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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 COOK PRODUCTIONS, LLC,

9 Plaintiff,

10 v.

11 THOMAS SWANICKE, et al.,

12 Defendants.

C16-1844 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Defendant Thomas Swanicke’s Motion to Dismiss pursuant to Fed. R. Civ.
16 P. 12(b)(6), docket no. 56, is DENIED. To survive a motion to dismiss, a plaintiff must
17 allege facts sufficient to “state a claim to relief that is plausible on its face.” *Bell Atl.*
18 *Corp. v. Twombly*, 550 U.S. 544, 568 (2007). A claim has facial plausibility when the
19 pleaded factual content allows the court to draw the reasonable inference that the
20 defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678
21 (2009). In ruling on a Rule 12(b)(6) motion, the Court must assume the truth of the
22 complaint’s factual allegations and draw all reasonable inferences in favor of the
23 nonmoving party. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). To
state a claim for copyright infringement, plaintiff must establish two elements: (1)
ownership of a valid copyright, and (2) copying of constituent elements of the work that
are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).
Plaintiff has explicitly pled that it owns a valid and registered copyright in *Mr. Church*,
the film that is the subject of this action, Amended Complaint, docket no. 21, ¶¶ 6-7, Ex.
A (Certificate of Registration), and the Court finds that plaintiff has adequately alleged
that defendant Swanicke copied elements of the copyrighted work. Plaintiff alleges that
Comcast assigned a distinct IP address to defendant Swanicke, Amended Complaint, ¶

1 20; that defendant Swanicke’s IP address “was observed infringing on plaintiff’s motion
2 picture” on a certain date and time, *id.*; that the “physical make up and layout” of
3 defendant Swanicke’s residence and the security measures taken by Comcast make it
4 unlikely that the IP address was hijacked by others, *id.* at ¶ 14; and that the persistent
5 nature of the infringing activity would have diminished the bandwidth of defendant
6 Swanicke’s internet connection such that he would likely have been aware that it was
7 occurring, *id.* Taking all reasonable inferences in favor of plaintiff as the nonmoving
8 party, the fact that defendant Swanicke’s IP address was observed copying *Mr. Church*,
considered together with the other allegations in plaintiff’s complaint, supports a
reasonable inference that defendant Swanicke engaged in the copyright infringement
alleged in plaintiff’s complaint. *See Criminal Productions v. Evans, et al.*, Case No. 16-
1647-RAJ, docket no. 36 (W.D. Wash. Jun. 29, 2017); *see also QOTD Film Investment,*
LTD v. Wilson, Case No. 16-371-RSL, docket no. 70 (W.D. Wash. Oct. 11, 2016).
Accordingly, plaintiff has alleged sufficient facts to state a claim for copyright
infringement against defendant Swanicke.

9 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
10 record and to defendant pro se Thomas Swanicke via U.S. Mail at 8203 86th Ave. NE,
Marysville, WA 98270.

11 Dated this 24th day of August, 2017.

12 William M. McCool
13 Clerk

14 s/Karen Dews
15 Deputy Clerk