

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

The Honorable Robert S. Lasnik

UNITED STATE DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELF-MAN, LLC, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) Eric Cariveau, an individual; )  
 ) Sharon White, an individual; )  
 ) Leon Kimmerling, an individual; )  
 ) Josh Morrison, an individual; )  
 ) Jason Couture, an individual; )  
 ) Aaron Coy, an individual; )  
 ) Michael Soper, an individual; )  
 ) Johnathan Kirby, an individual; )  
 ) David Ullom, an individual; )  
 ) Essen Lee, an individual; )  
 ) Michele L. Neuman, an individual; )  
 ) Kyle White, an individual; )  
 ) Shannon Dixson, an individual; )  
 ) Shelly Scanlan, an individual; )  
 ) Becky Peloquin, an individual; )  
 ) Steven Peloquin, an individual; )  
 ) Jerry Graff, an individual; )  
 ) Vandy Graff, an individual; DOES )  
 ) 1-11; DOES 13-16; DOES 18-23; )  
 ) DOES 24-48; DOES 50-52; DOES )  
 ) 54-71; DOES 73-86; DOES 89-91; )  
 ) DOE 94; DOES 97-125; DOES 127-134; )  
 ) DOES 136-145; DOES )

Case No. 2:13-cv-00507-RSL  
DEFENDANT ESSEN LEE'S  
ANSWER, AFFIRMATIVE  
DEFENSES, AND  
COUNTERCLAIMS

1 147-148; and DOES 150-152, )  
2 Defendants. )  
3 \_\_\_\_\_ )

4  
5  
6 **I. ANSWER**

7 Defendant Essen Lee answers the allegations of plaintiff’s First Amended Complaint for  
8 Copyright Infringement (hereinafter “Complaint”) as follows:

9 1. In response to Paragraphs 1-9, Essen Lee is without information sufficient to  
10 ascertain the truth of the allegations of these Paragraphs. The allegations of these Paragraphs  
11 are therefore denied.  
12

13 2. In response to Paragraph 10, Essen Lee denies the allegations of this Paragraph  
14 to the extent they are made against him. Essen Lee is without information sufficient to  
15 ascertain the truth of the remaining allegations of this Paragraph. The allegations of this  
16 Paragraph are therefore denied.  
17

18 3. In response to Paragraph 11, the allegations of this Paragraph consist of  
19 statements of intention and/or legal conclusions for which no answer is required.

20 4. In response to Paragraph 12, the allegations of this Paragraph consist of legal  
21 conclusions for which no answer is required. Essen Lee denies that any alleged copyright  
22 infringement for which he is responsible occurred and therefore denies that facts conferring  
23 subject matter jurisdiction under 28 U.S.C. § 1331 or 28 U.S.C. § 1338 exist as regards him.  
24

25 5. In response to Paragraph 13, because Essen Lee is unaware of the citizenship of  
26 plaintiff or its specific business structure, the allegations regarding venue conferred under 28

1 U.S.C. § 1391(b) are denied. The allegations regarding venue conferred under 28 U.S.C. §  
2 1400 are admitted.

3 6. In response to Paragraph 14, Essen Lee is without information sufficient to  
4 ascertain the truth of the allegations of this paragraph. The allegations of this Paragraph are  
5 therefore denied.

6  
7 7. In response to Paragraphs 15-21, Essen Lee, who has not viewed *Elf-Man*, is  
8 without information sufficient to ascertain the truth of the allegations of these Paragraphs. To  
9 the extent these allegations consist of legal conclusions, no answer is required. The allegations  
10 of these Paragraphs are therefore denied.

11 8. In response to Paragraphs 22-26, Essen Lee denies the allegations of these  
12 Paragraphs to the extent they are made against him. Essen Lee is without information sufficient  
13 to ascertain the truth of the remaining allegations of these Paragraphs. The allegations of these  
14 Paragraphs are therefore denied.

15  
16 9. In response to Paragraphs 27-53, Essen Lee is without information sufficient to  
17 ascertain the truth of the allegations of these Paragraphs. The allegations of these Paragraphs  
18 are therefore denied.

19  
20 10. In response to Paragraph 54, Essen Lee is without information sufficient to  
21 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
22 therefore denied.

23 11. Essen Lee admits the allegations of Paragraph 55.

24 12. In response to Paragraph 56, Essen Lee denies that IP address 174.61.149.83 is  
25 “Essen Lee’s IP address.” He further denies that an IP address, *per se*, is capable of “infringing  
26 Plaintiff’s motion picture.” Essen Lee is without information sufficient to ascertain the truth of

1 the remaining allegations of this Paragraph. The allegations of this Paragraph are therefore  
2 denied.

3 13. In response to Paragraphs 58-74, Essen Lee is without information sufficient to  
4 ascertain the truth of the allegations of these Paragraphs. The allegations of these Paragraphs  
5 are therefore denied.  
6

7 14. In response to Paragraph 75, the allegations of this Paragraph consist of  
8 statements of intention for which no answer is required. Essen Lee is without information  
9 sufficient to ascertain the truth of the remaining allegations of this Paragraph. The allegations  
10 of this Paragraph are therefore denied.

11 15. In response to Paragraphs 76-122, Essen Lee denies the allegations of these  
12 Paragraphs to the extent they are made against him. He denies in their entirety the allegations  
13 of Paragraphs 83-86 and Paragraphs 110-119. To the extent the allegations of Paragraphs 76-  
14 122 consist of legal conclusions, no answer is required. Essen Lee is without information  
15 sufficient to ascertain the truth of the remaining allegations of these Paragraphs, especially to  
16 the extent they include purported testimony in the U.S. Congress and detailed descriptions of  
17 the functions of internet communications protocols and peer-to-peer networks. The allegations  
18 of these Paragraphs are therefore denied.  
19

20 16. In response to Paragraph 123, Essen Lee reincorporates his responses to  
21 Paragraphs 1-122 above.  
22

23 17. In response to Paragraphs 124-131, the allegations of these Paragraphs are  
24 denied.  
25

26 18. In response to Paragraph 132, Essen Lee reincorporates his responses to  
Paragraphs 1-122 above.

1           19. In response to Paragraphs 133-139, the allegations of these Paragraphs are  
2 denied.

3           20. In response to Paragraph 140, Essen Lee reincorporates his responses to  
4 Paragraphs 1-122 above.

5           21. In response to Paragraphs 141-149, the allegations of these Paragraphs are  
6 denied.

7           22. In response to Paragraphs 150-153, the allegations of these Paragraphs consist of  
8 statements of intention and/or legal conclusions for which no answer is required. To the extent  
9 an answer is required, the allegations of these Paragraphs are denied.  
10

11   **II. AFFIRMATIVE DEFENSES**

12           Essen Lee hereby asserts the following affirmative defenses, which are pled in the  
13 alternative to the extent they may otherwise be determined mutually exclusive or inconsistent:  
14

15           1. One or more of plaintiff's claims fail to state a valid claim upon which relief can  
16 be granted.

17           2. This action is barred by plaintiff's misuse of copyright.

18           3. This action is barred by the doctrine of unclean hands.

19           4. The damages sought in this action are grossly excessive and disproportionate to  
20 any actual damages claimed by plaintiff. The claim for imposition of such damages violates the  
21 Due Process Clause of the U.S. Constitution, as interpreted in *BMW v. Gore*, 517 U.S. 559  
22 (1996).  
23

24           5. Plaintiff has failed to join one or more indispensable parties to this action.

25           6. One or more defendants have been improperly joined to this action in violation  
26 of Fed.R.Civ.Pro. 20 and should be severed and/or dismissed from this action.



1 subscriber's internet network in a manner that is unauthorized and unknown to the subscriber  
2 may be explained by numerous possibilities including: wireless "poaching;" "cracking" or  
3 circumvention of password protections and other network security measures; network address  
4 translation; the use of anonymous proxies; and "man-in-the-middle" attacks.

5  
6 4. In addition to the numerous technical explanations for possible mis-  
7 identification of ISP subscribers as infringers, widely available demographic information has  
8 for years indicated that listed ISP subscribers are relatively unlikely to be responsible for  
9 suspected copyright infringement, even when such suspected infringement is appropriately  
10 correlated with the subscriber's physical address. In these circumstances, demographic  
11 information suggests, minor children who are not capable of subscribing to ISP services are  
12 statistically more likely to have engaged in infringement, often without the ISP subscriber's  
13 knowledge or permission.  
14

15 5. Plaintiff, which has allegedly employed an "investigator" in gathering the  
16 information supporting this action, purports in its Complaint to have wide-ranging knowledge  
17 about internet communications protocols and the use of peer-to-peer networks. Therefore,  
18 plaintiff knew or should have known that it could have wrongfully identified Essen Lee as  
19 having committed the copyright infringement alleged by plaintiff.  
20

21 6. Essen Lee has never viewed plaintiff's motion picture, *Elf-Man*. He has never  
22 knowingly downloaded or uploaded a computer file constituting or containing a copy of *Elf-*  
23 *Man*. After learning of plaintiff's allegations, he inspected computers in his home and could  
24 not locate a computer file constituting or containing a copy of *Elf-Man*. He has no specific  
25 knowledge that anyone in his home engaged in the infringement alleged by plaintiff.  
26

7. Despite what plaintiff knew or reasonably should have known about the

1 possibility of misidentifying Essen Lee as a copyright infringer, plaintiff never contacted Essen  
2 Lee to ask him about its allegations before naming him to this lawsuit. Plaintiff never  
3 attempted to inspect Essen Lee's computers or network devices. Despite knowing of the  
4 inherent limits and flaws of its own investigation, plaintiff failed to perform reasonable and  
5 appropriate further investigation before naming Essen Lee as a defendant in this lawsuit.  
6

7 8. Plaintiff's suit against Essen Lee was filed without a reasonable expectation of  
8 success on the merits. Plaintiff's suit against Essen Lee was filed as part of a pattern of similar  
9 suits filed without regard to the merits of individual claims. Upon information and belief,  
10 plaintiff's suit intends to utilize the burdensome and expensive nature of the litigation process  
11 to coerce Essen Lee to pay plaintiff money in settlement; to intimidate him and others so that  
12 they might act in a manner which serves plaintiff's financial interests; for purposes of general  
13 deterrence; or for other improperly-motivated purposes.  
14

15 9. Plaintiff's unreasonable acts and omissions have caused Essen Lee to expend  
16 unnecessary legal expenses, and have caused him to suffer anxiety and emotional distress.  
17 Plaintiff's threat of massive damages that could mean financial ruin for Essen Lee and his  
18 family is deeply troubling and upsetting.  
19

### 20 Count 1

#### 21 Declaration of Non-Infringement

22 1. Essen Lee re-alleges paragraphs 1-8 of his counterclaims, above.

23 2. Plaintiff has asserted a claim for copyright infringement against Essen Lee that is  
24 false and erroneous. Essen Lee did not infringe plaintiff's copyrights.

25 3. Essen Lee respectfully requests that the court enter an order declaring that he has  
26 not infringed Plaintiff's copyrights.



1 **IV. PRAYER FOR RELIEF**

2 WHEREFORE, Essen Lee prays for:

- 3 a. Dismissal of plaintiff's claims with prejudice;
- 4 b. An order that plaintiff shall be afforded no relief from its complaint herein;
- 5 c. A declaration of non-infringement and injunctive relief;
- 6 d. Attorneys' fees and costs awardable under 17 U.S.C. § 505 and common law;
- 7 e. For post-judgment interest on the entire judgment until paid in full; and
- 8 f. For such other and further relief as the Court may deem just and equitable.
- 9

10 **IV. RESERVATIONS**

11 Defendant Essen Lee reserves the right to assert third-party claims and additional  
12 counterclaims in the event that further investigation and discovery support them.  
13

14 Respectfully submitted this 16th day of October, 2013.

15 By: /s/ Benjamin R. Justus  
16 Benjamin R. Justus (WSBA # 38855)  
17 Attorney for Defendant Essen Lee  
18 Lybeck ❖ Murphy, LLP  
19 Fifth Floor – Chase Bank Building  
20 7900 SE 28<sup>th</sup> Street  
21 Mercer Island, WA 98040  
22 (206) 230-4255 /phone  
23 (206) 230-7791 /fax  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of October, 2013, I electronically filed the foregoing  
DEFENDANT ESSEN LEE’S ANSWER, AFFIRMATIVE DEFENSES, AND  
COUNTERCLAIMS with the clerk of the court using the CM/ECF system, which will send  
notification of such filing to all parties of record including:

Maureen C. VanderMay  
The VanderMay Law Firm PC  
2021 S. Jones Blvd.  
Las Vegas, Nevada 889146  
[elfmanwa@vandermaylawfirm.com](mailto:elfmanwa@vandermaylawfirm.com)

Dated at Mercer Island, Washington, this 16th day of October, 2013.

LYBECK MURPHY, LLP

*/s/ Benjamin R. Justus*

By: Benjamin R. Justus (WSBA#38855)  
Lybeck Murphy, LLP  
Fifth Floor – Chase Bank Building  
7900 SE 28<sup>th</sup> Street  
Mercer Island, WA 98040  
(206) 230-230-4255 /phone  
(206) 230-7791 /fax