

**No. 21-15787**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

Harrison Snow Kinsley,

*Plaintiff-Appellant,*

v.

Udemy, Inc.

*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 3:19-cv-04334-JSC  
Hon. Magistrate Judge Jacqueline Scott Corley

---

**APPELLANT HARRISON SNOW KINSLEY'S OPENING BRIEF**

---

Steven Howard Kuhn, Esq.  
The Law Firm of Steven H. Kuhn  
1954 Mountain Blvd #13052  
Oakland CA 94611-2813  
(415)937-7358  
steven@kuhn-lawfirm.com

## TABLE OF CONTENTS

	Page
JURISDICTIONAL STATEMENT .....	1
INTRODUCTION .....	1
ISSUES PRESENTED .....	2
STATEMENT OF THE CASE.....	3
SUMMARY OF THE ARGUMENT .....	5
PROCEDURAL POSTURE .....	6
STANDARD OF REVIEW .....	10
ARGUMENT .....	10
I.    UDEMY'S RESPONSE WAS NOT EXPEDITIOUS IN ITS REMOVAL OF EITHER OF KINSLEY COURSES.....	12
A.    THE DISTRICT COURT OVERLOOKED IRREFUTABLE DOCUMENTARY EVIDENCE IN ITS DOCKET WHICH SHOWED THAT UDEMY'S RESPONSE REGARDING MASTERY PYTHON 3 BASICS TUTORIAL SERIES + SQLITE WITH PYTHON WAS <i>NOT EXPEDITIOUS</i> . UDEMY IS THEREFORE <i>NOT ENTITLED</i> TO THE SAFE HARBOR PROVISION OF 35 U.S.C 512(C). .....	13
B.    THE DOCUMENTS SWEEPED UP IN THE AMBIT OF UDEMY'S MASS, INDISCRIMINATE, AND ROUTINIZED CONFIDENTIALITY DESIGNATION SHOW THAT UDEMY HAD RED FLAG KNOWLEDGE OF COPYRIGHT INFRINGEMENT OF OPENCV WITH PYTHON FOR IMAGE AND VIDEO ANALYSIS – HANDS ON! AND DID NOTHING ABOUT IT UNTIL KINSLEY HIMSELF SUBMITTED A DMCA TAKEDOWN 36 DAYS LATER. ....	15

..

II.	UDEM Y IS GENERALLY NOT ENTITLED TO THE SAFE HARBOR PROVISION OF 35 U.S.C. §512 BECAUSE IT IS NOT A SERVICE PROVIDER UNDER THE MEANING OF 17 U.S.C. § 512 (K)(1).....	16
III.	UDEM Y IS NOT ENTITLED TO THE SAFE HARBOR PROVISION OF 35 U.S.C. 512 (C). ....	19
A.	UDEM Y DOES NOT SATISFY THE REQUIREMENTS OF 35 U.S.C. § 512 (C)(1)(A).....	20
B.	UDEM Y DOES NOT SATISFY THE REQUIREMENTS OF 35 U.S.C. § 512 (C)(1)(B).....	21
C.	UDEM Y DOES NOT SATISFY THE REQUIREMENTS OF 35 U.S.C. § 512 (C)(1)(C).....	22
IV.	UDEM Y REMAINS LIABLE FOR CONTRIBUTORY AND VICARIOUS COPYRIGHT INFRINGEMENT BECAUSE IT IS NOT ENTITLED TO THE SAFE HARBOR OF 35 U.S.C. 512(C). 23	
V.	THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR MISCELLANEOUS RELIEF BECAUSE THE EFFECT WAS TO SHIFT THE BURDEN TO KINSLEY TO EXPLAIN WHY THE DOCUMENTS UDEM Y PRODUCED SHOULD NOT BE CONFIDENTIAL. UDEM Y HAS THE BURDEN TO EXPLAIN WHY ITS DOCUMENT PRODUCTION SHOULD BE CONSIDERED AS CONFIDENTIAL. ....	23
VI.	THE DISTRICT COURT ABUSED ITS DISCRETION BY CONCLUDING THAT ORAL ARGUMENT WAS NOT NECESSARY WHEN QUESTIONS POSITED IN THE ORDER COULD HAVE BEEN ANSWERED AT ORAL ARGUMENT. ....	25
VII.	PLAINTIFF'S OTHER CLAIMS ARE NOT PREEMPTED BY HIS COPYRIGHT CLAIMS. ....	27
	CONCLUSION.....	29
	STATEMENT OF RELATED CASES.....	14

...

CERTIFICATE OF COMPLIANCE.....15

CERTIFICATE OF SERVICE.....16

## TABLE OF AUTHORITIES

Page(s)

**Cases**

<i>Adobe Sys. Inc. v. Christenson</i> , 809 F.3d 1071.....	13
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242.....	11
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317.....	12
<i>Del Campo v. Am. Corrective Counseling Servs., Inc.</i> .....	26
<i>Del Madera Properties v. Rhodes &amp; Gardner, Inc.</i> , 820 F.2d 973 .....	29
<i>Flexible Lifeline Sys. v. Precision Lift, Inc.</i> , 654 F.3d 989.....	16
<i>Fogerty v. Fantasy, Inc.</i> , 510 U.S. 517 .....	29
<i>Idema v. Dreamworks, Inc.</i> , 162 F. Supp. 2d 1129.....	29
<i>Kodadek v. MTV Networks, Inc.</i> , 152 F.3d 1209 .....	28
<i>Laws v. Sony Music Ent., Inc.</i> , 448 F.3d 1134.....	28
<i>Mahon v. Credit Bureau of Placer County, Inc.</i> , 171 F.3d 1197.....	26
<i>Miller v. Comm’r</i> , 310 F.3d 640 .....	11
<i>Thrifty Oil Co. v. Bank of America Nat. Trust</i> , 322 F.3d 1039.....	11
<i>United Steelworkers of Am. v. Phelps Dodge Corp.</i> , 865 F.2d 1539.....	12

**Statutes**

28 U.S. Code § 1331 .....	7
28 U.S. Code § 636(c).....	2, 6

**Rules**

FRAP 4(a)(1)(A).....	2
FRCP 12(b)(6) .....	3, 6, 10

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.