

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Dr. Keith F. Bell,

Plaintiff,

v.

THE MILWAUKEE BOARD OF
SCHOOL DIRECTORS and SHON
HARALSON, an employee of Milwaukee
Public Schools,

Defendants.

Case No.: 2:22-cv-227

JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

Plaintiff Keith F. Bell, by and through his attorneys, Hamilton IP Law, PC, hereby requests that the Court denies DEFENDANTS' MOTION TO DISMISS for the following reasons:

1. The Court should grant the filing date of February 23, 2022 as stated by the Clerk of the Court. If the Court declines to grant this date, the Court should extend the statute of limitations by one day under the doctrine of equitable tolling after Plaintiff's Attorney was diligent in timely filing the case but was unable to due to technological error.
2. Dismissal by the Court based on fair use by Defendants would be improper at this stage as courts should refrain from granting motions to dismiss based on affirmative defenses. Additionally, Defendants relies on a factually distinguishable case to argue that Defendants' use constitutes fair use.
3. Additionally, Plaintiff's WIN Passage, when posted by Plaintiff, contains the requisite CMI including Plaintiff's name and year of copyright registration, both of which

constitute CMI under 17 U.S.C. § 1202(c). Defendants made Plaintiff's work available on their social media knowing or should have known that CMI had been removed.

4. Plaintiff filed the Complaint in good faith based on willful infringement of Plaintiff's registered copyrights.
5. There are issues of fact concerning claims of fair use claims, CMI removal, good faith filing of this case, and it would therefore be improper to dismiss Plaintiff's claims prior to discovery.

This motion is based upon the pleadings, along with the brief in support, Affidavit of Keith F. Bell, and Affidavit of Attorney Hamilton filed with this motion.

Dated: August 3, 2022.

Respectfully submitted,

By: /s/ Jay R. Hamilton

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**ATTORNEYS FOR
PLAINTIFF DR. KEITH F. BELL**

CERTIFICATE OF SERVICE

I hereby certify that on the August 3, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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/s/ Jay R. Hamilton

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