subscribers represent a disproportionate percentage of its national and/or international userbase. (*See id.*) This is because Radioreference hosts a database containing information of interest to a national audience and does not target any specific geographical location. (*Id.* at ¶ 20.)

Furthermore, the entirety of Plaintiff’s allegations regarding Defendants marketing in Utah is nothing more than a passing reference, *e.g.*, “such as marketing.” (*Compl.* ¶ 5.) Plaintiff makes no other allegations relating to Radioreference’s marketing in Utah, and what Plaintiff does allege is factually inaccurate. Radioreference does not direct any advertisements specifically at Utah residents. (*See id.* ¶¶ 18-21, 30-35.) In fact, the Radioreference Wiki contains no advertisements, the only advertisement on the Radioreference.com Website is from Scanner Master, a Massachusetts company, and all advertisements on the Broadcastify Website are in the exclusive control of Google, none of which target specific geographic locations. (*See id.* ¶¶ 30-35.) Nor has Radioreference specifically targeted Utah through the use of Utah-related keywords or Utah-centric geographical restrictions (*e.g.*, advertisements that only appear in Utah). (*See id.* ¶¶ 33-34); *see JibJab Media Inc. v. White Castle Mgmt.*, No. CV1204178MMMJEMX, 2013

WL12123696, at *67 (C.D. Cal, May 14, 2013) (Google-based advertising...is not sufficient to establish that company purposefully directed its actions to California..))

Like the websites in both *Fitn40* and *Shrader*, the Radioreference Websites target a worldwide audience. The Radioreference Websites are not specifically aimed at attracting a Utah-based audience and do not include any advertisements directed particularly at Utah residents. These websites evince no intent to target Utahns to a degree greater than users in any other state. *See Fitn40*, 2022 WL 79910 *5. Considering Radioreference's geographically-neutral websites, there is no intentional internet activity directed at Utah. As such, the Complaint against Radioreference should be dismissed for lack of personal jurisdiction.

b. This Court Lacks Specific Personal Jurisdiction Over Blanton.

The Complaint improperly groups Radioreference and Blanton together when asserting allegations relative to establishing personal jurisdiction. Defendants' contacts must be considered separately. The already thin factual support for personal jurisdiction over Radioreference is even more sparse with respect to Blanton. The only allegations regarding this Court's personal jurisdiction over Blanton are the assertions that Blanton "is the owner, founder, and CEO of defendant Radioreference.com" and that he is "actively participating in the ongoing infringement." (*See* Compl. ¶ 15.) Even if taken as true, Blanton's "awareness and approval of the conduct at issue ... fail to show that [Blanton] was acting outside his capacity as CEO of [Radioreference]." *Purjes v. Diginext, LLC*, No. 2:19-CV-00309, 2019 WL 6324652, at *2 (D. Utah, Nov. 26, 2019) (granting motion to dismiss for lack of personal jurisdiction over individual CEO of corporate defendant, who was a resident of New York and who had acted within the scope of his capacity as CEO, *inter alia*, in responding to a demand letter regarding copyright infringement). If "the acts of individual principals of a corporation in the jurisdiction were carried out solely in the individuals' corporate or representative capacity, the corporate structure will ordinarily insulate

the individuals from the court’s jurisdiction.” *Ten Mile Industrial Park v. W. Plains Serv. Corp.*, 810 F.2d 1518, 1527 (10th Cir. 1987) (cited by *Purjes*, 2019 WL 6324652, at *2).

Even assuming *arguendo* that the allegedly infringing activity was purposefully directed at Plaintiff in Utah and that Plaintiff’s injury arose from that activity, a fact Defendants do not concede, the Complaint does not allege facts sufficient for this Court to exercise jurisdiction over Blanton in his personal capacity. *Purjes*, 2019 WL 6324652, at *2 (“Even if Plaintiffs can show that the allegedly infringing activity was purposefully directed at Plaintiffs in Utah and that Plaintiffs’ injury arose from that activity, they do not allege facts sufficient for this court to exercise jurisdiction over [CEO of corporate Defendant] in his personal capacity.”). Priority Dispatch did not, because it cannot, allege any grounds for personal jurisdiction over Blanton independent of his activities as CEO of Radioreference. Blanton wrote both of the Counter Notices for the two DMCA takedown notices sent by Priority Dispatch, and in both he made clear that he was signing his name on behalf of Radioreference as Radioreference’s CEO. (*See* SOF ¶¶ 43, 45.)

Blanton has no personal contacts with the State of Utah and took no action outside of his capacity as CEO of Radioreference. (*See* SOF ¶ 17.) Blanton’s “role as CEO of a company [allegedly] doing business in the state of Utah is insufficient to subject him to personal jurisdiction in Utah.” *Celtig, LLC v. Patey*, 347 F. Supp. 3d 976, 983–84 (D. Utah 2018) (finding that individual’s role as CEO of Tennessee company, who did not do business in Utah in his personal capacity, was insufficient to subject him to personal jurisdiction in Utah). As such, the Complaint against Blanton should be dismissed.

c. Defendants are not Subject to Specific Personal Jurisdiction in Utah Under the Long-Arm Statute.

The Complaint also improperly and inaccurately states the facts as if Defendants directly copied and posted the Alleged Content on the Radioreference Wiki, causing harm to Plaintiff in Utah, presumably under the Utah Long-Arm Statute (although the sparsely worded Complaint does not specifically invoke the statute.) To the contrary, registered users of Radioreference posted

and edited the Alleged Content. (See SOF ¶¶ 6, 8-9, 40.) Radioreference received two DMCA (referring to the Digital Millennium Copyright Act) Takedown Notices in April and August 2022 respectively and served Counter-Notices regarding same. As the host of a wiki, Radioreference is an online service provider under the DMCA, 17 U.S.C. § 512 *et seq.* The DMCA provides a safe harbor for online service providers from liability for content posted on their websites by third parties as long as they follow the protocols when presented with a proper, correct, and effective notice (Takedown Notice) that there is infringing content on the site. The U.S Copyright office website explains the process:

Once the online service provider has received a compliant notice, it must act expeditiously to remove or disable access to the infringing material. The service provider must then promptly notify the user that originally uploaded the material that it has been removed.

If the user believes that the material was removed as a result of mistake or misidentification of the material, the user may submit a counter-notice requesting the reinstatement of the material. To be effective, a counter-notice must contain substantially the following information: (i) a physical or electronic signature of the user; (ii) identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled; (iii) a statement under penalty of perjury that the user has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; (iv) the user's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

See <https://www.copyright.gov/512/>. (Paraphrasing 15 U.S.C, § 512 (g)(3).)

In this case, Defendants may not have followed all of the steps required and may have inserted themselves in the process by serving a counter notice instead of letting the registered user defend his or her posting. While that is not conceded, the exact correctness of Defendant's

compliance is perhaps a matter for the merits of the case. Regardless, neither Radioreference nor Blanton is subject to personal jurisdiction under the Utah Long-Arm Statute, Utah Code Ann. § 78B-3-205 (2022), because neither actually copied or posted any copyrighted material belonging to a Utah resident. (*See* SOF ¶¶ 6, 8-9, 40.) Radioreference simply submitted Counter Notices (Blanton signing only in his capacity as CEO of Radioreference) under the DMCA refusing to comply with the request to take down material posted by a wiki user because of a belief, *inter alia*, that the posting by the user was fair use, a defense to infringement, and/or because the DMCA takedown notice contained false allegations of facts, including in the case of the August 19, 2022 Takedown false accusations as to links to download Plaintiff’s software from the Radioreference Wiki. (*See id.* ¶¶ 42-45.) Indeed, the person sending a DMCA takedown is required to conduct a fair-use analysis before sending the takedown notice. *See, e.g., Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2016) (“We hold that the statute requires copyright holders to consider fair use before sending a takedown notification.”). Blanton and Radioreference reasonably believed that this had not been done. (*See id.* ¶¶ 43, 45.)

An internet host in Texas who refuses, for good reason, not comply with a DMCA takedown notice for user-generated content is not purposefully availing itself of the Utah forum. Moreover, the DMCA provides that a person serving a counter notice must submit to personal jurisdiction where they are located. As such, the DMCA contemplates that lawsuits resulting from the DMCA counter notification should take place in the defendant’s home state. Defendants made this clear in the Counter-Notification to the August 19, 2022 DMCA Takedown which specifically consents to the personal jurisdiction of the United States federal district court for the judicial district in which the San Antonio, Texas address is located. 17 U.S.C. § 512(g)(3)(D); (*See* SOF ¶ 45.) As such, this case should have been filed in Texas, not Utah.

II. ALTERNATIVELY, IF DEFENDANTS ARE SUBJECT TO PERSONAL JURISDICTION, BLANTON SHOULD BE DISMISSED FOR PLAINTIFF’S

FAILURE TO STATE A LEGALLY COGNIZABLE CLAIM UNDER FED. R. CIV. P. 12(b)(6).

Alternatively, and without waiving personal jurisdiction, Plaintiff’s copyright claim against Blanton cannot survive under Rule 12(b)(6). To avoid dismissal under Rule 12(b)(6), a complaint must “state a claim to relief that is plausible on its face.” *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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint must, at a minimum, “give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555.

Only two paragraphs in the Complaint specifically address Blanton. They allege:

15. Defendant Lindsay Blanton resides in Shavano Park Texas, and is the owner, founder, and CEO of defendant Radioreference.com. Blanton is actively participating in the ongoing infringement of Priority Dispatch’s Copyright Registrations.

16. Defendant Blanton is personally liable for the ongoing infringement of Priority Dispatch’s Copyright Registrations because “corporate officers and limited liability members who participate in a corporation's tortious acts are personally liable” for such acts under Utah law. *Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, ¶20, 70 P.3d 35.

(Compl. ¶¶ 15–16.)

Conclusory allegations like Blanton is “actively participating in the ongoing infringement of Priority Dispatch’s Copyright Registrations,” fall woefully short of the requisite pleading standards. Giving all possible lenience to Plaintiff, the Complaint by a miniscule margin provides a single bare-bones phrase sufficient to allege a claim, albeit factually and legally inaccurate, against Radioreference for copyright infringement: “[a]t these [Radioreference] websites,

Defendants post for its subscribers Priority Dispatch’s copyrighted protocol systems and their determinant levels, codes, and descriptors.” (Compl. ¶ 22.) Nowhere, however, does the Complaint offer a single substantive fact about Blanton’s activity, except to allege that he is the CEO of Radioreference, which is insufficient to state a claim against him.

Moreover, in a federal copyright claim, which preempts state law, 17 U.S.C. §301(a), Plaintiff cites Utah state law as the basis for why Blanton is personally liable for Radioreference’s copyright infringement. (See Compl. ¶ 16 (citing *Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, ¶20, 70 P.3d 35).) *Armed Forces* is a fraud case applying Utah State law, not a federal copyright case. Nowhere does the Complaint allege facts as to Blanton’s personal activity regarding the alleged copyright infringement, nor is its reliance on *Armed Forces* an appropriate basis for asserting Blanton’s personal liability in a federal copyright case. As such, if the Court determines that it has personal jurisdiction over Blanton personally, it should dismiss the Complaint against him for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

CONCLUSION

For all of the foregoing reasons, Defendants’ Motion to Dismiss should be granted. Neither Blanton nor Radioreference is subject to the personal jurisdiction of this Court and, in the alternative, without waiving personal jurisdiction, Plaintiff’s claim for copyright infringement against Blanton should be dismissed for failure to state a claim.

DATED this 27th day of January, 2023.

Respectfully submitted,

KIRTON | McCONKIE

By: /s/Julie Kenworthy

Julie Edwards Kenworthy

Michael Eixenberger

*Attorneys for Defendants Lindsay Blanton
and Radioreference.com*

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2023, a true and correct copy of the foregoing **DEFENDANTS' COMBINED RULE 12(b) MOTION TO DISMISS** was served on opposing counsel identified below, as well as all other counsel of record in this case, in the manner indicated below:

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/s/ Sherry Glendenning

Exhibit A

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

MEDICAL PRIORITY CONSULTANTS,
INC. dba PRIORITY DISPATCH CORP., a
Utah corporation,

Plaintiff,

v.

RADIOREFERENCE.COM, LLC, a Texas
limited liability company, and LINDSAY
BLANTON, an individual,

Defendants.

**DECLARATION OF
LINDSAY BLANTON**

Case No. 2:22-cv-00594-CMR

Judge Cecilia M. Romero

I, Lindsay Blanton, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am over the age of 21, have personal knowledge of the facts set forth herein, and am otherwise competent to testify about the matters set forth herein.
2. I am currently a resident of the State of Texas.
3. I am the co-owner and CEO of Radioreference.com, LLC (“Radioreference”), a Texas, limited liability company with its sole office in Texas.

4. Radioreference is a radio communications data provider. It maintains a website located at <https://www.radioreference.com> (the “Radioreference.com Website”). The website offers a complete frequency database, trunked radio system information, FCC license data and technical data on communications systems used worldwide. It also hosts forums that include discussions with its users on radio communications related topics.

5. Radioreference also operates a separate user-generated Wiki website located at <https://Wiki.radioreference.com> (the “Radioreference Wiki”) as well as a separate affiliated website located at <https://www.Broadcastify.com> (the “Broadcastify Website”) (collectively, along with the Radioreference.com Website, the “Radioreference Websites”). A user can link to the Radioreference Wiki or to the Broadcastify Website from the Radioreference.com Website, or the sites can be independently accessed by typing in the respective URL.

6. The content alleged to be infringed (the “Alleged Content”) was posted and edited by registered users on the Radioreference Wiki page.

7. To the best of my knowledge, the Alleged Content that was posted is comprised of alphanumeric first responder codes, their short descriptors, and suffixes in plain text. To the best of my knowledge, no other content relating to Plaintiff was posted.

8. I do not understand what paragraph 22 of the Complaint is referring to by the words “copyrighted protocol systems.” The Alleged Content did not copy or display any systems or protocols.

9. An example of the Alleged Content that was actually posted is as follows:

Protocol 2: Allergies (Reactions)/Envenomations (Stings/Bites)
2-E-1 Ineffective breathing
2-D-1 Not alert
2-D-2 Difficulty speaking between breaths

- 2-D-3 Swarming attack (bee, wasp, hornet)
- 2-D-4 Snakebite
- 2-C-1 Difficulty breathing or swallowing
- 2-C-2 History of severe allergic reaction
- 2-B-1 Unknown status
- 2-A-1 No difficulty breathing or swallowing (rash, hives or itching may be present)
- 2-A-2 Spider bite

10. Neither I nor anyone employed by, or connected with, Radioreference copied or posted any Alleged Content at any time.

11. The Radioreference Websites' Terms and Conditions, located at <https://www.radioreference.com/apps/content/?cid=2> (the "Radioreference Terms & Conditions"), contain a section dedicated to copyright concerns which provides procedures for Digital Millennium Copyright Act ("DMCA") takedown notices, including my name and address as Radioreference's designated agent to receive notifications of claimed infringement under the DMCA, with a physical address located in San Antonio, Texas.

12. Attached hereto as Exhibit 1 is a true and correct copy of the Radioreference Websites' Terms & Conditions.

13. On April 18, 2022, I received, on behalf of Radioreference, a DMCA takedown notice at the email address and physical address found in the RadioReference Terms & Conditions (legal@radioreference.com and 1150 N Loop 1604 W, Suite 108, San Antonio, TX 78248) regarding the "'alphanumeric codes' and 'generic text descriptors for each code, and any applicable suffixes (special situations)'" (the "April 18 DMCA Takedown").

14. Attached hereto as Exhibit 2 is a true and correct copy of the April 18, 2022 Takedown Notice that I received as CEO of Radioreference.

15. When I, as CEO of Radioreference, received Plaintiff's April 18 DMCA Takedown, I, on behalf of Radioreference, chose not to take down any Alleged Content, material that was posted and/or edited by a Radioreference registered user, and instead, on April 19, 2022, I served a DMCA counter-notification (the "April 19 Counter-Notification").

16. I did this in part because I believed that the April 18 DMCA Takedown was deficient, including that Plaintiff had not engaged in a proper fair use analysis of the Alleged Content that the Radioreference Wiki users had posted and/or edited.

17. Attached hereto as Exhibit 3 is a true and correct copy of the April 19 Counter-Notification.

18. On or around August 17, 2022, I received, on behalf of Radioreference, a second DMCA takedown notice, which Priority Dispatch sent to Amazon Web Services ("AWS"), the webhosting service used by the Radioreference Wiki (the "August 17 DMCA Takedown"), regarding inaccurate allegations of Radioreference making available for download Priority Dispatch's "copyrighted Flexi software."

19. Attached hereto as Exhibit 4 is a true and correct copy of the August 19 DMCA Takedown.

20. When I, as CEO of Radioreference, received Plaintiff's August 17 DMCA Takedown, I, on behalf of Radioreference, confirmed that there was no "Flexi software" to remove from the Radioreference Wiki, so no action could be taken regarding same.

21. On August 22, 2022, I served on AWS a DMCA counter-notification (the "August 22 Counter-Notification").

22. I did this in part because I believed that there were false statements of fact in the August 19 DMCA Takedown, including the false assertion that Radioreference had posted a link to download software belonging to Plaintiff, when neither it nor its users had done so.

23. Attached hereto as Exhibit 5 is a true and correct copy of the August 22 Counter-Notification.

24. The Radioreference Wiki is an open-editing model that consists of a collection of user-generated content that can be created, edited, and updated by any Radioreference registered user. As such, the Radioreference Wiki provides an open-source dynamic place to exchange radio communications information – a collaborative platform for public safety communication professionals and hobbyists.

25. The Radioreference Wiki has zero restrictions on the availability of its content to the public. This content is publicly available without pay. To be able to contribute to the content on the Radioreference Wiki, an individual only needs to register with Radioreference via Radioreference.com, which simply requires the individual to create a username and password, and to provide Radioreference with an email address. Thus, to create, edit, update, or exchange information on the Radioreference Wiki, an individual does not need to purchase a Radioreference premium subscription, nor do they need to provide Radioreference with a name, or physical address.

26. Radioreference generates no revenue directly from the Radioreference Wiki.

27. I view the Radioreference Wiki as a public service that Radioreference supports and hosts.

28. The Broadcastify Website broadcasts public safety live audio communications feeds, hosting thousands of live audio broadcasts of Police, Fire, EMS, Railroad, and aircraft communications.

29. Neither Radioreference nor I (a) conducts or engage in business in Utah, (b) is licensed to do business in Utah, (c) has an office or corporate presence in Utah, (d) holds, owns, leases, or controls any property (real or personal) or assets that are corporate-owned or personally-owned by me in Utah, (e) maintains any bank accounts in Utah, (f) maintains a phone listing in Utah, (g) advertises or solicits customers in Utah, (h) travels to Utah by way of salespersons, or (i) pays taxes in Utah.

30. Neither does Radioreference or I systematically or otherwise specifically target persons or companies as potential customers in the state of Utah for the sale of Radioreference premium subscriptions.

31. More specifically, neither Radioreference nor I market to persons or companies in the state of Utah to sell premium Radioreference subscriptions.

32. None of the Radioreference Websites intentionally direct their activity or operation toward Utah.

33. The Radioreference Websites are geographically neutral. The content on these sites is accessible worldwide as Radioreference is targeting a worldwide audience.

34. The Radioreference.com Website does host geographic-specific content for all 50 states, including Utah, and many countries, but it does not otherwise single-out or specifically target Utah. See <https://www.radioreference.com/db/browse/>.

35. Radioreference's registered users are from multiple states within the United States and multiple countries across the world.

36. Radioreference values the privacy of all of its registered users and premium subscribers and does not track the location of its users.

37. The majority of the data and information Radioreference receives comes from users located in the United States, Canada and Australia.

38. To register as a Radioreference user, individuals are asked to choose a username, password, and email address. The individual is not required to enter any contact information other than an email address to register with Radioreference.

39. For its premium subscriptions, Radioreference accepts a variety of payment methods. The majority of premium subscribers, approximately ninety-eight percent (98%), pay using a credit card. Radioreference outsources the handling of these payments to Paypal. The remaining small percentage of premium subscribers use other methods of payment ranging from wire transfers and checks to cryptocurrencies.

40. Because Radioreference does not ask its customers to provide their location when submitting payment, it is not possible to retrieve location information for Radioreference's premium subscribers. However, Radioreference has no reason to believe that its Utah-based premium subscribers represent a disproportionate percentage of its national and/or international userbase.

41. The Radioreference.com Website contains no advertisements directed at Utah residents.

42. The Radioreference.com Website displays only one advertisement; it is an advertisement for Scanner Master, a Massachusetts company.

43. The Radioreference Wiki contains no advertisements whatsoever.

44. The Broadcastify.com Website hosts ads that are exclusively controlled and maintained by Google. Radioreference has no control, or even input, regarding the content of those ads.

45. Radioreference also uses Google to advertise and promote its services. It does not, however, target its Google advertisements toward specific geographical locations, and it has never specifically targeted Utah with Utah-related keywords or Utah-centric geographical restrictions (e.g., advertisements that only appear in Utah).

46. The Radioreference Websites do not link to any third-party websites that are based in Utah.

47. The Radioreference Websites do not specifically target Utah residents to a greater degree than users in any other state or any other country.

48. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements made by me are true and correct.

Executed on January 27th, 2023

/s/ Lindsay Blanton*

Lindsay Blanton

*Signed with permission 1/27/23

Exhibit 1

RadioReference.com Terms and Conditions

1. ACCEPTANCE OF TERMS

RadioReference.com LLC, comprised of the internet sites RadioReference.com, wiki.radioreference.com, api.radioreference.com, and radioreference.blogspot.com (the "Sites"), provides the information and services on the Sites to you, the user, conditioned upon your acceptance, without modification, of the terms and conditions of use applicable to such Sites. Your use of any of the Sites constitutes agreement with the terms and conditions of use set forth herein (the "Terms").

Before using RadioReference.com Sites, please carefully read this agreement relating to your use of RadioReference.com Sites. By using RadioReference.com Sites, you agree to be bound by these terms and conditions. If you do not agree to these terms and conditions, please do not use RadioReference.com Sites.

RadioReference.com reserves the right, at RadioReference.com's sole discretion, to change, modify, add or remove portions of these Terms periodically. Such modifications shall be effective immediately upon posting of the modified agreement to the website unless provided otherwise (e.g., when implementing major, substantive changes, RadioReference.com intends to provide users with up to fourteen days of advance notice). Your continued use of the RadioReference.com Sites following the posting of changes to these Terms will mean that you accept those changes.

Use of RadioReference.com Sites constitutes full acceptance of and agreement to the Terms; if a user does not accept RadioReference.com's Terms, he or she is not granted rights to use RadioReference.com Sites as defined herein, and should refrain from accessing RadioReference.com Sites.

RadioReference.com reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, any or all RadioReference.com Sites (or any part thereof). RadioReference.com shall not be liable to any user or other third party for any such modification, suspension or discontinuance except as expressly provided herein.

2. NO UNLAWFUL OR PROHIBITED USE

By using RadioReference.com Sites, you warrant to RadioReference.com that you will not use RadioReference.com Sites, or any of the content obtained from RadioReference.com Sites, for any purpose that is unlawful or prohibited by these Terms. If you violate any of these Terms, your permission to use the RadioReference.com Sites automatically terminates.

3. DESCRIPTION OF SERVICES

The RadioReference.com Sites are owned and operated by RadioReference.com for the purpose of radio communications, a database, and associated discussions (the "Purpose"). The RadioReference.com Sites provide news, databases, and discussions resources that are of interested to the Radio Communications community..

4. REGISTRATION OBLIGATIONS

When requested, each RadioReference.com Site user must: (1) personally provide true, accurate, current and complete information on the RadioReference.com Site's registration form (collectively, the "Registration Data") and (2) maintain and promptly update the Registration Data as necessary to keep it true, accurate, current and complete. If, after investigation, RadioReference.com has reasonable grounds to suspect that any user's information is untrue, inaccurate, not current or incomplete, RadioReference.com may suspend or terminate that user's account and prohibit any and all current or future use of the RadioReference.com Sites (or any portion thereof) by that user other than as expressly provided herein.

Each user will receive passwords and account designations upon completing certain RadioReference.com Site registration processes and is wholly responsible for maintaining the confidentiality thereof and wholly liable for all activities occurring thereunder. RadioReference.com cannot and will not be liable for any loss or damage arising from a user's failure to comply with this Section 4, including any loss or damage arising from any user's failure to: (1) immediately notify RadioReference.com of any unauthorized use of his or her password or account or any other breach of security; and (2) ensure that he or she exits from his or her account at the end of each session.

RadioReference.com handles user Registration Data in accordance with the RadioReference.com Sites' Privacy Policy .

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All information, data, text, software, music, sound, photographs, graphics, video, messages, or any other materials whatsoever (collectively, "Content"), whether publicly posted or privately transmitted, is the sole responsibility of the person from whom such Content originated. This means that the user, and not RadioReference.com, is entirely responsible for all Content that he or she uploads, posts, emails or otherwise transmits via the RadioReference.com Sites. No user shall transmit Content or otherwise conduct or participate in any activities on RadioReference.com Sites that, in the judgment of RadioReference.com, is likely to be prohibited by law in any applicable jurisdiction, including laws governing the encryption of software, the export of technology, the transmission of obscenity, or the permissible uses of intellectual property.

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If you believe that your work has been copied and is accessible on this site in a way that constitutes copyright infringement, you may notify us by providing our copyright agent with the following information in writing:

- (1) the electronic or physical signature of the owner of the copyright or the person authorized to act on the owner's behalf;
- (2) identification of the copyrighted work that you claim has been infringed;
- (3) identification of the material that is claimed to be infringing and information reasonably sufficient to permit RadioReference.com to locate the material, including the full URL.
- (4) your name, address, telephone number, and email address.
- (5) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- (6) a statement, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

If RadioReference.com receives such a claim, RadioReference.com reserves the right to refuse or delete Content as described under Section 5 hereto, or to terminate a user's account in accordance with Section 9.

Our designated agent to receive notification of claimed infringement under the Digital Millennium Copyright Act OF 1998 ("DMCA") is:

Lindsay C. Blanton III President, RadioReference.com 1150 N Loop 1604 W Suite 108-556 San Antonio, TX 78248 legal@radioreference.com

After receiving a claim of infringement, RadioReference.com will process and investigate notices of alleged infringement and will take appropriate actions under the DMCA and other applicable intellectual property laws. Upon receipt of notices complying or substantially complying with the DMCA, RadioReference.com will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity, and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. RadioReference.com will take reasonable steps to expeditiously notify the subscriber that it has removed or disabled access to such material.

Upon receipt of a proper counter notification under the DMCA, RadioReference.com will promptly provide the person who provided the initial notification of claimed infringement with a copy of the counter notification and inform that person that it will replace the removed material or cease disabling access to it in ten (10) to fourteen (14) business days. Additionally, RadioReference.com will replace the removed material and cease disabling access to it ten (10) to fourteen (14) business days following receipt of the

counter notice, unless RadioReference.com's designated agent first receives notice from the person who submitted the initial notification that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the RadioReference.com system or network.

You may provide us with a counter notification by providing our copyright agent the following information in writing:

(1) your physical or electronic signature;

(2) identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled, including the full URL;

(3) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;

(4) your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for any judicial district in which RadioReference.com may be found and that you will accept service of process from the person who provided the initial notification of infringement.

14. GENERAL INFORMATION

The Terms constitute the entire agreement between each user and RadioReference.com and govern each user's use of RadioReference.com Sites, superseding any prior agreements. Each user may be subject to additional terms and conditions that may apply when that user uses affiliate services, third party content or third party software.

15. VIOLATIONS

Please report any violations of the Terms (except for claims of intellectual property infringement) to the RadioReference.com Legal Team at legal@radioreference.com

Last Updated: 2007-12-09 15:57:19

Exhibit 2



Legal Department

J. Simón Cantarero
Direct +1 385 715 0598
simon.cantarero@prioritydispatch.net

April 18, 2022

VIA USPS and EMAIL: legal@radioreference.com

Lindsay C. Blanton III, President
RadioReference.com
1150 N Loop 1604 W, Suite 108
San Antonio, TX 78248

**RE: Notice of Infringement
Digital Millennium Copyright Act of 1998 (DMCA)**

Dear Mr. Blanton,

Priority Dispatch Corp. ("Priority Dispatch") is the exclusive world-wide proprietor of the Emergency Priority Dispatch System ("EPDS") for emergency disciplines. The EPDS is an emergency protocol system licensed to emergency dispatch centers and Public Safety Answering Points (PSAP) throughout the world. The EPDS is currently in use in 54 countries and in 27 languages. The EPDS includes, among other things, Key Questions, Pre-Arrival Instructions®, Post-Dispatch Instructions®, determinant codes and descriptors for three disciplines: Medical, Fire, and Police.

The Medical Priority Dispatch System (MPDS®) is the original and most advanced emergency call-taking system in the world. It allows emergency communication centers to eliminate the impractical and dangerous practice of freelance call-taking. The structured approach guides call takers to quickly gather the right information, dispatch the right help, and when necessary, provide lifesaving support. The Fire Priority Dispatch System (FPDS®) is the most comprehensive, up-to-date Fire/Rescue Protocols, Pre-Arrival Instructions® and Post-Dispatch Instructions® in the world. The Police Priority Dispatch System (PPDS®) is the leading structured police call-taking system of protocols and instructions, designed to assist emergency dispatchers gather and relay additional critical information to police to increase officer, victim, and bystander safety.

Priority Dispatch has expended considerable time, effort, and resources in developing its intellectual property and in perfecting its rights. The EPDS is protected by national and international patents, trademarks, and copyright laws, as well as laws and conventions and treaties protecting intellectual property rights. The MPDS®, FPDS®, and PPDS® are extremely valuable business assets that differentiate Priority Dispatch from the competition. Consequently, Priority Dispatch is very vigilant and active in pursuing those that reproduce, distribute, copy, publicly display, or adapt their contents (in whole or in part) without authority or consent. In addition, the MPDS is protected in the U.S. by 21 issued patents and 4 pending patent applications, and there are 110 issued foreign patents and 30 pending foreign patent applications protecting the intellectual property abroad. Only authorized and properly licensed users may use in any way or have access to the MPDS®. Consequently, Priority Dispatch has reasonable expectations that others will respect its intellectual property rights.

Priority Dispatch has recently become aware that a RadioReference.com webpage has been posted with unauthorized copyrighted information belonging to Priority Dispatch. The infringing content can be seen at https://wiki.radioreference.com/index.php/Priority_Dispatch_Codes# (last visited April 16, 2022).

Specifically, the copyrighted information we are concerned about is referred to as “the dispatch determinants (codes) utilized in the Priority Dispatching™ system by the National Academy of Emergency Dispatch™ (NAED™)” and includes “alphanumeric codes” and “generic text descriptors for each code, and any applicable suffixes (special situations).” The information online, accompanying tables, and descriptions are part of the EPDS, and as such are not authorized to be posted.

In light of the foregoing, we respectfully request that you immediately remove these materials from the aforementioned webpage, and from any other webpage or similar publicly available medium under your custody or control, and notify me in writing confirming this action no later than April 22, 2022.

In the alternative, you may continue to publish the above-referenced webpage with Priority Dispatch’s Determinant Codes and Descriptors for an annual fee of \$225,000, payable thirty days from the date of this letter, and annually no later than January 31 of each following year. If we do not receive written confirmation that Priority Dispatch’s copyrighted information has been removed by the appointed date, and the webpage is still up and active, we will initiate billing or seek a restraining order to protect our rights. Furthermore, it’s worth noting that the information published on your website is outdated and inaccurate, and would be considered potentially dangerous if used or relied on by PSAPs, responders, or the general public.

I have a good faith belief that the use of the copyrighted material described above on the allegedly infringing web pages is not authorized by the copyright owner nor its agent, or by protection of law.

I swear, under penalty of perjury, that the information in the notification is accurate and that I am authorized to act on behalf of its rightful owner and on behalf of an exclusive right that is allegedly infringed.

This notice is written without prejudice to or waiver of our rights, all of which are hereby expressly reserved. If you require further information, I can be reached at the numbers listed at the top of this letter.

Respectfully submitted,

/s/ J. Simón Cantarero
General Counsel

cc: Jeff J. Clawson, M.D.
Medical Director and Founder
International Academies of Emergency Dispatch

Brian Dale
President
Priority Dispatch Corp.

Exhibit 3



April 19, 2022

VIA EMAIL: Simón Cantarero <Simon.Cantarero@prioritydispatch.net>

Priority Dispatch Corp.
Legal Department - J. Simón Cantarero
110 South Regent Street, Suite 500
Salt Lake City, UT 84111 USA

**RE: Notice of Infringement Dated April 18, 2022
Digital Millennium Copyright Act of 1998 (DMCA)**

Dear Mr. Cantarero:

RadioReference.com LLC declines your request to remove the content posted at the following URL:

https://wiki.radioreference.com/index.php/Priority_Dispatch_Codes

We would like to remind you that it is not legal, financially viable, or ethical, to claim that someone has infringed your copyright when this has not occurred. When you send a DMCA takedown notice that is both false and meant in bad faith, you have committed perjury. When filing a DMCA takedown request, your organization has a legal duty to consider fair-use of the materials contained in the above referenced URL.

Sincerely,

A handwritten signature in blue ink that reads "Lindsay Blanton" with a stylized flourish at the end.

Lindsay Blanton
Chief Executive Officer

Exhibit 4

Dear Amazon,

This law firm represents Priority Dispatch Corporation ("PDC") in intellectual property matters. This message constitutes notification of claimed infringement pursuant to § 202 of the Digital Millennium Copyright Act of 1998 (the "DMCA"). 17 U.S.C. § 512 (c)(1)(3).

By this message, PDC provides notice of objection to the unauthorized reproduction of its copyrighted material. Specifically, PDC's copyrighted Flexi software is available for download using the link shown below:

https://wiki.radioreference.com/index.php/Priority_Dispatch_Codes

PDC's EMS, Fire, and Police protocols are registered copyrights in the United States. *See* U.S. Copyright Registration Nos. TX0008333136 (Fire), TX0008333140 (EMS), and TX0007934165 (Police).

I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use).

I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am authorized to act on behalf of the owner of the copyright that is allegedly infringed.

Should you have any questions concerning PDC's position in this matter, please do not hesitate to contact me.

This notice of claimed infringement is sent without prejudice to the rights of PDC, all of which are expressly reserved.

Sincerely,

Jared L. Cherry

PHILLIPS WINCHESTER ATTORNEYS AT LAW

4001 South 700 East, Suite 500 | Salt Lake City, UT 84107

Phone: 801-935-4932 | Fax: 801-935-4936

jlc@phillipswinchester.com | phillipswinchester.com

Exhibit 5

Dear Amazon,

We received your DCMA notice and wish to file the following counter notice:

1) Priority Dispatch Corporation ("PDC") alleges that the information at the following link infringes on their copyrights in violation of the Digital Millennium Copyright Act of 1998 (the "DMCA"). 17 U.S.C. § 512 (c)(1)(3).

https://wiki.radioreference.com/index.php/Priority_Dispatch_Codes

PDC also alleges that we are hosting a link to download software called "Flexi software"

2) I declare under penalty of perjury I have a good faith belief that the material at issue was misidentified.

I hereby state that the information in this Counter Notice is accurate and, under penalty of perjury, that I am authorized to act on behalf of the owner of link above that is allegedly infringed.

3)
Lindsay C. Blanton III
Chief Executive Officer
RadioReference.com LLC
1150 N Loop 1604 W Suite 108-556
San Antonio, TX 78248
(210) xxx-xxxx

4) I consent to the jurisdiction of the United States federal district court for the judicial district in which my address is located and will accept service of process from the person who provided the notice set forth above or their agent.

5) /s/ Lindsay C. Blanton III, Chief Executive Officer,

RadioReference.com LLC