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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PENGUIN GROUP (USA) INC.,

Case No. 09 CIV 00528 JGK

Plaintiff,

-against-

AMERICAN BUDDHA,

Defendant.

**DECLARATION OF TARA LYN CARREON IN SUPPORT OF
AMERICAN BUDDHA'S MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

Tara Lyn Carreon hereby declares:

1. I am President and sole Director of American Buddha, defendant herein, and state the matters herein of personal knowledge. If called as a witness, I could and would so competently testify.

Personal Background

2. I have a degree in Sociology with a minor in Anthropology from Southern Oregon University, from which I graduated in 1983 Summa Cum Laude.

3. I am the full-time archivist and librarian for the American Buddha Online Library, a project of American Buddha.

4. I am the sole worker for American Buddha. I make all decisions regarding the operation of American Buddha. Aside from its attorney of record herein, and the company's designated agent for receipt of DMCA notices, American Buddha has no agents that act on its behalf.

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Corporate Description of American Buddha

- 5.** American Buddha is an Oregon nonprofit corporation that was incorporated in the State of Oregon on June 8, 2000.
- 6.** I have been President of American Buddha since the date of its incorporation, and thus have complete and accurate knowledge of its business and financial activities.
- 7.** I have lived in Tucson, Arizona since April 2007.
- 8.** American Buddha operates the brick-and-mortar Ralph Nader Library located at 2165 S. Avenida Planeta, Tucson, Arizona 85710. The Ralph Nader Library has a physical collection of hundreds of books, and has issued library cards to 52 members. Library cards are issued only to people who sign the Nader Library / ABOL User Signup Form attached as **Exhibit 9** to the Declaration of Charles Carreon.
- 9.** American Buddha owns no real estate or personal property, and has no bank accounts, personnel, business associates, or agents in the State of New York. American Buddha has never conducted any business activities in New York, either directly or through any agents, and has received no revenue from residents of the State of New York. American Buddha has sold no products anywhere in the world, and specifically has never sold any products in the State of New York. American Buddha has no sources of revenue whatsoever, via intrastate commerce in Arizona, via interstate commerce in the United States, or via international commerce worldwide. American Buddha has not purposefully directed any of its activities, including the AB Websites, at the residents of New York, or in any way sought to avail itself of the privilege of doing business there.
- 10.** American Buddha is not a commercial entity, produces no products, makes no sales, serves no markets, and generates no revenues. As set forth in detail below, American Buddha utilizes the Internet for the sole purpose of providing a resource for education and scholarship without regard to the geographic location of its users, and in compliance with the law applicable to all libraries, whether constructed of “bits and bytes” or “bricks and mortar.”

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American Buddha's Compliance With The Requirements of 17 U.S.C. § 108

11. American Buddha operates two websites under the Fair Use and Library Exemptions from Copyright Infringement Liability at 17 U.S.C. §§ 107 and 108, and makes a careful effort to comply with all the requirements of subsection (a) of Section 108, including: (1) making only one copy of a work available on a website, without any purpose of direct or indirect commercial advantage, (2) keeping the collections of the library and archives open to the public, and (3) including a notice of copyright that appears on any webpage where copyrighted works appear.

12. I have created every webpage at www.naderlibrary.com and www.american-buddha.com (the "AB Websites") as a labor donation to American Buddha. The AB Websites are intended to advance scholarly knowledge and facilitate access to research material. Each of the AB Websites is linked to a search engine, so all of the text on both websites can be searched by keyword, a feature that is of course essential for scholars and students. Using the AB Websites's search engine, Internet visitors have access to a contained, but expansive archive of material, quickly finding connections among the works of authors separated by centuries. Research of this type cannot be conducted unless the materials are all digitized and in the same database, thus the AB Websites provide a unique service for scholars.

13. I have curated two AB Websites to address two different types of scholars. Naderlibrary.com addresses the interests of political and social scholars, and American-Buddha.com is more oriented toward artistic, philosophical, and spiritual students. The two AB Websites provide the notice required to be posted in library copying facilities under 37 C.F.R. 201.14, which is displayed on a page that is accessed via a prominent link at the top of *every page* entitled "Library Copyright Notice" on Naderlibrary.com, and "American Buddha Online Library Copyright Notice" on American-Buddha.com. The notice reads as follows:

LIBRARY COPYRIGHT NOTICE

(37 C.F.R. 201.14)

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction.

One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

14. In compliance with the foregoing policy, I have made available one library copy of each copyrighted work at each AB Website. Allowing people to read that library copy does not constitute infringement, any more than handing a person a book in the brick-and-mortar Nader Library building and allowing them to read it or check it out constitutes infringement.

American Buddha Has Performed No Act That

Any Person Would Reasonably Anticipate Would Cause An Effect In New York

15. I have never had any reason to anticipate that the AB Websites would cause an effect in New York, and to my knowledge, they never have.

16. In particular, I have never had any reason to think that anyone in New York would utilize the AB Website version of "Oil," or "The Golden Ass," or "It Can't Happen Here" to commit an act of copyright infringement by creating an unlawful copy of any of these books. Nor do I have any reason to believe that the AB Websites have facilitated any unlawful copying of these or any other books.

The AB Websites Have No Downloadable Text Files of Copyrighted Works

17. AB websites do not have any downloadable files of copyrighted printed material that is at issue in this litigation. I use the term "download" here in its ordinary meaning: ¹

"Downloading is the transmission of a file from one computer system to another, usually smaller computer system. From the Internet user's point-of-view, to download a file is to request it from another computer (or from a Web page on another computer) and to receive it."

18. AB Websites have downloadable files of non-copyrighted text files. For example, on a webpage entitled "Justification for US Military Intervention In Cuba (Operation Northwoods),"²

¹ <http://searchnetworking.techtarget.com/definition/downloading>

² at <http://www.american-buddha.com/cuba.just.htm>,

there appears the highlighted phrase “View this PDF file.” By clicking this phrase, an Internet user can download a fifteen-page pdf that is stored on the website at a specific URL:

<http://www.american-buddha.com/nthwds.pdf/>. That URL spells the location of the file, and anyone can download a copy of it to the hard drive or other storage media on their machine.

Thus, with one click, any Internet user can download the “precise description of pretexts which would provide justification for US military intervention in Cuba” that the Joint Chiefs of Staff sent to the Secretary of Defense on March 13, 1962. A copy of the first page of that downloaded file is attached as **Exhibit 10**. Users can download the entire file, copy it freely, and attach that file to an email and send it to a friend.

19. However, that type of ease of file-copying and distribution is more than people need to make scholarly use of copyrighted materials, for which they only need to be able to find, search, and read. Therefore, where copyrighted books are concerned, the AB Websites makes it easy to find, search, and read the material, but does not provide any downloadable files. To obtain a copy of an entire copyrighted work available on an AB Website, an AB Website user would have to cut and paste many pages of the website into some other program, like Word, remove the HTML coding, and compile it into some type of digital file. They would need an expensive program like Adobe Professional to create a PDF file. And of course, if they wanted a paper copy, the cost of printing out an entire book through a commercial photocopier, or even on a home desktop printer, would exceed the cost of buying the book new or used. Indeed, for a prospective copyright infringer desiring a paper copy, it would likely be cheaper to go to the public library and simply make a photocopy from a paper edition. And in all the years I have operated the AB Websites, with the exception of Penguin attorney Tom Kjellberg, I have never heard of any AB Website user creating an infringing copy of a book by cutting and pasting all of the text into their own file.

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It Would Cause Great Hardship

To Be Forced To Defend This Lawsuit In New York City

20. American Buddha is not big enough, economically, to defend a suit in New York City. It would cause me great hardship to be forced to defend this lawsuit in New York City. To transport and provide food and lodging for myself and my *pro bono* lawyer to New York for the trial would be very costly, so much so that to fund the project, I would probably have to stop working as the American Buddha librarian and resume employment as a legal secretary at the relatively modest wages that profession commands here in Tucson, and donate all of those funds to American Buddha. Currently, it is very difficult to find employment in Tucson, Arizona, so there is a serious possibility that regardless of how hard I tried, I could not pay the costs of trial, even with a *pro bono* attorney. A trial on the merits of American Buddha's defense to Penguin's claim under 17 U.S.C. § 108 would be greatly aided by expert testimony that would be extremely costly to procure in New York City, whereas here in Tucson, with the University of Arizona and its School of Library Science, it would be considerably more tenable.

I declare and affirm, pursuant to 28 U.S.C. § 1746(2), that the foregoing is true and correct under the law of the United States of America, and that this declaration was signed on October 1, 2011

at Tucson, Arizona.

A handwritten signature in black ink, reading "Tara Lyn Carreon", written over a horizontal line.

Tara Lyn Carreon