

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

BRYAN ANTHONY REO,)
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Plaintiff,)
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v.) No. 14-5093-CV-SW-MJW
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MARTIN LINDSTEDT,)
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Defendant.)

ORDER

Before the Court is Plaintiff Bryan Anthony Reo's response to this Court's Order to Show Cause (doc. 46).¹ The Court entered an order on July 7, 2015, finding that the complaint fails to state a plausible claim for relief under the Digital Millennium Copyright Act (DMCA) to establish federal question jurisdiction and that the allegations are insufficient to support the legitimacy of a claim exceeding \$75,000 to establish diversity jurisdiction. The Court directed Plaintiff to demonstrate why this case should not be dismissed for lack of subject matter jurisdiction. For the reasons stated below, this Court concludes that Plaintiff has failed to provide facts or evidence to prove the requisite federal jurisdictional amount.²

Background

Plaintiff filed this action pro se against Defendant Martin Lindstedt in federal court in the Northern District of Ohio, and the case was transferred to this district as the proper venue pursuant to 28 U.S.C. § 1406(a). In addition to a claim for relief under the DMCA, Plaintiff's complaint asserts claims arising under state tort law, including defamation, libel, intentional infliction of emotional distress and invasion of privacy. Plaintiff seeks injunctive relief and \$10,750,000 in monetary damages, specifically: \$100,000 in actual damages "for damage to

¹ With the consent of the parties, this case was assigned to the United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(c).

² On September 1, 2015, Defendant filed unsolicited suggestions in reply (doc. 47) to Plaintiff's response, in which he asserts that the Court has jurisdiction to proceed on his counter-claims. However, Defendant's counter-claims were asserted in an amended answer that was stricken in accordance with Fed. R. Civ. P. 15(a)(2). (Doc. 41). The operative responsive pleading in this case (doc. 9) does not contain a counter-claim.

Plaintiff's reputation"; \$500,000 in emotional damages; \$10,000,000 in punitive damages; and \$150,000 in statutory damages under the DMCA.

Standard

"When a federal complaint alleges a sufficient amount in controversy to establish diversity jurisdiction, but . . . the court questions whether the amount alleged is legitimate, the party invoking federal jurisdiction must prove the requisite amount by a preponderance of the evidence." See Missouri ex rel. Pemiscot County v. Western Sur. Co., 51 F.3d 170, 173 (8th Cir. 1995). To satisfy this standard requires offering some specific facts or evidence demonstrating that the jurisdictional amount has been met. See Hill v. Ford Motor Co., 324 F. Supp. 2d 1028, 1035 (E.D. Mo. 2004). "Speculation and belief that a plaintiff's damages exceed \$75,000 is insufficient to meet this burden." Krebs v. Estate of Estate of Krebs, No. 14-CV-1408-JAR, 2015 U.S. Dist. LEXIS 58565, at *4 (E.D. Mo. May 5, 2015) (citing Hill, 324 F. Supp. 2d at 1036). Further, "the plaintiff's allegations of requisite jurisdictional amount are not necessarily dispositive of the [jurisdictional] issue." Missouri ex rel. Pemiscot County, 51 F.3d at 173.

Discussion

In Plaintiff's response regarding his DMCA claim (doc. 46), he requests he be allowed to amend his complaint. The federal court has a liberal amendment policy. See Fed. R. Civ. P. 15(a) (a court should grant leave to amend freely "when justice so requires"). "However, denial of leave to amend may be justified by undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party." United States ex rel. Joshi v. St. Luke's Hosp., Inc., 441 F.3d 552, 557-58 (8th Cir. 2006) (internal quotation omitted). Even with liberal construction, the complaint here is devoid of facts that would conceivably support a basis for a claim under the DMCA. See CoxCom, Inc. v. Chaffee, 536 F.3d 101, 110 (1st Cir. 2008) (prohibited conduct under the DMCA, 17 U.S.C. § 1201, is the trafficking of any technology designed to circumvent a technological measure that controls access to a copyrighted work); see Monotype Imaging, Inc. v. Bitstream Inc., 376 F. Supp. 2d 877, 892 (N.D. Ill. 2005) (the DMCA, 17 U.S.C. § 1202, concerns the unauthorized intentional removal or alteration of copyright management information). This Court concludes that allowing an amendment to Plaintiff's DMCA claim would be futile.

The issue in this case is the amount in controversy to establish that this Court has diversity jurisdiction over Plaintiff's state law claims. In his response, Plaintiff primarily argues

that the damages he has suffered are “conclusively established” due to Defendant’s failure to respond to requests for admissions that included statements about the extent of damages. (Doc. 46 at 3-4). Plaintiff further contends that “the trier of fact could easily conclude” that Defendant’s conduct resulted in Plaintiff suffering “at least \$75,000 in damages”. *Id.* at 4. Plaintiff also offers the following two assertions in his response, that: “relatives [have] approached him and ask[ed] him about content placed on the internet by Defendant regarding Plaintiff”; and that he “has also been approached by professors, peers, and his employer, with questions about content placed on the internet by Defendant about Plaintiff”. *Id.*

Here, the allegations include vaguely stated categories of damages, which provide the court with little guidance as to the actual damages incurred by the Plaintiff. Plaintiff focuses on the degree of offensive conduct alleged in his complaint, but fails to provide any evidence or specific fact upon which the Court can rely on in determining that his claims exceed the jurisdictional minimum. To rely on Plaintiff’s generic and conclusory allegations that he has suffered emotional distress and damage to his reputation, without more, would be mere conjecture. The Court cannot speculate that Plaintiff’s damages exceed \$75,000.

Notably, both Plaintiff and Defendant’s filings contain personal attacks and references to immaterial information about the other that conflict with Fed. R. Civ. P. 12(f), which provides that “a court may strike any immaterial, impertinent, or scandalous matter”. Statements of a similar nature were also made by both parties on the record during the telephone conference call held in this matter on February 13, 2015.

After careful consideration, the Court has doubts that the alleged amount in controversy is either presented in good faith or substantiated. Plaintiff fails to offer any specific facts or evidence in his response to reasonably demonstrate that he could meet the \$75,000 threshold. Consequently, the Court does not have subject matter jurisdiction over Plaintiff’s claims. In accordance with Fed. R. Civ. P. 12(h)(e), “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”. A dismissal should be without prejudice since there is no jurisdiction in federal court and plaintiff may seek to litigate his claims in state court, while being mindful of any applicable statute of limitations.

Conclusion

The Plaintiff’s claims are DISMISSED without prejudice for lack of subject matter jurisdiction. All motions outstanding in the case are denied as moot.

IT IS SO ORDERED.

Dated this 10th day of September, 2015, at Jefferson City, Missouri.

/s/ *Matt J. Whitworth*

MATT J. WHITWORTH
United States Magistrate Judge