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October 14, 2020

**Via Email**

Alex H. Moss  
Staff Attorney  
Electronic Frontier Foundation  
815 Eddy Street  
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alex@eff.org

Re: Response to Letter re. Lindsay Ellis' video "Into the Omegaverse: How a Fanfic Trope Landed in Federal Court" (the "Video")

Dear Alex:

As your organization, the Electronic Frontier Foundation ("EFF"), is a close partner with the Organization for Transformative Works ("OTW"), and was clearly working with Lindsay Ellis on the Video, the EFF is aware that for over two years, my client, Addison Cain ("Ms. Cain") has been involved in two lawsuits in which the plaintiff (Quill Ink Books, Limited) was supported by the OTW, via cofounder and self-professed *fanfiction expert* Prof. Busse—who lacks any background in infringement analysis, yet sought to supply Court-rejected expert testimony.

The OTW has been at least tangentially involved in the litigation brought about due to DMCA's filed by Ms. Cain's former publisher against another author, Zoey Ellis (who previously also published as author [REDACTED]). Zoey Ellis, using her proxy company, along with her corporate counsel (a former ARC reader of Ms. Cain's books, who is currently under investigation by the Chief Disciplinary Counsel in Texas [Case No: 202004421] for modifying evidence in regards to the Oklahoma case and lying in response to subpoena in Virginia), filed two separate lawsuits against my client. Then, in spite of my client's complete silence about the DMCA's (In contrary to your client's claims in the Video stating that a draft public statement turned over in discovery had been posted, when it had not), Zoey Ellis made the DMCA's public on her social media pages and via a website she created to dox my client and spread a false narrative. The Virginia Court censured Zoey Ellis and her counsel, who appeared on the website, for this behavior. Indeed, every last claim made by Zoey Ellis lacked any supporting evidence, despite the Court's orders that Quill produce it. For example, Quill was ordered by the courts to provide legitimate proof of damages due to the DMCA's in both Oklahoma (where Quill settled to avoid court order and conceal the lack of damages) and Virginia (where *Quill had no damages*

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*to report*). Regardless of what really happened during the two lawsuits, it is clear that you and your client were intent on spreading false allegations and outright lies about my client and the litigation in the monetized Video, which the EFF received a portion of the proceeds to help produce.

Zoey Ellis and her attorneys utilized numerous methods to obtain their objective to smear Ms. Cain's name, but one common denominator has been their utilization of the OTW, of which the EFF is a close partner. First, Zoey Ellis hired Professor Busse (the co-founder, editor, and a former board member of OTW) to write an "expert opinion" about how there was no infringement using her unrelated background in fanfiction to support her faulty opinion. However, Quill's counsel later failed to timely identify Ms. Busse as an expert in the Virginia case, and the Court held she could not be used as an expert at all.

Second, Zoey Ellis and her attorneys mislead a reporter for the New York Times, who has historically cited the OTW and interviewed Busse for many articles, in order to, despite the Virginia Court's warning to stop litigating via the media, spread their false narrative about the case. And, now, your organization, using your client, has clearly decided to continue where Zoey Ellis and her attorneys left off by posting a Video containing infringing and defamatory content, and in which Lindsay Ellis credits the EFF and claims a portion of the proceeds will be donated ("a portion of the profits of this video are going to be donated to the EFF." the Video at 62:49).

Though you failed to directly address our allegations of defamation in your letter, it is our opinion that defamation exists, and because the EFF worked in collusion with Lindsay Ellis to create the monetized Video, the EFF is also culpable for the copyright infringement and the defamation. Of note, Lindsay Ellis clearly states, *"thanks especially to Stacy Lantane of the University of Mississippi School of Law and Katharine Trendacosta with the Electronic Frontier Foundation."* (Video at 62:40).

Lindsay Ellis goes on to further claim, *"The EFF is the leading non-profit defending digital privacy...."* However, the relationship between the EFF and the OTW in this instance makes this statement shaky at best. The OTW previously partnered with Zoey Ellis and her agents, who went to great lengths to expose my client's real name, home address, and photos of her child in relation to her real name and home address, which is the opposite of "digital privacy." As the EFF colluded with Lindsay Ellis to infringe my client's copyrighted works, supported her in creating new work product used in the Video, and monetized spreading false information and defamation for financial gain, the EFF is equally responsible for not only the defamation but for misleading Lindsay Ellis as to the interpretation of legal documents.

The EFF's objective to destabilize copyright law failed when Quill, the plaintiff that its partner, the OTW supported, was repeatedly caught lying to the courts, was twice sanctioned for failing to follow court orders, was continuously reprimanded for bad behavior including litigating via social media and the media, and ultimately abandoned the case to avoid turning over discovery and paying court ordered sanctions. Quill's own local counsel filed a motion to withdraw stating:

“In this instance, the Firm believes that Rule 1.16(b)(3) (imprudent objective), (b)(4) (failure substantially to fulfill responsibility to counsel), and (b)(5) (unreasonably difficult representation) are implicated.”

The Plaintiff and OTW’s objective failed in litigation. However, it is our belief that the OTW, through the EFF and Lindsay Ellis have responded by attempting to continue to undermine the credibility of Ms. Cain, an author who defended her copyright in good faith. The tie between the OTW and the EFF and the history of abuse my client has faced the last two years, makes the use of Lindsay Ellis, a YouTube/Patreon personality with public sway, suspicious in the least, particularly where you assisted in the creation of a monetized Video where both the EFF and Lindsay Ellis could profit off copyright infringement and defamation.

We have reviewed your letter regarding the Video and disagree with your conclusions. As you are clearly aware, the Fair Use Doctrine is highly subjective, and we find your analysis of Ms. Ellis’ use of Ms. Cain’s book erroneous and incomplete. Further, in spite of your assertions, the Video includes clear defamatory commentary about Ms. Cain and our reporting of the same as a violation of Patreon and YouTube’s terms of service was entirely appropriate. We address both defamation and fair use below.

## **I. Defamation.**

Regardless of whether Ms. Cain is a public figure, we believe that your client’s Video includes several instances that are not mere opinion, but are defamatory per se.

First, Lindsay Ellis states as fact that my client committed perjury in the Oklahoma case. A motion to show cause regarding allegations of perjury was filed by Quill (Zoey’s proxy company) on a Friday, and on the following Monday, Quill and Blushing notified the Oklahoma court that they had settled and presented a consent judgment for the Court to sign. Quill settled to avoid trial, to avoid producing evidence of damages (which had been ordered by the Court) and other evidence ordered by the Court to be produced, and to reduce their expenses, as they had separately sued Ms. Cain in Virginia. Blushing Books, no longer representing my client as publisher due to legal action my client took behind the scenes to have her rights returned, had no reason to continue to defend their case.

The perjury filing was a last minute potshot by Quill to smear my client’s name and a sorry attempt to encourage my client to answer the motion. Had my client answered, she would have opened herself to Oklahoma jurisdiction, which we believe was Quill’s ultimate goal. However, the Court brushed the filing off his desk. The case was closed. Nevertheless, it is clear from looking at the documents submitted, that my client did not commit perjury. My client never directed DMCA’s into the state of Oklahoma. No vendors who received DMCA’s are located in that state. The third party upload service, Draft2Digital, *which is located in Oklahoma*, never received a DMCA. They were forwarded DMCA’s from Barnes & Noble. This is where both

Quill's claim of perjury and the EFF and Lindsay Ellis' continuing defamation on the topic, are crippled. That claim cannot stand up to fact.

Despite a subpoena to Draft2Digital, Quill could find no correspondence directed to either my client or Blushing Books. As your client is unaware of legal procedure, she must also not understand that simply because a motion/complaint was filed in court does not mean the statement is true. However, there is no excuse for your lack of due diligence on this topic. Litigation exists to separate fact from fiction. And fact is not on your side. Accusing someone of committing a crime **is** defamation, and your client's statements were clearly made with at least reckless disregard of the truth. *See e.g., Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 22 (1990).

Other examples of defamation in the Video include the following:

1. Lindsay Ellis' regurgitated claim that Ms. Cain had claimed to own a genre (or at least M/F Omegaverse). This claim arose solely because Zoey Ellis was attempting to deflect from her plagiarism by trumpeting this lie. No evidence has *ever* been provided to support that statement. Quite a bit of evidence to the contrary has. Ms. Cain, a former fanfiction author, has throughout her career attributed Omegaverse to fanfiction and supports numerous authors who write Omegaverse. Yet, you and your client decided to spread the false narrative in collaboration with the EFF despite the total inability of Quill to provide any such statement in a further attempt to undermine my client's victory in Court.

2. The Video treats as true Quill's claim that vendors refused to work with it due to the label plagiarist. However, the Virginia Court documents clearly show this is false. When compelled to turn over proof, Quill could provide no evidence and retracted the statement.

3. The Video again states that Ms. Cain attempted to blackmail Zoey Ellis. However, Zoey Ellis/[REDACTED] and Quill were unable to produce a single piece of evidence supporting that claim.

None of these statements are true and in fact are provably false and made with at least reckless disregard of the truth. In fact, your client went further, claiming my client had harassed several published authors via Twitter. Yet, she never provided names or evidence—only general, salacious statements one could assume were shared to drive traffic to her Video and line her pockets and potentially increase the donation to the EFF.

## **II. Fair Use**

First, while the Video overall did include commentary on the underlying lawsuits involving my client, it was not necessary for Ms. Ellis to read entire portions of my client's book for over two minutes at the beginning of the Video. This portion of the Video does not include any commentary, comparison, or historical analysis. Instead, it is a clear derivative of large portions of my client's book and not transformative or historical in the slightest.

Second, it is our opinion that the Video includes much more of Ms. Cain's book than necessary. Ms. Ellis could have easily condensed use of Ms. Cain's book into a few paragraphs for illustration instead of reading from the book for over two minutes. Again, this use in the Video does not tie in with the remainder of Ms. Ellis' commentary. We disagree that the amount used is protectable. Ms. Ellis clearly creates her videos and publishes them on YouTube and Patreon for profit, and the EFF profited as well in this case, a factor that strongly cuts against your fair use argument.

As for harm, you are again mistaken. The Video and the use of Ms. Cain's content have caused Ms. Cain harm. Since the Video was posted, Ms. Cain has received numerous ugly comments through social media and other venues, the ratings on her books have dropped (as a direct result of the Video - *See Exhibit 1* showing evidence of a twitter user who states he gave 1 star reviews to my client's books), and the sales of Ms. Cain's books have taken a direct hit. And, neither Patreon nor YouTube made a finding whether the Video was fair use or not. They merely requested that we file a lawsuit before they would take further action.

### **III. Lindsay Ellis's claims that the counts were not dismissed with prejudice**

As counsel for Lindsay Ellis, we suggest that you explain the Court documents to your client so that she may no longer claim ignorance as to how the final count against my client was dismissed. On July 1<sup>st</sup>, 2020 Judge Liam O'Grady in the Eastern District of Virginia signed an order granting our motion to dismiss for lack of prosecution (Doc #86). As your client may not have read this order, or may have been misled about how a court order works when referencing a motion. In fact, the Court's order on the motion (Doc. #95), clearly references the motion (Docs. #86 and #87), in which we requested a *with prejudice* dismissal. These documents are attached as **Exhibit 2** for your reference. These documents are clear and your client's ignorance and spreading of false information is untenable.

### **IV. Ongoing harassment**

Despite my client's current public silence regarding Lindsay Ellis, her ongoing accusations, the defaming Video, and verbal attacks of her child, your client has gone to great lengths to continue to spread baseless accusations and misinformation—the latest as recently as October 11th. *See Exhibit 3*. Lindsay Ellis' fans have gone to great lengths as well to attempt to spam Ms. Cain's social media with the defamatory Video and inappropriate comments. Ms. Cain has diligently removed all posts/comments, despite ongoing trolling from Ms. Ellis' fan base. *See Exhibit 4*.

Furthermore, in spite of your client's claims to the contrary, a simple search of Amazon shows that your client has received only two 1-star reviews since the Video went live on September 3rd. *See Exhibit 5*. Neither review mentions the Video, the lawsuit, Addison Cain, or YouTube. Her accusations that Ms. Cain is whipping up her fans to attack her rankings is unfounded, preposterous, and defamatory—as are all of Lindsey Ellis' claims.

## V. In conclusion

Professor Busse, the OTW, and Quill and its agents were unable to affectively disrupt authors' copyright protection via *Quill vs. Soto*, a case where the plaintiff clearly lost. Regardless of this failure, it is clear that the EFF, through Lindsay Ellis, is now attempting to drag the battles' corpse over the finish line by making a defamatory Video and misleading the public about your agenda—using a legally ignorant layman to do your dirty work in exchange for donations.

Because your client's Video is not clearly fair use with respect to its use of Ms. Cain's works, and because it contains several instances of defamation, we again request that your client remove or modify the video accordingly. We request a public apology from both the EFF and Lindsay Ellis for knowingly spreading false information for profit. You and your client should note that because this is an ongoing dispute, all correspondence relating to this matter is discoverable, and we demand that you avoid modifying or destroying evidence that relates to this matter.

Lastly, if we believe that Lindsay Ellis or other parties have infringed my client's work, we will continue to file good faith DMCA's on that basis. We also reserve the right to respond to YouTube and Patreon, regarding whether the Video violates their TOS. We demand that Lindsay Ellis cease using social media, or any platform, to harass my client, to continue to make false accusations, and to further instigate her fan base to attack my client. And finally, we request that Lindsay Ellis and the EFF donate all proceeds made from the defaming video to the anti-bully charity, <https://www.kindcampaign.com/>.

Our client asserts other rights, claims and defenses with respect to this matter. Thus, reference to specific rights, claims and defenses of our client set forth above is not a waiver of any other rights, claims and defenses available to our client under the facts and applicable law; all such rights, claims and defenses being specifically reserved by our client. If you have any questions, please do not hesitate to write or call.

Sincerely,

s/Tynia W. Watson

Tynia A. Watson  
For the Firm

enclosures

## EXHIBIT 1

44

27

85



**Ugly Bretty**  
@ugglybretty



Replying to [@Addison\\_Cain](#)

Just purchased the complete Myth of Omega series.  
Gave 1 star reviews to the entire Alpha's Claim series on  
Goodreads.

Sue me.

9:20 AM · Sep 6, 2020 · Twitter Web App



## EXHIBIT 2

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
QUILL INK BOOKS LIMITED,	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	No. 1:19cv476-LO-MSN
	)	
RACHELLE SOTO <i>aka</i> Addison Cain,	)	
<i>Defendant.</i>	)	
_____	)	

**DEFENDANT’S MOTION TO DISMISS**

PURSUANT TO RULE 41(b), Defendant, Rachelle Soto a/k/a Addison Cain, moves to dismiss, *with prejudice*, the sole remaining claim of Plaintiff, Quill Ink Books, Ltd. (“Quill”), which is Quill’s claim under the Digital Millennium Copyright Act, 17 U.S.C. § 512 (“DMCA”). The grounds and reasons for granting this relief are stated with particularity in the accompanying memorandum. A proposed order is submitted herewith.

***Certification:*** Since Plaintiff’s counsel has withdrawn, I was unable to narrow or eliminate this dispute prior to seeking court intervention.

June 3, 2020

/s/ Craig C. Reilly  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically provide notice to all counsel of record and to office@quillinkbooks.com.

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*Counsel for Defendant*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
QUILL INK BOOKS LIMITED,	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	No. 1:19cv476-LO-MSN
	)	
RACHELLE SOTO <i>aka</i> Addison Cain,	)	
<i>Defendant.</i>	)	
_____	)	

**ORDER**

THIS MATTER is before the Court on the motion to dismiss filed by Defendant pursuant to Rule 41(b) (Doc. \_\_\_\_). Upon consideration of the motion, and it otherwise appearing proper to do so, it is hereby

ORDERED that the motion is GRANTED; and it is further

ORDERED that Count I of Plaintiff's *First Amended Complaint* (Doc. 27) be, and hereby is, DISMISSED WITH PREJUDICE for failure to prosecute.

ENTERED this \_\_\_\_ day of June 2020.

Alexandria, Virginia

\_\_\_\_\_  
Liam O'Grady  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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QUILL INK BOOKS LIMITED,  
*Plaintiff,*

v.

RACHELLE SOTO *aka* Addison Cain,  
*Defendant.*

---

No. 1:19cv476-LO-MSN

**BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**

Pursuant to Rule 41(b), Defendant, Rachelle Soto, a/k/a Addison Cain (“Soto”), has moved to dismiss the remaining claim against her because Plaintiff and Counterclaim-Defendant, Quill Ink Books Ltd. (“Quill”), has now abandoned this litigation. After two months of Quill’s persistent violation its discovery obligations and the rules, the Court’s entered an order on May 1 granting Soto’s motion to compel *in toto* (Doc. 57). After some efforts to comply, Quill fired its counsel, who then moved for leave to withdraw (Doc. 61), which was granted on May 18 (Doc. 68). Quill’s firing of its counsel effectively stopped this case dead in its tracks, even though the discovery period is set to end on June 12, and a lot of party and third-party discovery remained unfinished.

When new counsel for Quill still had not appeared, Soto filed an emergency motion on May 26 to enforce Quill’s compliance with the May 1 order and to have the Court order Quill to have new counsel appear forthwith (Doc. 70). The Court entered an order requiring Quill to have new counsel appear by May 29, and to appear for a hearing on June 1 to address all pending discovery motions (Doc. 77). Quill did neither.

Instead, on May 29, 2020, the firm Hudson Weir Limited, a company registered in the United Kingdom (“UK”) and licensed to act as “insolvency practitioners,” submitted an unsigned

“*Notice of Insolvency, Suggestion of Mootness and Lack of Jurisdiction*,” attaching a letter stating that there was a “proposed creditors’ voluntary liquidation” of Quill (Doc. 78) (hereafter, “*Notice*”). As explained in **Section I**, that unsigned *Notice* should be stricken. It is not a proper pleading, paper, or motion, and it is of no effect.

Moreover, as explained in **Section II**, that *Notice* notwithstanding, the UK insolvency proceedings involving Quill are merely “proposed” and do not become effective until Quill’s creditors, after receiving due notice, approve the liquidator and consent to the winding up, liquidation, and dissolution of Quill. Under UK law, there is no automatic stay of litigation involving the allegedly insolvent company who initiates a nonjudicial “creditors’ voluntary liquidation” proceeding pursuant to the UK *Insolvency Act 1986*.

Finally, in **Section III**, Soto shows that the Court should dismiss Quill’s DMCA claim, with prejudice, for failure to prosecute. As of May 29, despite an order to do so, new counsel for Quill had not appeared. Quill did not file a reply brief to respond to Soto’s opposition to Quill’s motion for leave to file late expert disclosures. Quill did not file an opposition to Soto’s motion to enforce the May 1 order. Quill did not file responses to two pending motions to seal its own discovery materials. And Quill did not appear for the June 1 hearing.

Soto respectfully submits that the Court can and should Dismiss Quill’s sole remaining claim under DMCA, with prejudice, under Rule 41(b) for failure to prosecute and because Quill otherwise has disobeyed the rules and orders of the Court.

## **ARGUMENT**

### **I. THE UNSIGNED *NOTICE* IS SHOULD BE STRICKEN.**

The *Notice* submitted by Quill (Doc. 78) apparently was submitted to the Clerk by nonelectronic filing. *See* FED.R.CIV.P. 5(d)(2). Under the Rules, however, every paper presented for filing “must be signed by at least one attorney of record in the attorney’s name—or by a party

personally if the party is unrepresented.” FED.R.CIV.P. 11(a). The *Notice* was not signed by anyone, and is procedurally deficient; nonetheless, the Clerk was required to file it. FED.R.CIV.P. 5(d)(4). However, the Court “must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney’s or party’s attention.” FED.R.CIV.P. 11(a). Here, the only course of action is to strike the *Notice*.

On May 18, 2020, the Court entered an order allowing Quill’s counsel to withdraw (Doc. 68). No new counsel appeared. On May 26, a second order was entered directing Quill to have new counsel appear by May 29 (Doc. 77). No new counsel appeared. The absence of counsel for Quill dictates that the *Notice* must be stricken.

Quill may not appear *pro se* to prosecute its DMCA claim, defend Soto’s counterclaim, file any motions, pleadings, or other papers, or take any other action in this case. “It has been the law for the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel.” *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 201-02 (1993). Therefore, the federal courts “have uniformly held that 28 U.S.C. § 1654, providing that ‘parties may plead and conduct their own cases personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.” *Id.* at 202 (citations omitted); accord *Reynolds v. Reliable Transmissions, Inc.*, 2009 WL 3064774, at \*1 (E.D. Va. Sept. 21, 2009) (“It is well settled that a corporation ... may only appear by counsel in a federal judicial proceeding”). Therefore, the *Notice* could only be filed by counsel who has formally appeared for Quill and who has signed it. The *Notice* was not properly signed or filed, and it may be stricken under Rule 11(a).

Therefore, the Court should not treat the unsigned *Notice* as a motion for a stay, or a “suggestion of mootness,” or as an indication that the Court now lacks of jurisdiction. Any such

notice or motion must be filed by counsel who has signed and filed the paper as required by Rule 11(a). The *Notice* is not signed by counsel of record for Quill—or at all—and was not filed by counsel as required. The *Notice* must be stricken.

**II. THE “CREDITORS’ VOLUNTARY LIQUIDATION” PROCEDURE DOES NOT RENDER THIS ACTION MOOT, OR PRESENT GROUNDS FOR A STAY, OR DEPRIVE THIS COURT OF JURISDICTION.**

Even if the *Notice* were validly filed, which it was not, it has no effect on this Court’s jurisdiction or authority to rule on matters. Quill has not filed a formal bankruptcy proceeding; rather, it has proposed a nonjudicial voluntary liquidation under the supervision of its creditors. That proceeding is like a nonjudicial “composition of creditors” or “assignment for the benefit of creditors” under United States law.

As set forth in the *Notice*, Quill’s directors have retained the firm Hudson Weir Limited to act as liquidators to place Quill into “creditors’ voluntary liquidation”—known as a “CVL.” Under UK law, *Insolvency Act 1986*, c.45, Part IV, §§ 84 *et seq.*, the directors of a UK-registered company may initiate the CVL process by adopting a “special resolution that [the company] be wound up voluntarily.” *Section 84(1)(b)*. “When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution” to its creditors by publication and otherwise. *Section 85(1)(a)*. As the Hudson Weir Limited letter indicates, formal notice to creditors has not yet been given (Doc. 78). Nonetheless, the CVL procedure “is deemed to commence at the time of the passing of the resolution for voluntary winding up,” *Section 86*; and “the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.” *Section 87(1)*. In a CVL, the company’s directors must present “a statement in the prescribed form as to the affairs of the company,” which must be sent “to the company’s creditors” within seven days



after adoption of the winding up resolution. *Section 99(1)(a) & (b)*. The statement of affairs must be “verified” and include the following information:

- (a) particulars of the company’s assets, debts and liabilities;
- (b) the names and addresses of the company’s creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

*Section 99(2) & (2A)(a)*. That notice has not yet been sent to Quill’s creditors.

The liquidator retained by Quill may be nominated for appointment, and the creditors may appoint him or another liquidator. *Section 100*. A liquidation committee of creditors may be appointed, as well. *Section 101*. When a liquidator is appointed, “all powers of the directors cease” except as expressly allowed by the creditors or the liquidation committee. *Section 103*. The liquidator must promptly wind up the company’s affairs and make an account of the company’s property, which is sent to the creditors withing 14 days. *Section 106*. The liquidator’s compensation and expenses are paid from the company’s assets prior to distributions to creditors. *Section 113*. Although a CVL is not administered by a court, the liquidator or a creditor “may apply to the court to determine any question arising in the winding up of [the] company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise in the company were being wound up by the court.” *Section 112*. In short, the CVL proceeding now proposed is intended as a prompt and complete winding up of Quill.

Significantly, there is no statutory moratorium on litigation against an insolvent company that has commenced CVL proceedings. The CVL procedure generally is used by small companies with little cash and no prospects for continuing operations. In contrast, under *Insolvency Act 1986*, c.45, Part I, §§ 1 *et seq.*, if a “Company Voluntary Arrangement”, or “CVA,” has been commenced, the company may seek a “moratorium” on litigation against itself. *Section 1A*. Therefore, unlike

either a bankruptcy proceeding in the United States, in which there is an “automatic stay” of litigation against the bankrupt company, 11 U.S.C. § 362, or a CVA proceeding under UK law, in which a moratorium may be entered on a proper showing, the mere commencement of a CVL proceeding does not stay litigation against the insolvent company.

Accordingly, the unsigned *Notice*, even if taken at face value, does not present any grounds for staying this action, rendering it moot, or depriving the Court of jurisdiction. Instead, the Court retains full authority over the action and may issue such orders as are appropriate.

### **III. QUILL’S DMCA CLAIM SHOULD BE INVOLUNTARILY DISMISSED FOR FAILURE TO PROSECUTE DUE TO FAILURE OF COUNSEL TO APPEAR AND QUILL’S FAILURE TO COMPLY WITH THE RULES AND COURT ORDERS**

The failure of counsel to appear dictates that Quill’s DMCA claim should be involuntarily dismissed, with prejudice, for failure to prosecute. “If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it,” which ordinarily “operates as an adjudication on the merits.” FED.R.CIV.P. 41(b). Involuntary dismissal also may be entered *sua sponte* for failure of counsel to appear for a hearing, failure to comply with the rules or orders, or failure to diligently prosecute the case. *Link v. Wabash R. Co.*, 370 U.S. 626, 629-31 (1962) (affirming dismissal for failure to appear for pretrial conference); *Slack v. McDaniel*, 529 U.S. 473, 489 (2000) (“The failure to comply with an order of the court is grounds for dismissal with prejudice” under Rule 41(b)); *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978) (affirming dismissal for failure to provide discovery on damages issues and plaintiff’s “long history of delay). Specifically, the failure of a corporate party to have new counsel appear as required may constitute “a failure to prosecute under Federal Rule of Civil Procedure 41(b).” *See MHD-Rockland Inc. v. Aerospace Distribs. Inc.*, 102 F. Supp. 2d 734, 737 (D. Md. 2015); *cf. Eagle Assocs. v. Bank of Montreal*, 926 F.2d 1305, 1310 (2d Cir. 1991) (upholding a default

judgment entered against a partnership for willfully failing to “comply with the district court’s order directing it to appear with counsel”). Moreover, the Court’s power to dismiss may be exercised without advance notice to the plaintiff. *Link*, 370 U.S. at 632-33; *accord Atkinson v. Holder*, 925 F.3d 606, 625 (4th Cir. 2019). That power should be exercised here to dismiss Quill’s DMCA claim with prejudice.

Rule 41(b) dismissal “is intended as a safeguard against delay in litigation and the harassment of a defendant.” 9 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3d, § 2370 at 642 (2008); *accord Zaczek v. Fauquier County, Va.*, 764 F. Supp. 1071, 1076 (E.D. Va. 1991) (“the sanction [of dismissal] protects those litigants who are direct victims of abusive litigation”). Moreover, dismissal under Rule 41(b) fosters the “administration of justice and dignity of the courts” and “provides the control necessary to achieve the orderly and expeditious disposition of cases.” *Id.* (citations omitted). Soto respectfully submits that the Court’s power under Rule 41(b) should be used to dismiss Quill’s DMCA claim with prejudice.

When deciding whether to dismiss a claim involuntarily under Rule 41(b), the Court “should weigh” the following factors:

- (1) the plaintiff’s degree of personal responsibility;
- (2) the amount of prejudice caused the defendant;
- (3) the presence of a drawn-out history of deliberately proceeding in a dilatory fashion; and
- (4) the effectiveness of sanctions less drastic than dismissal.

*Atkinson*, 925 F.3d at 625 (citations omitted). “Those criteria, however, ‘are not a rigid four-prong test.’” *Id.* (citing *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (Powell, J.)). “Rather, the propriety of an involuntary dismissal ultimately depends on ‘the facts of each case,’ which we review to determine ‘whether the trial court exercised sound discretion.’” *Id.* (citations omitted). Here all four factors strongly point to involuntary dismissal with prejudice.

First, Quill bears personal responsibility. As shown in Soto’s prior filings, Quill admittedly set up the omegaverselitigation.com website and abused discovery and litigation papers by posting them (Doc. 71 [sealed version Doc. 73] at 6 n.3, 17-18). Quill fired its counsel in an obvious effort to derail and delay deposition discovery and adjudication on the merits (Doc. 71 at 3-6). Quill and its “principal author,” Zoey Ellis sat for an interview with the *New York Times* but refused to be deposed in this action (Doc. 71 at 1 & n.1). Quill provided Soto’s discovery materials to the *New York Times* (Doc. 71 at 1) despite having been expressly warned by this Court not to do that (Doc. 71 at 6 n.3). And Quill, together with its Texas and Oklahoma counsel, have persistently ignored or violated the rules and orders of the Court—in this action and in the Oklahoma action—for the obvious purpose of inflicting professional and financial harm on Soto (Doc. 71 at 4-8). Quill, under oath, provided deliberately false discovery responses, failed to produce emails and social media communications, and spoliated evidence (Doc. 71 at 8-18). These are not the actions of Quill’s former counsel of record—they are actions taken by or at the direction of Quill.

Second, as shown in Soto’s prior filings, she has been prejudiced by Quill’s dilatory conduct, as well as Quill’s haphazard and inadequate discovery responses (Doc. 44, 50, 64, and 71). As happened in Oklahoma, Quill knew it had no damages, and strung out the litigation as long possible to punish Soto for a perceived slight that caused little or no financial injury, and to force Soto to incur enormous litigation expenses. It cannot be gainsaid that Quill has been on a personal vendetta to harass and punish Soto and to inflict enormous legal fees on Soto.

Third, as shown in Soto’s sealing motions in connection with her motion to compel (Doc. 51 & 58), Quill has repeatedly trampled upon Soto’s privacy interests. Moreover, Quill has actively litigated the case in the press and online, while ignoring its obligations to the Court. In Oklahoma and here, Quill has quixotically pursued untenable claims and unattainable remedies

with no hope of prevailing. In the eighteen months of litigation in Oklahoma and this Court, Quill has refused to produce competent damages discovery—fact or expert—and has otherwise disobeyed its discovery obligations, disregarded the rules, and disregarded the Court’s numerous orders (Doc. 71 at 8-11). As the evidence shows, Quill suffered lost sales from the DMCA take-down notices amounting, at most, to a few hundred dollars, not \$735,000. It is now obvious that Quill acted with implacable indifference to the rules and orders because it has always intended to pull the ripcord and bail out of this case before trial, just as it did in Oklahoma. Obviously, the sole purpose of this litigation was to punish Soto with litigation expenses and embarrass her in the press and online.

Fourth, no other sanctions are sufficient. The Court has issued a scheduling order (Doc. 38)—which Quill has ignored or disobeyed. The Oklahoma court entered an order compelling Quill to produce damages evidence, which Quill also ignored or disobeyed (Doc. 44 at 4; Doc. 50 at 6-8). Quill provided wholly inadequate discovery responses, forcing Soto to file a motion to compel and an emergency motion to enforce (Doc. 43 & 70). Quill still failed to comply. Quill served untimely and deficient expert disclosures in disregard of the scheduling order, which have been excluded (Doc. 81). Quill litigated its claims in the press and online, while refusing to follow the rules and requirements for litigation in court (Doc. 71 at 1, 6 n.3). Quill’s willful, persistent, and deliberate disregard of the rules and orders more than justifies involuntary dismissal of the DMCA claim with prejudice.

Accordingly, the Court can and should dismiss the DMCA claim, with prejudice, under Rule 41(b).

## CONCLUSION

For the reasons argued above and in Soto's motion to enforce, the Court should (a) strike the *Notice* and enter an order under Rule 41(b) dismissing Quill's DMCA claim with prejudice.

June 3, 2020

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## CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically provide notice to all counsel of record and to [office@quillinkbooks.com](mailto:office@quillinkbooks.com).

/s/ Craig C. Reilly  
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*Counsel for Defendant*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

---

QUILL INK BOOKS LIMITED,

*Plaintiff,*

v.

RACHELLE SOTO *aka* ADDISON CAIN,

*Defendant.*

---

Civil Action No. 1:19-cv-476  
Hon. Liam O’Grady

**ORDER**

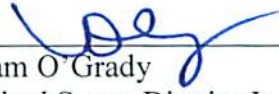
Before the Court is Defendant’s Motion to Dismiss for Lack of Prosecution. Dkt. 86. Plaintiff’s counsel withdrew from the matter on May 18, 2020, and the Court ordered Plaintiff to retain new counsel by May 29, 2020. Dkt. 77. Plaintiff failed to do so, and failed to appear at the June 1, 2020 hearing before Judge Nachmanoff.

The Court issued a show cause Order on June 4, 2020, allowing fourteen days for Plaintiff to respond. Dkt. 89. Plaintiff’s only response was a Notice of Liquidation Under the Insolvency (England and Wales) Act of 1986, and Formal Appointment of Liquidators, Wounding-Up [sic] Proceedings, Suggestion of Mootness and Lack of Jurisdiction. Dkt. 93. This Notice was not filed by counsel and did not address the issues as identified by the Court and in Defendant’s brief. The Notice states that “Quill Ink Books Limited cannot participate in any further legal proceedings, and that “[i]ts status of insolvency disallows the hiring of new counsel in Virginia.” Dkt. 93 at 1. Plaintiff thus concedes it “cannot further prosecute its cause of action against the Defendant.” *Id.*

As such, Defendant's motion to dismiss Plaintiff's sole remaining claim (Dkt. 86) is hereby **GRANTED** for lack of prosecution.

It is **SO ORDERED**.

July  
June 1, 2020  
Alexandria, Virginia

  
\_\_\_\_\_  
Liam O'Grady  
United States District Judge



## EXHIBIT 3



**Lindsay Ellis**  @thelindsayellis · 11h

Replying to @thelindsayellis

Right and given her accusations of click farms and sock puppetry against multiple authors, it's clear it's a page from her playbook. I don't check ratings or reviews for my own sanity, but I wouldn't be surprised if my book mysteriously racked up some one stars from sock accounts



**arauto da mariposa vadia** @arautodabad · 11h

Replying to @thelindsayellis

The irony here is that she totally would incite fans to do that, then post a statement saying "I'm just an innocent person caught in between. Everybody loses"



7



13



1K



**Lindsay Ellis**  @thelindsayellis · Sep 15

So I've had several people come out of the woodwork in the last couple weeks to message me about being contacted by **Addison Cain** and/or her lawyer for a variety of perceived infractions. If this has happened to you, hmu at namebrandlindsay at gmail, I'd like to talk to you



79



346



5.7K



**Lindsay Ellis**  @thelindsayellis

Replying to @siliconred

I mean, the person whom I am subtweeting has a well documented history of review manipulation, so

5:29 PM · Sep 28, 2020 · Twitter Web App

7 Likes



**Lindsay Ellis** ✓ @thelindsayellis · Sep 14

So, fun fact that I have learned in recent days: if you, say, send a DMCA takedown notice to a platform, whether the notice is honored or not, the person whose content you are claiming is infringement has the right to request the notice from the platform. lol 🤡🤡🤡 #shedidthething

72

332

7K



**Lindsay Ellis** ✓ @thelindsayellis · Sep 14

And if you were to, say, send multiple DMCA takedowns to multiple platforms either linking to or hosting the content, and none of them were honored because you don't know how fair use works... well wouldn't that be interesting

66

102

5.2K



**Lindsay Ellis** ✓  
@thelindsayellis

Replying to @superjulesesq

Maybe - I've gotten several e-mails from people who'd been harangued by her lawyer, who she must be paying good bucks to harass people, so I wouldn't be surprised. letter she sent me didn't even have a threat of action, but did have typos (gimme your email i'll fwd it to you)

5:26 PM · Sep 9, 2020 · Twitter Web App



**Lindsay Ellis** ✓ @thelindsayellis · 2h

I do find it interesting that the rating for AE has gone down more than a full tenth of a point since the omegaverse video was released, though 🤔

16

6

750





**Twilight Laureate** @TwilightLaurea1 · Sep 3

Replying to @Addison\_Cain

Wow your reputation just got turned into road kill by **lindsay ellis**



2



1



139



**Lindsay Ellis** @thelindsayellis · Oct 11

huh, well that was easy

SOMEONE keeps trying to get this video age restricted hmm I wonder who it could be



**YouTube**

**Dear Lindsay Ellis,**

Thank you for submitting your video appeal to YouTube. After further review, we have removed the age restriction on your video.

[Into The Omegaverse: How a Fanfic Trope Landed in Federal Court](#)

For more information please visit the YouTube [Help Center](#).

We apologize for the delay. Due to the recent global health crisis related to COVID-19, a number of our normal review processes have been disrupted and are experiencing delays. To stay up to date on any changes in our services, and our broader response to COVID-19,



108



363



8.3K



## EXHIBIT 4

7:41



## Comments



Lady, you have PROBLEMS.  
Please sort yourself out.

5h Like Reply Message



**Ben Snyder**

Just learned about how much of a liar and a perjurer you are, Addison Cain. Props to Lindsay Ellis for exposing you with images from discovery showing you lied to the court and played innocent, naive victim. Even your claims about it being dismissed with prejudice are lies.

<https://m.youtube.com/watch?v=zhWWcWtAUoY>



**Into The Omegaverse: How a Fanfic Trope Landed in Feder...**

youtube.com

6h Like Reply Message



6:15



**Addison Cain**



Posted by Addison Cain

Aug 17 · 🌐

4,365 people reached >



Boost Post



Shane Starrett and 212 others

13 Shares

Newest ▾



**Ben Snyder**

Hmmm, someone appears to have deleted my comment.

Here again is the video where I learned of this lawsuit, which shows Addison Cain's emails with her publishers that prove she committed clear and undeniable perjury in her court case.

<https://m.youtube.com/watch?v=zhWWcWtAUoY>



**Into The Omegaverse: How a Fanfic Trope Landed in Feder...**

youtube.com



8:14



**Addison Cain**



Posted by Addison Cain

3d · 🌐



**Katheryn DeRoos**

Hoooooly shit lady. Narcissism is a hell of a drug, huh? You claimed to be the first person to ever write M/F Omegaverse (which, even if that is true, way to take a queer space and appropriate it for The Straights), AND your publisher floated the idea of copyrighting the Omegaverse entirely. I kind of want to see you try it, that would be a hell of a dumpster fire. It's obvious at this point that anyone who is not drinking your Kool-Aid and therefore unquestionably on your side is an Enemy who must be Dealt With, but, spoiler: your publisher's statement that the DMCA's they filed at Zoey Ellis were invalid will be a mark against them if they file anymore. Also, since you were stupid enough to perjure yourself, anyone with half a brain will know you were involved if your publisher pulls that shit again. Lots of people are talking about this issue and they aren't being anywhere near as nice as the NYT or Courtney Miles. So maybe you should start



Write a comment...





8:14



**Addison Cain**



Posted by Addison Cain

3d ·

statement that the DMCA's they filed at Zoey Ellis were invalid will be a mark against them if they file anymore. Also, since you were stupid enough to perjure yourself, anyone with half a brain will know you were involved if your publisher pulls that shit again. Lots of people are talking about this issue and they aren't being anywhere near as nice as the NYT or Courtney Milan. So maybe you should start learning to not get your panties in such a twist over criticism.

11m   Like   Reply   Message

Newest ▾



Comment as Addison Cain



**Victor Montelago** <https://youtu.be/zhWWcWtAUoY?t=3031>

go fuck a dog jk youd probably like that lmao



YOUTUBE.COM

Into The Omegaverse: How a Fanfic Trope Landed in Federal Court



1

Like · Reply · Message · 1d



**Loki Renard** I'm so glad this is over for you, what a complete fucking clusterballs of a situation.



3

Love · Reply · Message · 3w



**Kali Fuhrmann**

Assign Conversation ▼

---

6:22 PM

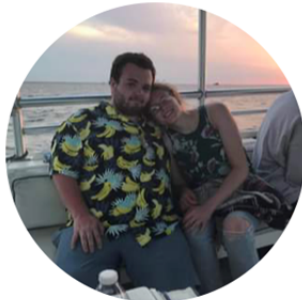
What you did to zoey was absolutely ridiculous. I can't believe you get away with such shit trying to kill another person's livelihood like that just because you want to be the only one to make money. selfish bitch. you may fool your fans buy anyone with half a brain isn't falling for your lack of knowledge regarding copyright you retard. go fuck yourself you selfish bitch.



1:55



**John Fields Carter**



**John Fields Carter**

[VIEW PROFILE](#)

THU 2:31 PM

im not gonna send you a death threat, im just gonna say you are a selfish moron and a shitty author, if a writer at all.



a shitty human being you are



1:55



**Melanie Xu**



**Melanie Xu**

Lives in Melbourne, Victoria, Australia  
Studied Bachelor of biomedicine at The  
University of Melbourne

**VIEW PROFILE**

5:43 AM



So uhhh care to respond to  
Lindsay Ellis' youtube video  
doing a whole deep dive on  
how petty you are? 😂😂



Addison Cain  
dumbtvat@gmail.com  
172.56.20.217  
<https://www.addisoncain.com/contact/>

Addison L Cain Contact Form

Go fuck yourself, like seriously. You've wasted everyone's time, money, resource, and sanity over your inability to be a god damn actual human being. What does it feel like knowing that your a disappointment to your parents?

September 4, 2020 at 4:24 am

2354

## EXHIBIT 5

## Customer Review



PuffyPinkCow

★☆☆☆☆ **Boring, Couldn't finish**

Reviewed in the United States on September 12, 2020

I probably only read a few chapters. It was so hard to get into. I jumped to the end. Just very boring. And then the Shape of Water ending... barf. Don't worry, it's going to be a trilogy so there'll def be some alien sex in the future.

One person found this helpful

Helpful

▼ [Comment](#)

[Report abuse](#)

[Permalink](#)

## Customer Review



ggiorgio

★☆☆☆☆ **Not good**

Reviewed in the United States on September 5, 2020

**Verified Purchase**

Poorly written. Hard to follow. Disconnected. Uninteresting.

One person found this helpful

Helpful

▼ [Comment](#)

[Report abuse](#)

[Permalink](#)



Mark Olsen

★☆☆☆☆ **Forced to Finish**

Reviewed in the United States on September 28, 2020

**Verified Purchase**

I have to say I enjoyed portions at the beginning of the book. That said by the half way mark interest decreased significantly, and by the last hundred pages I'm literally reading a chapter a night forcing myself to the end. I have about forty pages left and just don't know if I'm going to give up and just put the book on the shelf or force myself to continue knowing sequels are on the way. Maybe I'm not the target audience, but I can see how people are saying Twilight with a grant sci-fi twist.

Helpful

▼ [Comment](#)

[Report abuse](#)



Gerardo J. Mercado

★☆☆☆☆ **It's fine.**

Reviewed in the United States on September 27, 2020

**Verified Purchase**

The plot is interesting enough, fun world building, but really blunt and boring allegory. Novice prose, needed more editing.

One person found this helpful

Helpful

▼ [Comment](#)

[Report abuse](#)