

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOLCOW LLC, : Docket No.: 26-cv-02059

Plaintiff, :

v. :

ZHEN ELIZABETH FONG-JONES, : New York, New York

: August 27, 2026

Defendant. :

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PROCEEDINGS BEFORE
THE HONORABLE KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

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1 THE DEPUTY CLERK: Your Honor, this is in
2 the matter of Lolcow, LLC vs. Fong-Jones.

3 Counsel, please state your name for the
4 record, beginning with plaintiff.

5 MR. HARDIN: Thank you. This is
6 Matthew Hardin on behalf of Lolcow, LLC.

7 THE COURT: Good afternoon, sir. This is
8 Judge Failla. Are you able to hear me this
9 afternoon?

10 MR. HARDIN: Yes, your Honor. Thank you.

11 THE COURT: Thank you very much.

12 On behalf of Ms. Fong-Jones, do we have an
13 appearance?

14 MR. HAYGOOD: Yes, your Honor. This is
15 Lane Haygood on behalf of Ms. Fong-Jones.

16 THE COURT: Sir, thank you very much. Good
17 afternoon to you.

18 MR. HAYGOOD: Good afternoon.

19 THE COURT: And then on behalf of the
20 subpoena recipients, do we have an appearance?

21 MR. WOLMAN: Good afternoon, your Honor.
22 This is Jay Wolman of Randazza Legal Group for the
23 subpoena subject those 1 through 7. I'm joined by
24 my colleague, Marc Randazza.

25 THE COURT: Thank you very much. And good

1 afternoon to you as well.

2 As I suggested, in the order that initially
3 scheduled this conference, and it is my intention to
4 first resolve two motions -- actually three motions.

5 The first is a motion by the plaintiff and
6 by the third-party defendants, who are the subpoena
7 recipients here, to quash certain DMCA subpoenas
8 filed by plaintiff. There is then a motion -- I'm
9 sorry -- filed on plaintiff and third-party
10 defendants. There are then a motion for preliminary
11 injunction and there is then discussions about an
12 anticipated motion to dismiss that has been
13 suggested.

14 So let me please. I'm going to read into
15 the record, because that is the quickest way that I
16 have to communicate this to you, my decision on the
17 motions to quash. And what I'm going to do is I'm
18 going to invite everyone -- I'll pause and let you
19 do this -- invite everyone to mute themselves so
20 that no one's breaking into the communication and
21 interrupting me as I read the decision.

22 The decision is about 10 pages long, so
23 I'll thank you in advance for your patience. And
24 it'll address first the motion to quash, and then as
25 a result of the motion to quash and my disposition

1 of it, it will as well address the motion for a
2 preliminary injunction.

3 And just so that you're attuned to what it
4 is I'm going to be doing, in these decisions, I am
5 going to be granting the motions to quash, and I am
6 going to be denying the motion for preliminary
7 injunction. So just want to manage your
8 expectations.

9 I'll let you mute yourselves and then I
10 will begin.

11 Thank you very much, by the way, for
12 everyone's briefing on these issues. There were a
13 lot of really interesting legal issues that were
14 explored very well by the parties, and I do very
15 much appreciate that. But because the parties have
16 done such a good job in explaining the factual and
17 the procedural backgrounds, I'm really going to
18 limit my discussion of these areas and I'll try and
19 be as streamlined as I can.

20 I do want to get some nomenclature issues
21 out of the way first. I'm going to refer to
22 Plaintiff Lolcow as simply "plaintiff" and to
23 Defendant Ms. Fong-Jones as "defendant". And for
24 ease of reference, when I'm discussing one of the
25 third-party defendants, I'm very likely to refer to

1 them by their Doe number, even though the parties
2 have identified the screen names. And if I refer to
3 them collectively, I'll be referring to them as the
4 third-party defendants.

5 So let me just give some brief background.
6 At defendant's request, I signed three DMCA
7 subpoenas addressed to plaintiff in late March and
8 early April of this year. And the first two
9 subpoenas sought information about accounts linked
10 to the third-party defendants. The third sought
11 information about nonparties to the case, and these
12 are the subpoenas that are the primary focus of the
13 briefing before me.

14 There was a recommendation from the
15 third-party defendants that I analyzed the
16 nonparties' posts coextensively with third-party
17 defendants' posts. I am declining that
18 recommendation.

19 But talking a little bit more about the
20 subpoena -- the subpoenas, they were issued under
21 17 U.S.C. Section 512(h), which authorizes a
22 subpoena to issue to a service provider for
23 identification of an alleged, in this case,
24 copyright infringer. And so, cutting to the chase,
25 the parties agree that where, as here, a Section

1 512(h) subpoena seeks to identify anonymous online
2 speakers, courts in the Second Circuit are required
3 to balance the five factors set forth in *Arista*
4 *Records LLC v. Doe 3*. That's a Second Circuit
5 decision from 2010 reported at 604 F.3d 110.

6 And that's decided to -- excuse me --
7 that's in order to determine whether to quash the
8 subpoena. So the first of the *Arista* factors -- and
9 I'm fully aware that the parties are likely -- can
10 repeat this back to me, but I do want the record to
11 be clear. The first of the factors is the
12 concreteness of the plaintiff showing of a prima
13 facie case of actionable harm, in this case,
14 copyright infringement. That's from the *Arista*
15 decision, 604 F.3d at 119. That in turn is quoting
16 *Sony Music Entertainment Inc. v. Does 1-40*, a
17 Southern District decision from 2004 reported at
18 326 F. Supp. 2d 556.

19 Now here the parties do not dispute that
20 the defendant has a copyright in what I'll call her
21 professional headshot, which is the image that is
22 docketed at docket entry 33-8. There's no dispute
23 that the third-party defendants reproduced the
24 headshot in several of the contested images. And
25 instead the parties debate whether the subpoenas

1 should be quashed because the reproductions
2 constitute fair use, which is an affirmative defense
3 that can defeat a prima facie showing of
4 infringement. Discussions about that concept are
5 found in cases including In Re: DMCA Section 512(h)
6 Subpoena to YouTube, Google Incorporated, a Southern
7 District decision from 2022 reported at 581 F. Supp.
8 3d 509.

9 So for me, the motions to quash boil down
10 to whether each of the challenged reproductions
11 constitutes fair use, and for reasons I'm about to
12 explain, I find that each does, and that's why I'm
13 quashing the subpoenas. That's also why I'm not
14 engaging with the parties' many, many other
15 arguments on this issue.

16 So as the parties' briefing makes clear,
17 they are familiar with the standard for fair use
18 defense. Section 107 of Title 17 of the U.S. Code
19 provides four nonexclusive factors that inform
20 whether a use is fair, and they are number one, the
21 purpose and character of the use, including whether
22 such use is of a commercial nature or is for
23 nonprofit educational purposes. Number two, the
24 nature of the copyrighted work. Number three, the
25 amount and substantiality of the portion used in

1 relation to the copyrighted work as a whole. And
2 number four, the effect of the use upon the
3 potential market for or value of the copyrighted
4 work.

5 Now, I'll break that down a little bit
6 more, but this discussion that I'm about to give you
7 is taken largely from the Second Circuit's recent
8 decision in *Richardson vs. Townsquare Media*
9 *Incorporated*, 174 F.4th 299.

10 So beginning with Section 107.1, which is
11 purpose and character, the courts consider two
12 sub-factors. Number one, the extent to which the
13 secondary use is transformative, and number two,
14 whether the secondary use is commercial in nature.
15 That's discussed in cases including *Hachette Book*
16 *Group, Inc. v. Internet Archive*, 115 F.4, 163, a
17 Second Circuit decision from 2024. And in this
18 setting, a secondary use is transformative where it
19 does not merely supplant the original, but instead
20 adds something new with a further purpose or
21 different character, altering the original with a
22 new expression, meaning or message. That's
23 discussed in *Hachette* and it's also discussed in
24 *Campbell vs. Acuff-Rose Music, Incorporated*, 510
25 U.S. 569, a Supreme Court decision from 1994.

1 Typically, this factor distills to the issue of
2 substitution. A secondary use will not be
3 transformative where it merely offers a substitute
4 for the original work, and instead a use may be
5 transformative where it was made for and objectively
6 realizes a purpose distinct from that of the
7 original work. That's discussed at length in the
8 Supreme Court's 2023 decision in *Andy Warhol*
9 *Foundation for the Visual Arts Incorporated vs.*
10 *Goldsmith*, 598 U.S. 508.

11 Now, in addition, the new purpose must
12 supply a sufficient justification for copying, such
13 as providing a critique or commentary on the
14 original or supplying information to the public
15 about the copied work that is not otherwise
16 available. That's discussed in the Supreme Court's
17 decision of last year in *Romanova vs. Amilus, Inc.*,
18 138 F.4th 104, again, Second Circuit decision from
19 2025.

20 Now, most copying has some further purpose,
21 and many secondary works add something new. And so
22 the *Warhol* Court recognized that the inquiry will
23 not always be clear cut. Instead, what they asked,
24 or what the Court directed, is that lower courts
25 assess transformativeness as a matter of degree and

1 weigh it against other considerations like
2 commercialism.

3 Turning to the second factor, that
4 considers the nature of the copyrighted work in
5 recognition of the fact that some works are closer
6 to the core of intended copyright protection than
7 others. I'm quoting from the *Campbell* decision.
8 And so what the *Warhol* case -- the Supreme Court's
9 *Warhol* case asked or indicated was that the inquiry
10 was whether the copyrighted work is more expressive
11 or factual because fair use is more likely to be
12 found where the work is fact or informational.

13 We also asked whether the copyrighted work
14 has been previously published because the scope of
15 fair use involving unpublished works is far more
16 limited. I have to say, though, of the four
17 factors, this one probably plays the least of a role
18 in the fair use assessment.

19 On the third factor, a finding of fair use
20 is more likely when small amounts or less important
21 passages of the work are copied than when the
22 copying is extensive or encompasses the most
23 important part of the original. That's the *Hachette*
24 decision I mentioned earlier, and it is in turn
25 quoting a Second Circuit decision from 2015, *Authors*

1 *Guild vs. Google Incorporated*, 804 F.3d 202.

2 Once again, however, the inquiry remains
3 context specific, and a fair use defense may be
4 available even where a secondary work uses the
5 entirety of the original. One case for that
6 proposition is *Bill Graham Archives v. Dorling*
7 *Kindersley Ltd.* 448 F.3d 605, a Second Circuit
8 decision from 2006. The crux of the inquiry is
9 whether no more was taken than necessary. That is a
10 quote from the Second Circuit's 2014 decision in
11 *Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87.

12 On the fourth factor, the Second Circuit
13 has repeatedly recognized this as the most
14 important. The *Hachette* case I mentioned, the
15 *Authors Guild* case I mentioned, and the *Richardson*
16 case that I mentioned all speak to this issue.

17 And in this setting, courts consider
18 primarily whether the secondary work usurps the
19 market for the first work by offering a competing
20 substitute, that is from the Second Circuit's
21 decision in the *Warhol* case that then went to the
22 Supreme Court.

23 So in doing so, courts weigh not only the
24 market harm caused by the particular actions of the
25 alleged infringer, but also the market harm that

1 would result from unrestricted and widespread
2 conduct of the same sort. That is a quote from *Fox*
3 *News Network, LLC v. TVEyes, Inc.*, 883 F.3d 169, a
4 Second Circuit decision from 2018. This particular
5 factor subsumes much of the content of the other
6 factors whose force lies in evidencing the market
7 effect of the use. For example, the fourth factor
8 relates to the third factor because the greater the
9 amount and substantiality of the use, the greater
10 the likelihood that the secondary work might serve
11 as an effectively competing substitute for the
12 original. It is also relevant to the first factor
13 because the more transformative a secondary use is,
14 the less likely it is to serve as a mere substitute
15 for the original.

16 Now, having outlined the relevant
17 considerations for the fair use defense, I'll now
18 apply them to each of the asserted copyright
19 infringements here. I want to note at the outset
20 though, that in describing why each of these
21 reproductions is protected by fair use, I am not
22 meaning to suggest anything about the
23 appropriateness of the messages that they
24 communicate. I think anyone looking at them would
25 consider many of these messages to be cruel,

1 offensive, racist, and transphobic. But the fact
2 remains that the fair use defense is rooted in the
3 First Amendment, and that protects even the speech
4 that we might find to be odious. One example of
5 that is found in the Second Circuit's decision in
6 *SARL Louis Faraud International v. Viewfinder,*
7 *Incorporated*, 489 F.3d 474, a Second Circuit
8 decision from 2007.

9 So let me first address Doe 1 and Doe 7's
10 posts together because they are substantively
11 identical. They appear at docket entries 33-1,
12 33-2, and docket entry 32 at page 10. And they both
13 reproduce a cropped version of the headshot overlaid
14 with meme-like text reading consent accidents do
15 occasionally happen and accompanied by some
16 commentary within the form posts.

17 Going under the first factor, I find that
18 the meme-like text alone is sufficiently
19 transformative to constitute fair use. It adds
20 something new, altering the original with new
21 expression, meaning or message. It's clearly
22 criticism of the defendant and commentary on her
23 tweet describing what she characterized as a consent
24 accident. And there's nothing about this post or
25 any of the posts at issue that is commercial in

1 nature.

2 And I want to pause for a moment and step
3 back because, particularly with respect to this
4 headshot, it is important to consider how it's being
5 juxtaposed with the text. What I mean to say is, it
6 is the defendant's portrait and expression, which
7 are calm if not beatific, and the authors here have
8 deliberately juxtaposed that with statements that
9 she made that one can fairly say downplay or
10 recharacterize allegations of sexual assault. And
11 so my point is that image was selected precisely
12 because the commentary is so at odds with the vision
13 or the visage in the image.

14 I also don't find that the second factor in
15 the fair use analysis is much help to the analysis.
16 The reproductions are expressive and not
17 informational, but the headshot was previously
18 published, and I'm therefore not according the
19 factor much weight.

20 For the third factor I don't find
21 particularly helpful because the reproductions do
22 crop out some background from the original headshot,
23 but that cropping does little to inform the fair use
24 analysis. This is not a situation, for example,
25 where a few pages of a book were excerpted.

1 On the fourth factor, I think that it is
2 helpful in demonstrating that Doe 1 and Doe 7 can
3 avail themselves of the fair use defense. The
4 defendant here suffered no market harm from the
5 posts because they are not commercial in nature.
6 They cannot usurp the headshots market in the first
7 instance, and in any event, it is not clear to
8 the Court what commercial market exists for the
9 headshot. But the foregoing analysis obviates any
10 need to wade into those particular waters.

11 Turning next to Doe 2's post, which appears
12 at docket entry 33-3 and page 11 of Docket Entry 32,
13 the Doe in this -- Doe 2 comments that the headshot
14 appears to have been touched up in Photoshop or with
15 AI and notes that he can do that too, and so he
16 does, reproducing the headshot in a clearly altered
17 way, transforming the defendant's face with a
18 caricaturized smile, and then including critical
19 commentary, writing nightmare fuel and again echoing
20 the defendant's own prior comments, have a happy
21 consent accident.

22 So, as an initial matter, this court can
23 consider the language outside of the headshot itself
24 under cases including *Yang v. Mic Network, Inc.*, 405
25 F. Supp. 3d 537, a Southern District decision from

1 2019. Others include *Clark v. Transportation*
2 *Alternatives, Inc.*, 2019 Westlaw 1448448 and *Walsh v.*
3 *Townsquare Media, Inc.*, 464 F. Supp. 3d 570.

4 In other words, the fact that Doe 2's
5 criticism and commentary appear in text surrounding
6 the headshot rather than superimposed onto it like a
7 more traditional meme, does not alter the Court's
8 ability to consider that text for purposes of the
9 fair use analysis. Here, too, the first factor of
10 the fair use analysis is dispositive. Doe 2's
11 altering of the headshot materially transforms it
12 into something new, particularly when contextualized
13 by his commentary that the original headshot appears
14 photoshopped. It is clear that Doe 2 is offering
15 criticism and communicating a new meaning and there
16 is nothing commercial about the post.

17 For factors 2 and 3, I don't find them
18 especially informative, and I'm not discussing them.

19 The fourth factor is again useful in
20 demonstrating Doe 2's fair use. Doe 2 made this
21 post and the others at issue here on an internet
22 forum without any commercial considerations. There
23 is no risk that the reproduction would affect any
24 market substitution. So the use is also fair.

25 I turn now to Doe 3's post, which appears

1 at docket entry 33-4 and in part at page 13 of
2 docket entry 32. This is a reproduction of the
3 headshot. It zooms in to isolate the defendant's
4 face. It is accompanied by text on the top and
5 bottom, just outside the image itself in the margins
6 of the forum post, but otherwise functioning just
7 like the meme posted by Doe 1 and Doe 7.

8 The commentary contains racist invective
9 that I will not repeat as well as the clause it was
10 just consent accident. And for the reasons I've
11 outlined above, this post also constitutes fair use.
12 It is transformative under the first factor because
13 it reflects criticism and commentary and is not
14 commercial in nature. And under the fourth factor,
15 there is no risk of market substitution.

16 Turning to Doe 4's post, which is found at
17 docket number 33-5 at page 7 and at page 14 of
18 docket entry 32. Now Doe 4 explicitly calls his
19 reproduction a meme, and the Court agrees. It is a
20 four-panel grid that juxtaposes the headshot and an
21 image from the movie -- the 1985 movie Brazil, which
22 is described by the third-party defendants as a
23 haggard woman with stretched out skin and
24 superimposed onto the meme are the phrases "DLSS 5
25 off" and "DLSS 5 on", which the third-party

1 defendants explain, are phrases popularly used
2 online and memes to portray exaggerated before and
3 after pictures. This meme is transformative, it is
4 noncommercial, and I find that the use of the
5 headshot in it is fair. Specifically, placing the
6 headshot beside the Brazil image offers
7 transformative criticism and commentary, as do the
8 DLSS 5 off and on phrases.

9 The commentary itself appears rather
10 offensive, but as the Court mentioned at the outset,
11 this is what the First Amendment by way of the fair
12 use defense protects. And again, nothing about this
13 reproduction is commercial. So Doe 4 presents no
14 threat of usurping defendant's market for the
15 headshot.

16 Now I'm going to analyze Doe 5 and Doe 6
17 posts together. Doe 5's post appeared in docket
18 entry 3-6 at pages 2 and 3 and at docket entry 32 at
19 16. It is a screenshot of a LinkedIn post
20 advertising a podcast episode featuring defendant
21 and the underlying LinkedIn post contains the
22 headshot with the background removed and only
23 defendant's body remaining pasted on a yellow
24 background with text that appears to be the title of
25 the podcast episode, and it appears to the Court to

1 be standard podcast promotional material.

2 Doe 6's post appears at docket number 32 at
3 page 17 and then in partial form at docket number
4 33-7 at pages 2 and 3. And this version is cut off,
5 which is why I'm using the version at docket entry
6 32. So it's a screenshot of defendant's own social
7 media post announcing that she will use the headshot
8 as her new profile picture. Doe 6 adds some
9 commentary criticizing defendant's appearance in the
10 headshot. Here, the Court's fair use analysis is
11 not entirely or does not proceed entirely like its
12 earlier analyses, but comes up with the same result.
13 There is hardly anything transformative about a
14 direct reproduction of the headshot without much
15 accompanying commentary or criticism, Doe 6's brief
16 criticism notwithstanding. But Section 107.2 guides
17 that where a use is factual or informational rather
18 than expressive, and the copyrighted work has been
19 previously published, fair use is more likely to be
20 found. I'm quoting from the *Richardson* decision
21 174 F.4th, page 308. And that's what's going on
22 here.

23 There's very little expressive about
24 Doe 5's and Doe 6's reproductions. Rather, these
25 Does reproduce the headshot for factual purposes.

1 The fact of the headshot's existence was the point.
2 That justification alone might cause issues, but
3 Section 107.2 generally plays a minimal role in the
4 fair use assessment anyway.

5 So buttressing this factor is a familiar
6 justification, the entirely noncommercial nature of
7 Doe 5's and Doe 6's posts. There is no risk that
8 their posts might compete with the headshots as
9 substitutes in the market, whatever that market may
10 be, and therefore I find that the uses of the
11 headshot were fair.

12 Now moving on to another request of
13 plaintiff. Plaintiff is seeking attorneys' fees and
14 costs under Federal Rule of Civil Procedure
15 45(d)(1). And in that setting, a defendant must
16 take -- it provides that a defendant must take
17 reasonable steps to avoid imposing undue burden or
18 expense on a person subject to subpoenas and that
19 the court must enforce this duty and impose an
20 appropriate sanction which may include reasonable
21 attorneys' fees on a party or attorney who fails to
22 comply. The plaintiff argues that defendant failed
23 to take reasonable steps to avoid imposing an undue
24 burden on it via her subpoenas and plaintiff further
25 emphasizes the mandatory nature of the rule.

1 Nonetheless, the Court declines to award
2 plaintiff fees and costs because it finds that
3 defendant took reasonable steps to avoid imposing an
4 undue burden on plaintiff. That determination
5 requires the Court to weigh the burden to the
6 subpoenaed party against the value of the
7 information to the serving party. Whether a
8 subpoena imposes an undue burden depends on such
9 factors as relevance, the need of the party for the
10 documents, the breadth of the document request, the
11 time period covered by it, the particularity with
12 which the documents are described and the burden
13 imposed. Quoting from my own 2021 decision in
14 *Breaking Media Incorporated vs. Jowers*, 2021 Westlaw
15 1299108.

16 Here, the Court finds the defendant had a
17 good faith belief that plaintiff via third-party
18 defendants was infringing her copyright with no
19 alternative mean to identify the third-party
20 defendants. Defendant pursued the only route then
21 available to her seeking subpoenas from this court.
22 The Court need not engage with the parties'
23 arguments about the overbreadth of the subpoenas to
24 determine the defendant's good faith attempt to
25 identify the infringers amounted to reasonable steps

1 taken to avoid imposing an undue burden. It is true
2 that the Court is quashing defendant's subpoenas,
3 but that does not necessarily mean that defendant's
4 arguments or efforts were unreasonable or undue.

5 Other cases in which this same result is
6 obtained include *Molefi vs. Oppenheimer Trust*, 2007
7 Westlaw 538547. And it, in turn, is citing *Builders*
8 *Association of Greater Chicago vs. City of Chicago*,
9 2002 Westlaw 1008455.

10 So put somewhat differently, the uses of
11 the headshots, this court ultimately concludes, were
12 fair. But defendant's attempts to curtail them were
13 not so unreasonable or so undue as to require fee
14 shifting.

15 So for all of these reasons, I am granting
16 plaintiff's and third-party defendants' motions to
17 quash defendant's DMCA subpoenas.

18 That leaves plaintiff's preliminary
19 injunction motion. And in that regard, plaintiff
20 asks this Court to preliminarily enjoin defendant
21 from issuing DMCA takedown notices pursuant to
22 Section 512(c)(3) and DMCA subpoenas pursuant to
23 Section 512(h), against the users of plaintiff's
24 platform who use the headshot for commentary,
25 criticism, parody, news reporting, or discussion of

1 defendant.

2 The Court declines to issue such blanket
3 prospective relief. In granting the motions to
4 quash, this Court carefully reviewed each individual
5 post at issue. At this stage in the litigation,
6 this court cannot ex ante determine that all uses of
7 the headshot to discuss defendant made now or in the
8 future are fair use or that all uses henceforth will
9 be immune from DMCA takedown requests and subpoenas.
10 And it is for this reason that the Court denies
11 plaintiff's preliminary injunction motion.

12 That said, and to preview final discussion
13 topic today, the parties should give careful
14 consideration to how today's rulings bear on this
15 case moving forward. This Court has certainly not
16 resolved the merits of plaintiff's underlying case,
17 but I trust that the parties will, as any good
18 lawyers would in this circumstance, think about what
19 these decisions on these motions mean for the case
20 going forward and whether, for example, that might
21 suggest an ability to resolve this case without
22 additional motion practice or without a trial.

23 Let me also just offer another thought. If
24 defendant, excuse me, did not understand this
25 Court's views on the fair use doctrine, she does

1 now. And so I imagine that I will have the same
2 views were there to be future subpoenas or takedown
3 notices. And at that point, I might entertain an
4 application for attorneys' fees or costs because at
5 that point I don't know that I could find that the
6 defendant's efforts were reasonable and not undue.
7 But point being, for today, I am not comfortable
8 ex ante preventing the defendant from issuing
9 subpoenas. I just trust that she and her attorney
10 will give careful consideration to the rulings
11 today.

12 So finally, and as suggested by my July 6th
13 endorsement of defendant's opposition to plaintiff's
14 premotion letter seeking leave to move to dismiss
15 defendant's copyright infringement counterclaim, and
16 I repeated it in my July 23rd endorsement adjourning
17 defendant's answer deadline, I am aware that the
18 defendant has not yet filed an answer to plaintiff's
19 first amended complaint or counterclaims, but I
20 wanted to understand the plaintiff's contemplated
21 motion.

22 And what I'm suggesting is now that the
23 parties understand my views on fair use in this
24 context, it may be that the parties want to think
25 further about deciding on the need or advisability

1 of motion practice.

2 So with that, Mr. Hardin, let me please
3 turn to you, sir. What would you like to do?

4 MR. HARDIN: I think it probably makes
5 sense to give us a couple weeks, and we can submit a
6 status report either suggesting that there's not a
7 need for further proceedings, or if there is a need
8 for an amended answering counterclaim and further
9 proceedings, establishing a schedule for that. So
10 that's what I would suggest is a status report in
11 two weeks, and we'll figure out where we stand then.

12 THE COURT: All right. Now, sir, I'm very
13 happy to get that from you in two weeks. If your
14 colleagues are out vacationing, we might need a
15 little bit more time. But you think two weeks is
16 sufficient?

17 MR. HARDIN: I'm happy to make it 30 days
18 if the defense feels like 30 days is more
19 appropriate. I just threw that out as an option.

20 THE COURT: Well, you know, I'm feeling
21 generous today, which I'm not usually, so I'll go
22 with 30 days.

23 Mr. Haygood, does that make sense to you,
24 sir?

25 MR. HAYGOOD: It does, your Honor.

1 THE COURT: Okay, much appreciated. And I
2 know you've been dealing with Mr. Hardin, and I'm
3 sure you've been dealing with the Randazza Group as
4 well, so you can interact with them.

5 And Mr. Wolman, does that work for you,
6 sir?

7 MR. WOLMAN: Your Honor, I don't believe
8 our clients were served with anything at this point
9 relative to any third-party claim or whatnot. But
10 yes, 30 days is fine to the extent we have any
11 future role.

12 THE COURT: You've identified it exactly
13 the right way, sir. I didn't want to exclude you to
14 the extent that you might be brought back into this
15 case through some other method.

16 All right. I thank you all for
17 participating in this conference this afternoon.
18 We've gotten a lot done, even if it may not have
19 appeared that way at first.

20 I will issue a minute entry that resolves
21 these motions, and I will look forward to hearing
22 from everyone in 30 days. That may get us -- you
23 know what, that's going to end up being a Saturday.
24 So let's do whatever that Friday is. Excuse me for
25 a second while I try and try and get a calendar up.

1 Let's, please, make it September 25th, and we'll
2 write that into the minute entry as well.

3 So, on or before September 25th, I will
4 receive a letter, a joint letter, from whoever
5 wishes to submit it, letting me know what the
6 parties' intentions are going forward.

7 With that, I wish you all great rest of
8 your summers. I thank you again. We are adjourned.
9 Take care, everyone.

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C E R T I F I C A T E

I, Marissa Lewandowski, certify that the foregoing transcript of proceedings in the case of Lolcow LLC v. Fong-Jones, Docket #1:26-cv-02059-KPF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Marissa Lewandowski

Marissa Lewandowski

Date: August 31, 2026