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Ethan Klein and Hila Klein

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 TRILLER FIGHT CLUB II LLC, a
14 Delaware limited liability company,

15 Plaintiff,

16 v.

17 TED ENTERTAINMENT, INC., a
California corporation; TEDDY
18 FRESH, INC., a California
corporation; ETHAN KLEIN, an
19 individual; HILA KLEIN, an
individual; and DOES 1-10

20 Defendants.
21
22

Case No.: 2:21-cv-03942-JAK-KS

**DECLARATION OF DEFENDANT
ETHAN KLEIN IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT
PURSUANT TO F.R.C.P. 12(b)(6)**

[Notice of Motion and Motion;
Declaration of Lincoln D. Bandlow;
Compendium of Exhibits; Notice of
Lodging and Request for Judicial Notice
filed concurrently herewith]

Assigned to: Hon. John A. Kronstadt

Date: November 22, 2021

Time: 8:30 a.m.

Place: Courtroom 10B
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DECLARATION OF ETHAN KLEIN

I, Ethan Klein, do hereby state and declare as follows:

1. I am over the age of 18 and one of the named defendants in the present action. I am the chief executive officer of defendant Ted Entertainment, Inc. (“TEI”) – which I own with my wife, defendant Hila Klein (“Hila”). TEI is the production company responsible for the creation, production and dissemination of the H3 Podcast. I am the vice-president of defendant Teddy Fresh, Inc. (“Teddy Fresh”) – which I own with Hila. I have personal knowledge of the facts contained in this declaration and, if called and sworn as a witness, I could and would competently testify thereto. I make this Declaration in support of defendants’ Motion to Dismiss Plaintiff’s Second Amended Complaint Pursuant to F.R.C.P. 12(b)(6) (the “Motion”).

2. A true and correct screen capture video of the audiovisual work by plaintiff Triller Fight Club II, LLC (“Triller”) entitled *Jake Paul vs. Ben Askren* (the “Broadcast”) from <https://www.fite.tv/watch/jake-paul-vs-ben-askren/2p8y0/> is included on the external hard drive filed with Defendants’ Notice of Lodging and incorporated herein as **Exhibit B**.

3. A true and correct printout of the webpage for the H3 Podcast episode entitled *Jake Paul Fight Was A Disaster – H3 Podcast #244* (the “4/22/21 Podcast”), available at <https://youtu.be/bfKPts4BJkA> and referenced in Paragraphs 3, 5, 13, 24, 28, 32, 36, 41 and 44 of Triller’s Second Amended Complaint (“SAC”) is attached to Defendants’ Compendium of Exhibits and incorporated herein as **Exhibit C**.

4. A true and correct printout of the webpage for the video entitled *Jake Knockout* that was referred to in the 4/22/21 Podcast (the “Reference Video”), was available at: <https://www.youtube.com/watch?v=-G7u36dpmL8> and referenced in Paragraphs 3, 5, 13, 24, 28, 32, 36, 41 and 44 of Triller’s SAC is attached to

1 Defendants' Compendium of Exhibits and incorporated herein as **Exhibit D**. Since
2 the Reference Video is currently designated as private, the publicly available
3 version appears different than Exhibit D. Exhibit D is how the webpage appears to
4 TEI as the owner of the Zach the Sound Lad Channel and was visible prior to May
5 3, 2021 to those who manually entered the URL for the Reference Video.
6 Currently, the Reference Video is private. As of May 3, 2021, the Reference Video
7 was changed from "unlisted" to "private." If one were to click the link to the
8 Reference Video, the individual will be greeted with a black box that states: "Video
9 unavailable" and "This video is private." Currently, the Reference Video is only
10 accessible by TEI. Should the Court wish to confirm the printout of the webpage
11 for the Reference Video, Defendants can make arrangements for the Court to view
12 the webpage for the Reference Video with sufficient advance notice.

13 5. A true and correct printout of the YouTube Help article entitled
14 "Change Video Privacy Settings" that defines public, unlisted and private videos
15 on YouTube and is available at:
16 [https://support.google.com/youtube/answer/157177?co=GENIE.Platform%3DDesk
17 top&hl=en#zippy=%2Cunlisted-videos%2Cprivate-videos%2Cpublic-videos](https://support.google.com/youtube/answer/157177?co=GENIE.Platform%3DDesktop&hl=en#zippy=%2Cunlisted-videos%2Cprivate-videos%2Cpublic-videos) is
18 attached to Defendants' Compendium of Exhibits and incorporated herein as
19 **Exhibit E**.

20 6. A true and correct copy of the Reference Video, which was available
21 at <https://www.youtube.com/watch?v=-G7u36dpmL8> and referenced in Paragraphs
22 5, 24, 26, 32, 34-35, 41 and 43 of Triller's SAC is included on the external hard
23 drive filed with Defendants' Notice of Lodging and incorporated herein as **Exhibit**
24 **F**.

25 7. A true and correct printout of a YouTube Help article that defines
26 eligibility for the YouTube Partner Program entitled "YouTube Partner Program
27 overview & eligibility", is available at:
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1 <https://support.google.com/youtube/answer/72851?hl=en> and referenced in
2 Paragraphs 3, 13, 28, 36 and 44 of Triller’s SAC is attached to Defendants’
3 Compendium of Exhibits and incorporated herein as **Exhibit G**.

4 8. A true and correct copy of the 4/22/21 Podcast, is available at
5 <https://youtu.be/bfKPts4BJkA> and is referenced in Paragraphs 5-6, 24-25, 32-33
6 and 41-42 of Triller’s SAC is included on the external hard drive filed with
7 Defendants’ Notice of Lodging and incorporated herein as **Exhibit H**.

8 9. A true and correct printout of the definition of the word “stream” from
9 Merriam-Webster’s online dictionary, which is available at: <https://www.merriam->
10 [webster.com/dictionary/stream](https://www.merriam-webster.com/dictionary/stream), is attached to Defendants’ Compendium of
11 Exhibits and incorporated herein as **Exhibit P**.

12 I declare under penalty of perjury that the contents of this declaration are true
13 and correct. Executed this 6th day of September, 2021 in Los Angeles, California.

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16 _____
17 Ethan Klein