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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LIUXIA WONG,

Plaintiff,

v.

HARD DRIVE PRODUCTIONS, INC., AND
DOES 1-50,

Defendants.

Case No. 5:12-cv-00469-HRL

**DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMEMNDED
COMPLAINT**

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. This is a civil action seeking declaratory relief based upon the continuing improper conduct of defendants Hard Drive Productions, Inc. (hereafter —Hard Drive) and Does 1-50 in harassing plaintiff and others like her to settle claims of purported infringement of Hard Drive's purported copyrighted works.

ANSWER: Defendant denies the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint.

II. PARTIES

2. Plaintiff Liuxia Wong is an individual over the age of 18 residing in the County of Solano, California.

1
2 **ANSWER:** Defendant admits the allegations contained in Paragraph 2 of Plaintiff's
3 Amended Complaint.

4 3. Plaintiff is informed and believes, and thereon alleges that Hard Drive is an
5 Arizona Corporation whose principal place of residence is in Maricopa County, and which
6 does business worldwide including in the State of California, Counties of San Francisco and
7 Solano.
8

9 **ANSWER:** Defendant admits that it is a corporation organized and existing under the laws of
10 the State of Arizona, with a principal place of business in Phoenix Arizona. Defendant admits
11 that its products are available for purchase over the Internet, including in the State of California
12 and the counties referenced in Paragraph 3 of Plaintiff's Amended Complaint. Defendant denies
13 that it conducts business in the State of California, as that term is defined in the California
14 statutes.
15

16 4. The true names and capacities of defendants named as Does 1 through 50 are
17 presently unknown to plaintiff.

18 **ANSWER:** Defendant lacks information sufficient to admit or deny the allegations contained
19 in Paragraph 4 of Plaintiff's Amended Complaint, and therefore denies the same.

20 5. Plaintiff will amend this complaint setting forth the true names and capacities of
21 these fictitious defendants when they are ascertained.
22

23 **ANSWER:** Defendant lacks information sufficient to admit or deny the allegations contained
24 in Paragraph 5 of Plaintiff's Amended Complaint, and therefore denies the same.

25 6. Plaintiff is informed and believes, and thereon alleges that each of the
26 fictitious defendants have participated in the acts alleged in this complaint to have been done
27 by the named defendant.
28

1 that Paul Pilcher owns more than 20% of any class of shares issued by Hard Drive, or having
2 more than a 20% beneficial interest in Hard Drive, information which is publicly available
3 electronically from the Arizona Secretary of State at
4 [http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-
6 id=11235797&type=CORPORATION](http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-
5 id=11235797&type=CORPORATION).

7 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
8 subjective information and beliefs, and therefore denies the same. Defendant denies that
9 Plaintiff has fully and accurately characterized the contents of the records of the Arizona
10 Secretary of State, and therefore denies the allegations contained in Paragraph 21 of Plaintiff's
11 Amended Complaint regarding the same.

12 22. In this prior action, Hard Drive sued 48 anonymous doe defendants by
13 improperly joining them in one action without taking into account the requirements of 28 U.S.C.
14 section 1400(a) which provides that a defendant in a copyright infringement action may only be
15 sued in the district where the defendant or his or her agent resides or may be found.
16

17 **ANSWER:** Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Amended
18 Complaint.

19 23. Plaintiff is informed and believes, and thereon alleges that Hard Drive
20 improperly joined multiple defendants in one action to avoid paying the \$350 filing fee for each
21 action had Hard Drive properly filed separate actions for each defendant.
22

23 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
24 subjective information and beliefs, and therefore denies the same. Defendant denies the
25 remaining allegations contained in Paragraph 23 of Plaintiff's Amended Complaint.
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1 28. Plaintiff is informed and believes, and thereon alleges that Hard Drive represented
2 to the U.S. Copyright Office that the work was first published on March 3, 2010.

3 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
4 subjective information and beliefs, and therefore denies the same.

5 29. Plaintiff is informed and believes, and thereon alleges that the work was registered
6 on April 22, 2011.

7 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
8 subjective information and beliefs, and therefore denies the same.

9 30. In this prior action, Hard Drive alleged that it was entitled to recover statutory
10 damages and attorneys' fees per 17 U.S.C. section 504(c) as stated in its complaint at paragraph
11 31, and in its prayer for relief at paragraph 4.

12 **ANSWER:** Defendant denies the allegations contained in Paragraph 30 of Plaintiff's Amended
13 Complaint completely or accurately summarizes the contents of the complaint in Case No. 11-
14 cv-1957, and therefore denies the same.

15 31. A party is not entitled to recover statutory damages and attorneys' fees under 17
16 U.S.C. section 504(c) if the alleged infringement of copyright commenced after first publication
17 of the work and before the effective date of its registration, unless such registration is made
18 within three months after the first publication of the work per 17 U.S.C. section 412.

19 **ANSWER:** Paragraph 31 states legal conclusions which Defendant is not required to admit or
20 deny, and Defendant therefore denies the same.

21 32. Hard Drive is not entitled to recover statutory damages and attorneys' fees.

22 **ANSWER:** Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Amended
23 Complaint.

1 33. After filing its prior action, Hard Drive then applied ex parte for expedited
2 discovery seeking the names, addresses, and telephone numbers of the account holders whose
3 IP addresses resolved to them.

4 **ANSWER:** Defendant admits that it filed an ex parte application for leave to take discovery
5 prior to the Rule 26(f) conference in the “prior action.”
6

7 34. Plaintiff is informed and believes, and thereon alleges that Hard Drive had entered
8 into an agreement with a third party private investigator, who is unlicensed under California law,
9 to log IP addresses that were allegedly transmitting Hard Drive’s work via Bittorrent.

10 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff’s
11 subjective information and beliefs, and therefore denies the same. Defendant denies the
12 remaining allegations contained in Paragraph 34 of Plaintiff’s Amended Complaint.
13

14 35. A Bittorrent tracker is a computer server.

15 **ANSWER:** Defendant denies that a Bittorrent tracker is a computer server, as the term is
16 commonly defined.

17 36. A Bittorrent tracker is required to initiate any download of the work.

18 **ANSWER:** Defendant denies the allegations contained in Paragraph 36 of Plaintiff’s Amended
19 Complaint.
20

21 37. Plaintiff is informed and believes, and thereon alleges that Hard Drive gave the right
22 to distribute the work to its unlicensed private investigator, otherwise it would not have been able
23 to log the IP addresses.

24 **ANSWER:** Defendant denies the allegations contained in Paragraph 37 of Plaintiff’s Amended
25 Complaint.
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1 38. Plaintiff is informed and believes, and thereon alleges that Hard Drive knew of the
2 IP addresses of the Bittorrent trackers that were being used distribute the work.

3 **ANSWER:** Defendant lacks denies the allegations contained in Paragraph 38 of Plaintiff's
4 Amended Complaint.

5 39. Plaintiff is informed and believes, and thereon alleges that Hard Drive never issued
6 any Digital Millennium Copyright Act (D.M.C.A.) takedown notices to the owners and/or
7 operators of the Bittorrent trackers that were being used distribute the work.

8 **ANSWER:** Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Amended
9 Complaint.

10 40. Plaintiff is informed and believes, and thereon alleges that Hard Drive never issued
11 any D.M.C.A. takedown notices to the owners and/or operators of the Bittorrent trackers, because
12 it and/or its agents were using them as honeypots so that they could continue to log IP address.

13 **ANSWER:** Defendant denies the allegations contained in Paragraph 40 of Plaintiff's Amended
14 Complaint. Furthering answering, Defendant specifically denies that it and/or its agents used
15 "honeypots."

16 41. Plaintiff is informed and believes, and thereon alleges that Hard Drive knew it
17 could make more money by allowing its work to continue to be distributed instead of shutting
18 down the Bittorrent trackers.

19 **ANSWER:** Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Amended
20 Complaint. Defendant affirmatively alleges that Plaintiff has no factual basis for asserting its
21 allegations.

22 42. Contrary to Hard Drive's allegation that venue under 28 U.S.C. section 1391(b)
23 governs copyright infringement actions, it does not; only section 1400(a) governs venue
24

1 in copyright infringement actions per the Supreme Court's holding in Schnell v. Peter Eckrich &
2 Sons, Inc. (1961) 365 U.S. 260, 262-263.

3 **ANSWER:** Defendant denies that Plaintiff's allegations contained in Paragraph 42 of
4 Plaintiff's Amended Complaint completely or accurately summarizes the contents of its
5 pleadings, and therefore denies the same. The remainder of Paragraph 42 contains legal
6 conclusions which Defendant is not required to admit or deny, and Defendant therefore denies
7 the same.
8

9 43. The Schnell court's analysis of venue in section 1400(b) for patent infringement
10 actions should likewise be applied for venue in copyright infringement actions under section
11 1400(a).

12 **ANSWER:** Paragraph 43 contains legal conclusions which Defendant is not required to admit
13 or deny, and Defendant therefore denies the same.
14

15 44. Plaintiff did not move to quash Hard Drive's subpoena issued to her internet
16 service provider.

17 **ANSWER:** Defendant is unaware of a motion to quash on the part of Plaintiff for a subpoena
18 that Hard Drive issued.

19 45. Plaintiff's internet service provider released her name, address, and telephone
20 number to Hard Drive.
21

22 **ANSWER:** Defendant admits that, pursuant to a Court order and a duly-issued and served
23 subpoena, an internet service provider submitted Plaintiff's name and contact information to
24 Defendant.
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1 46. After receipt of plaintiff's name, address, and telephone number, Hard
2 Drive transmitted a letter demanding that she settle the prior action for \$3,400. A true and
3 correct copy of this letter is attached hereto as Exhibit A.

4 **ANSWER:** Defendant denies the allegations contained in Paragraph 46 of Plaintiff's Amended
5 Complaint completely or accurately summarizes the contents of the document referenced
6 therein, and therefore denies the same.

7
8 47. In Hard Drive's settlement demand letter, it notified plaintiff that it was prepared
9 to commence a lawsuit against her if its settlement efforts failed.

10 **ANSWER:** Defendant denies that the allegations contained in Paragraph 47 of Plaintiff's
11 Amended Complaint completely or accurately summarize the contents of the document
12 referenced therein, and therefore denies the same.

13
14 48. In Hard Drive's settlement demand letter, it notified plaintiff to act promptly by
15 settling to avoid being named as a defendant in the lawsuit.

16 **ANSWER:** Defendant denies that the allegations contained in Paragraph 48 of Plaintiff's
17 Amended Complaint completely or accurately summarize the contents of the document
18 referenced therein, and therefore denies the same.

19
20 49. In Hard Drive's settlement demand letter, it notified plaintiff that she was liable
21 for copyright infringement by merely having an unsecured wireless network/router even though
22 plaintiff did not download the work, did not tell anyone else to download the work, and did not
23 know anyone was using her internet service to download the work.

24 **ANSWER:** Defendant denies that the allegations contained in Paragraph 49 of Plaintiff's
25 Amended Complaint completely or accurately summarize the contents of the document
26 referenced therein, and therefore denies the same.

1 50. In Hard Drive's settlement demand letter, it notified plaintiff that she may be liable
2 for statutory damages of up to \$150,000.

3 **ANSWER:** Defendant denies that the allegations contained in Paragraph 50 of Plaintiff's
4 Amended Complaint completely or accurately summarize the contents of the document
5 referenced therein, and therefore denies the same.
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7 51. Plaintiff is informed and believes, and thereon alleges that Hard Drive's prior
8 action complaint coupled with the settlement demand letter was designed to intimidate and to
9 coerce plaintiff into paying the settlement demand of \$3,400, especially when confronted with the
10 statutory damages figure of \$150,000, and when she was not represented by counsel.

11 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
12 subjective information and beliefs, and therefore denies the same. Defendant denies the
13 remaining allegations contained in Paragraph 51 of Plaintiff's Amended Complaint.
14

15 52. Plaintiff is informed and believes, and thereon alleges that Hard Drive's prior
16 action complaint coupled with the settlement demand letter was designed to intimidate and to
17 coerce plaintiff into paying the settlement demand of \$3,400 as it would be more expensive
18 for her to retain an attorney to defend her against all allegations.

19 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
20 subjective information and beliefs, and therefore denies the same. Defendant denies the
21 remaining allegations contained in Paragraph 52 of Plaintiff's Amended Complaint.
22

23 53. Plaintiff is informed and believes, and thereon alleges that no facts existed for
24 Hard Drive to represent, either in its prior action complaint or in its settlement demand letter, to
25 plaintiff that Hard Drive was entitled to recover any statutory damages award given that the
26 alleged infringement occurred on March 28, 2011 which is more than three months after the
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1 work was first published on March 3, 2010, and which is before the work's registration date of
2 April 22, 2011.

3 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
4 subjective information and beliefs, and therefore denies the same. Defendant denies the
5 remaining allegations contained in Paragraph 53 of Plaintiff's Amended Complaint.
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7 54. Plaintiff is informed and believes, and thereon alleges that
8 Hard Drive's communications transmitted to plaintiff were designed to intimidate and to coerce
9 her into settling the case despite the absence of any facts supporting liability against her.

10 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
11 subjective information and beliefs, and therefore denies the same. Defendant denies the
12 remaining allegations contained in Paragraph 54 of Plaintiff's Amended Complaint.
13

14 55. Plaintiff is informed and believes, and thereon alleges that Hard Drive, its agents
15 and/or its employees also contacted her telephonically in order to extract a settlement from her
16 based on their acts of coercion and intimidation.

17 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
18 subjective information and beliefs, and therefore denies the same. Defendant denies the
19 remaining allegations contained in Paragraph 55 of Plaintiff's Amended Complaint.
20

21 56. Hard Drive subsequently obtained a continuance of the case management conference
22 in the prior action.

23 **ANSWER:** Defendant denies the allegations contained in Paragraph 56 of Plaintiff's Amended
24 Complaint because it fails to allege to what was "subsequent." Defendant admits that it filed a
25 motion to continue the case management conference in the "prior action" on June 28, 2011
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1 57. On or before September 27, 2011, plaintiff notified Hard Drive that she denied
2 all liability alleged in the prior action's complaint.

3 **ANSWER:** Defendant denies that the allegations contained in Paragraph 57 of Plaintiff's
4 Amended Complaint completely or accurately summarizes the contents of the communication
5 referenced therein, and therefore denies the same.
6

7 58. In response to plaintiff's notification described in paragraph 57, Hard Drive notified
8 plaintiff that they would name and serve her with a lawsuit.

9 **ANSWER:** Defendant denies that the allegations contained in Paragraph 58 of Plaintiff's
10 Amended Complaint completely or accurately summarizes the contents of the communications
11 referenced therein, and therefore denies the same.
12

13 59. On September 27, 2011, Hard Drive subsequently dismissed its prior action
14 without prejudice.

15 **ANSWER:** Defendant denies the allegations contained in Paragraph 59 of Plaintiff's
16 Amended Complaint because it fails to allege to what the dismissal was "subsequent."
17 Defendant admits that it filed a motion to voluntarily dismiss the "prior action" on or about
18 September 27, 2011.

19 60. Plaintiff is informed and believes that Hard Drive dismissed its prior action as it
20 could not, and did not want to address the issues and questions that the court had with the prior
21 action, and that it also did not want to be sanctioned for failing to prosecute the case, and for
22 misjoining all anonymous doe defendants.
23

24 **ANSWER:** Defendant denies the allegations contained in Paragraph 60 of Plaintiff's Amended
25 Complaint.
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1 61. On or about October 10, 2011, Plaintiff notified Hard Drive that she denied all
2 liability alleged in the prior action’s complaint.

3 **ANSWER:** Defendant denies that the allegations contained in Paragraph 61 of Plaintiff’s
4 Amended Complaint completely or accurately summarizes the contents of the communication
5 referenced therein, and therefore denies the same.
6

7 62. On or about October 10, 2011, plaintiff notified Hard Drive that if it dismissed
8 plaintiff with prejudice, she would agree that each party would bear their own costs and attorneys’
9 fees. Hard Drive did not accept this offer.

10 **ANSWER:** Defendant denies that the allegations contained in Paragraph 62 of Plaintiff’s
11 Amended Complaint completely or accurately summarizes the contents of the communications
12 referenced therein, and therefore denies the same.
13

14 **B. Hard Drive’s Present Lawsuit**

15 63. On November 21, 2011, Hard Drive filed a complaint for copyright
16 infringement against a single John Doe defendant which was initially assigned case number
17 4:11-cv-05630-YGR (hereafter –present action)), and which was subsequently reassigned to the
18 Honorable Richard Seeborg on November 30, 2011.

19 **ANSWER:** Defendant admits the allegations contained in Paragraph 63 of Plaintiff’s Amended
20 Complaint.
21

22 64. Despite the fact that Hard Drive knew that the present action was related the
23 dismissed prior action, Hard Drive failed to comply with Civil L.R. 3-3(c) which requires the
24 refiling party to file a motion to consider whether cases should be related pursuant to Civil L.R.
25 3-12 so that the judge originally assigned to the action which had been dismissed should have the
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1 refiled case transferred to him or to her to avoid the unduly burdensome duplication of labor and
2 expense.

3 **ANSWER:** Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Amended
4 Complaint.

5
6 65. Plaintiff is informed and believes, and thereon alleges that Hard Drive
7 purposefully failed to comply with Civil L.R. 3-3(c), because the previously assigned judge,
8 the Honorable Joseph C. Spero, had made certain rulings adverse to Hard Drive and to Hard
9 Drive's counsel in other improperly joined copyright infringement cases.

10 **ANSWER:** Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Amended
11 Complaint.

12
13 66. Hard Drive further misrepresented to the court that plaintiff resided in this
14 district although at all relevant times, it knew that plaintiff resided in the City of Fairfield, County
15 of Solano which falls under the venue of the Eastern District of California. See attached Exhibit A.

16 **ANSWER:** Defendant denies the allegations contained in Paragraph 66 of Plaintiff's Amended
17 Complaint.

18
19 67. In the present action, Hard Drive alleged that it was entitled to recover
20 statutory damages and attorneys' fees per 17 U.S.C. section 504(c) as stated in its complaint at
21 paragraph 31, and in its prayer for relief at paragraph 2.

22 **ANSWER:** Defendant denies that the allegations contained in Paragraph 67 of Plaintiff's
23 Amended Complaint completely or accurately summarizes the contents of the documents
24 referenced therein, and therefore denies the same.

25
26 68. Again, Hard Drive was not entitled to recover statutory damages and attorneys'
27 fees, because Hard Drive claimed that the alleged infringement occurred on March 28, 2011 which

1 is more than three months after the work was first published on March 3, 2010, and which is before
2 the work's registration date of April 22, 2011.

3 **ANSWER:** Paragraph 68 of Plaintiff's Amended Complaint contains legal conclusions which
4 Defendant is not required to admit or deny, and Defendant therefore denies the same.
5 Defendant denies the remaining allegations contained in Paragraph 68 of Plaintiff's Amended
6 Complaint.
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8 69. Plaintiff is informed and believes, and thereon alleges that Hard Drive's present
9 action complaint coupled with the settlement demand letter was designed to intimidate and to
10 coerce plaintiff into paying the settlement demand of \$3,400 especially when confronted with a
11 statutory damages figure of \$150,000.

12 **ANSWER:** Defendant lacks information sufficient to admit or deny the contents of Plaintiff's
13 subjective information and beliefs, and therefore denies the same. Defendant denies the
14 remaining allegations contained in Paragraph 69 of Plaintiff's Amended Complaint.
15

16 70. On January 9, 2012, Hard Drive applied ex parte to take the deposition of plaintiff
17 who was not named as a defendant in Hard Drive's present action.

18 **ANSWER:** Defendant denies the allegations contained in Paragraph 70 of Plaintiff's Amended
19 Complaint to the extent they call for a legal conclusion.
20

21 71. Plaintiff is informed and believes, and thereon alleges that despite Hard
22 Drive's erroneous position that plaintiff is vicariously liable for any acts or conduct occurring
23 through her internet account, it purposely avoided naming plaintiff for the purposes of obtaining ex
24 parte discovery in the present action on an expedited basis, and to cause plaintiff to incur
25 attorneys' fees in defending herself at deposition to force her to settle.
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1 **ANSWER:** Defendant denies the allegations contained in Paragraph 71 of Plaintiff's Amended
2 Complaint.

3 72. Hard Drive's tactics were improper as plaintiff had offered it at all relevant times
4 that she was prepared to execute a declaration under penalty of perjury that: (1) she did not
5 download the movie, and (2) she did not tell anyone else to download the movie for her, and (3)
6 she did not know anyone else was using her computer or network equipment to download the
7 movie.
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9 **ANSWER:** Defendant denies the allegations contained in Paragraph 72 of Plaintiff's Amended
10 Complaint.

11 73. Hard Drive rejected plaintiff's offered declaration as stated in paragraph 72.

12 **ANSWER:** Defendant denies that the allegations contained in Paragraph 73 of Plaintiff's
13 Amended Complaint completely or accurately summarizes the contents of the communications
14 referenced therein, and therefore denies the same.
15

16 74. Hard Drive then improperly demanded \$3,000 from plaintiff in exchange for
17 not proceeding with her deposition despite plaintiff's offer of a declaration as stated in paragraph
18 72. A true and correct copy of this settlement demand is attached hereto as Exhibit D.

19 **ANSWER:** Defendant denies the allegations contained in Paragraph 74 of Plaintiff's Amended
20 Complaint.

21 75. Plaintiff then offered to execute a declaration under penalty of perjury that: (1)
22 she does not know who downloaded the movie, and (2) that her internet service provider set up
23 her wi-fi equipment.
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1 **ANSWER:** Defendant denies that the allegations contained in Paragraph 75 of Plaintiff's
2 Amended Complaint completely or accurately summarizes the contents of the communications
3 referenced therein, and therefore denies the same.

4 76. Hard Drive again rejected plaintiff's offered declaration, as stated in paragraph 75.

5 **ANSWER:** Defendant denies that the allegations contained in Paragraph 75 of Plaintiff's
6 Amended Complaint completely or accurately summarizes the contents of the communications
7 referenced therein, and therefore denies the same.
8

9 77. At all relevant times, Hard Drive notified plaintiff that it would proceed with
10 her deposition unless she offered \$3,000 in settlement.

11 **ANSWER:** Defendant denies that the allegations contained in Paragraph 75 of Plaintiff's
12 Amended Complaint completely or accurately summarizes the contents of the communications
13 referenced therein, and therefore denies the same.
14

15 78. Plaintiff is informed and believes, and thereon alleges that Hard Drive knew
16 that plaintiff would incur substantial costs and attorneys' fees if her deposition were to proceed,
17 and used this information to extract a settlement from plaintiff.

18 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
19 subjective information and beliefs, and therefore denies the same. Defendant denies the
20 remaining allegations contained in Paragraph 78 of Plaintiff's Amended Complaint.
21

22 79. Plaintiff is informed and believes, and thereon alleges that the acts and conduct of
23 Hard Drive and its agents or employees as described herein was unlawful and/or improper.

24 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
25 subjective information and beliefs, and therefore denies the same. Defendant denies the
26 remaining allegations contained in Paragraph 79 of Plaintiff's Amended Complaint.
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C. Hard Drive’s Work is Not Copyrightable

80. Article I, Section 8, Clause 8 of the United States Constitution, known as the Copyright Clause, empowers the United States Congress: -To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

ANSWER: Defendant denies that the allegations contained in Paragraph 80 of Plaintiff’s Amended Complaint completely or accurately summarizes the contents of United States Constitution Clause referenced therein, and therefore denies the same.

81. Thus, copyright is authorized only for works which promote the progress of science and the useful arts.

ANSWER: Paragraph 81 of Plaintiff’s Amended Complaint contains legal conclusions which Defendant is not required to admit or deny, and Defendant therefore denies the same. Defendant denies that the allegations contained in Paragraph 81 of Plaintiff’s Amended Complaint completely or accurately describes United States copyright jurisprudence.

82. Horizontal Stare Decisis or Circuit law binds all courts within a particular circuit including the court of appeals itself. (Hart v. Massanari (9th Cir. 2001) 266 F.3d 1155, 1171—[T]he first panel to consider an issue sets the law not only for all the inferior courts in the circuit, but also future panels of the court of appeals.... Once a panel resolves an issue in a precedential opinion, the matter is deemed resolved, unless overruled by the court itself sitting en banc, or by the Supreme Court or -unless Congress changes the law.)

ANSWER: Paragraph 82 of Plaintiff’s Amended Complaint contains legal conclusions which Defendant is not require to admit or deny, and Defendant therefore denies the same.

1 83. Early Circuit law in California held that obscene works did not promote the progress
2 of science and the useful arts, and thus cannot be protected by copyright.

3 **ANSWER:** Paragraph 83 of Plaintiff's Amended Complaint contains legal conclusions which
4 Defendant is not required to admit or deny, and Defendant therefore denies the same.

5
6 84. Subsequent non-en banc decisions by the Ninth Circuit failed to follow this prior
7 circuit decision in California.

8 **ANSWER:** Paragraph 84 of Plaintiff's Amended Complaint contains legal conclusions which
9 Defendant is not required to admit or deny, and Defendant therefore denies the same.

10 85. Given the absence of any subsequent en-banc Ninth Circuit decisions, Supreme
11 Court precedent, or changes in the Constitution that copyright is authorized for works which
12 does not promote the progress of science and the useful arts, the subsequent Ninth Circuit
13 decisions are void and do not constitute binding precedent.

14
15 **ANSWER:** Paragraph 85 of Plaintiff's Amended Complaint contains legal conclusions which
16 Defendant is not require to admit or deny, and Defendant therefore denies the same.

17 86. Hard Drive's work does not promote the progress of science.

18 **ANSWER:** Paragraph 86 of Plaintiff's Amended Complaint contains legal conclusions which
19 Defendant is not required to admit or deny, and Defendant therefore denies the same.

20 87. Hard Drive's work does not promote the useful arts.

21 **ANSWER:** Defendant denies the allegations contained in Paragraph 86 of Plaintiff's Amended
22 Complaint.

23 88. Hard Drive has judicially admitted that its work is adult pornography.

24 **ANSWER:** Defendant denies the allegations contained in Paragraph 88 of Plaintiff's Amended
25 Complaint.
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1 89. Hard Drive's work depicts obscene material.

2 **ANSWER:** Defendant denies the allegations contained in Paragraph 89 of Plaintiff's Amended
3 Complaint.

4 90. Plaintiff is informed and believes, and thereon alleges that to create the work,
5 Hard Drive and its agents and/or its employees violated laws which prohibited pimping,
6 pandering, solicitation and prostitution, including any claims of conspiracy.

7 **ANSWER:** Defendant lacks information sufficient to admit or deny the content of Plaintiff's
8 subjective information and beliefs, and therefore denies the same. Defendant denies the
9 remaining allegations contained in Paragraph 90 of Plaintiff's Amended Complaint.

10 91. Hard Drive's work depicts criminal acts and/or conduct.

11 **ANSWER:** Defendant denies the allegations contained in Paragraph 91 of Plaintiff's Amended
12 Complaint.

13 92. Hard Drive's work is not copyrightable.

14 **ANSWER:** Defendant denies the allegations contained in Paragraph 92 of Plaintiff's Amended
15 Complaint.

16 **VII.FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF AND/OR**
17 **JUDGMENT THAT PLAINTIFF IS NOT LIABLE TO HARD DRIVE FOR**
18 **COPYRIGHT INFRINGEMENT AGAINST ALL DEFENDANTS**

19 93. Plaintiff realleges and incorporates by reference as though fully stated here,
20 paragraphs 1 to 92.

21 **ANSWER:** Defendant re-alleges and incorporates by reference its answers to each of
22 Paragraphs 1 through 92 as though fully set forth herein.

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1 94. Although Hard Drive in its public present action denies that it does not know if
2 plaintiff is liable to it for copyright infringement, in nonpublic communications, Hard Drive's
3 position is completely the opposite—that plaintiff is liable to Hard Drive.

4 **ANSWER:** Defendant denies the allegations contained in Paragraph 94 of Plaintiff's Amended
5 Complaint.
6

7 95. On July 13, 2011, Hard Drive, through its counsel transmitted a letter to plaintiff
8 which is attached hereto as Exhibit A.

9 **ANSWER:** Defendant admits its counsel transmitted a July 13, 2011 letter addressed to
10 Plaintiff.
11

12 96. In its letter, Hard Drive demanded \$3,400 from plaintiff to avoid being named as
13 a defendant in Hard Drive's prior lawsuit for copyright infringement. (Exhibit A at p.3.)

14 **ANSWER:** Defendant denies that the allegations contained in Paragraph 96 of Plaintiff's
15 Amended Complaint completely or accurately summarizes the contents of the communications
16 referenced therein, and therefore denies the same.

17 97. Plaintiff is informed and believes, and thereon alleges that along with the
18 settlement demand letters Hard Drive and/or its counsel have transmitted, they also included a
19 -memorandum of law authored by its then counsel John Steele of Steele | Hansmeier, PLLC whose
20 firm name has since changed to Prenda Law Inc. A true and correct copy of the -memorandum of
21 law is attached hereto as Exhibit B and a true and correct copy of the metadata for the
22 -memorandum of law is attached hereto as Exhibit C.
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24 **ANSWER:** Defendant denies that the allegations contained in Paragraph 97 of Plaintiff's
25 Amended Complaint completely or accurately summarizes the contents of the communications
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1 referenced therein, and therefore denies the same. Defendant denies the remaining allegations
2 contained in Paragraph 97.

3 98. In Hard Drive's counsel's -memorandum of law, it is their ultimate position that
4 the account holder is liable for copyright infringement committed by any person who uses the
5 account holder's internet access.
6

7 **ANSWER:** Defendant denies that the allegations contained in Paragraph 97 of Plaintiff's
8 Amended Complaint completely or accurately summarizes the contents of the communications
9 referenced therein, and therefore denies the same.

10 99. On January 18, 2012, Hard Drive improperly demanded a settlement of \$3,000
11 in exchange for dismissing the present case against the John Doe defendant to avoid plaintiff
12 having her deposition taken. See Exhibit D.
13

14 **ANSWER:** Defendant denies the allegations contained in Paragraph 99 of Plaintiff's Amended
15 Complaint.
16

17 100. Hard Drive's present action, in which it allegedly denies that it does not know
18 who infringed its work is false and mere pretext given its nonpublic actions and conduct as alleged
19 herein.

20 **ANSWER:** Defendant denies the allegations contained in Paragraph 100 of Plaintiff's
21 Amended Complaint.
22

23 101. Plaintiff is informed and believes, and thereon alleges that Hard Drive is
24 purposefully avoiding naming plaintiff so that it can improperly conduct expedited ex parte
25 discovery upon plaintiff.
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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HARD DRIVE PRODUCTIONS, INC.,

Defendant/Counterplaintiff,

v.

LIUXIA WONG,

Plaintiff/Counterdefendant.

Case No. 5:12-cv-00469-HRL

**DEFENDANT’S/COUNTERPLAINTIFF’S
COUNTERCOMPLAINT**

Defendant/CounterPlaintiff Hard Drive Productions, Inc. (“Hard Drive”), through its undersigned counsel, hereby files this Counterclaim requesting injunctive relief against Plaintiff/CounterDefendant Liuxia Wong (“Wong”), and alleges as follows:

NATURE OF THE CASE

1. Wong initiated this action with a one-count complaint for declaratory relief relating to copyright infringement under the United States Copyright Act. In a previously filed action, Hard Drive had sought relief against an anonymous copyright infringer associated with Internet Protocol (“IP”) address 76.126.48.155. In the course of expedited discovery, Hard Drive ascertained that the identity of the account holder associated with the IP address to be Wong. Because the relationship between an account holder and infringer can be imperfect, Hard Drive in another case sought to depose Wong in order to investigate the infringer’s identity and, if necessary, to prosecute the infringer for his blatant violation of Hard Drive’s copyright.

1 conspiracy claim under 28 U.S.C. § 1367(a) because it is so related to Wong's copyright claims,
2 which is within this Court's original jurisdiction, that the two claims form part of the same case and
3 controversy under Article III of the United States Constitution.

4
5 8. This Court has personal jurisdiction because Wong filed the underlying action in this
6 Court and the case is pending in this Court. Venue is properly founded in this judicial district
7 pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Wong resides in this District, may be found
8 in this District, or a substantial part of the events giving rise to the claims in this action occurred
9 within this District.

10 **ALLEGATIONS COMMON TO ALL COUNTS**

11 9. At all times relevant hereto, Hard Drive was the exclusive rights holder with respect
12 to BitTorrent-based reproduction and distribution of the Video.

13 10. The Video was the subject of an application for registration, and is now registered as
14 Copyright PA-1-732-491 by the United States Copyright Office.

15 11. The torrent file used to access the copyrighted material was named in a manner that
16 would have provided an ordinary individual with notice that the Video was protected by the
17 copyright laws.

18 12. Hard Drive employs proprietary peer-to-peer network forensic software to perform
19 exhaustive real time monitoring of the BitTorrent-based swarm involved in distributing the Video.
20 This software is effective in capturing data about the activity of peers in a swarm and their infringing
21 conduct.
22

23 13. Hard Drive observed the use of Wong's IP address, without Plaintiff's authorization
24 or license, to intentionally downloaded a torrent file particular to Hard Drive's Video, purposefully
25 loaded that torrent file into his BitTorrent client, entered a BitTorrent swarm particular to Hard
26 Drive's Video, and reproduced and distributed the Video to numerous third parties.
27

1 **COUNT I: DECLARATORY JUDGMENT**

2 **(Hard Drive's Works Are Copyrightable)**

3 14. Plaintiff hereby incorporates by reference each and every allegation contained in the
4 preceding paragraphs as if fully set forth fully herein.

5 15. In her Amended Complaint, Wong alleges that "Hard Drive's work is not
6 copyrightable". Compl. at ¶92. In its Answer, Hard Drive

7
8 16. Hard Drive's work is not copyrightable.

9 **ANSWER:** Defendant denies the allegations contained in Paragraph 92 of Plaintiff's Amended
10 Complaint.

11 17. This Court has personal jurisdiction because Wong filed the underlying action in this
12 Court and the case is pending in this Court. Venue is properly founded in this judicial district
13 pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Wong resides in this District, may be found
14 in this District, or a substantial part of the events giving rise to the claims in this action occurred
15 within this District.
16

17 **PRAYER FOR RELIEF**

18 **WHEREFORE,** Plaintiff respectfully requests Judgment and relief as follows:

19 1) Judgment against Defendant that he has: a) willfully infringed Plaintiff's rights in
20 federally registered copyrights pursuant to 17 U.S.C. § 501; and b) otherwise injured the business
21 reputation and business of Plaintiff by Defendant's acts and conduct set forth in this Complaint;

22 2) Judgment in favor of the Plaintiff against Defendant for actual damages or statutory
23 damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, in an amount to be ascertained at
24 trial;
25
26
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