

The Honorable Robert S. Lasnik



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OCT 23 2013

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

13-CV-00507-BCST

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELF-MAN, LLC.,

Plaintiff,

vs.

ERIC CARIVEAU, et al.,

Defendants

Case No: 2:13-CV-00507-RSL

VERIFIED ANSWER OF DEFENDANTS

JERRY L. GRAFF and VANDY GRAFF,
husband and wife.

PRO SE

Come now the defendants, JERRY L. GRAFF and VANDY GRAFF, husband and wife, and for answer to the First Amended Complaint for Copyright Infringement, allege and aver as follows:

Answering paragraphs 1 through 10, inclusive, of the Introduction, these defendants **DENY** the same because they lack adequate information or knowledge thereof.

Answering paragraphs 11 through 13, inclusive, regarding Jurisdiction and Venue, defendants **ADMIT** paragraphs 11 and 12, and **ADMIT** that venue lies in the

Verified Answer of Defendants Jerry L. Graff
and Vandy Graff, husband and wife (PRO SE)

18225 Sunshine Lane SW
Rochester, WA 98579
Tel.: (360) 943-0491

1 United States District Court, Western District of Washington, but **DENY** that, as to them,
2 venue is proper in Seattle; instead, inasmuch as they both reside in Rochester,
3 Thurston County, Washington, proper venue is in Tacoma. Seattle is an inconvenient
4 forum for these defendants. Venue should be transferred to the United States District
5 Court, Western District of Washington at Tacoma.
6

7 Answering paragraph 14 regarding Parties, defendants **ADMIT** the same.

8 Answering paragraphs 15-21. Regarding the Rights of the Plaintiff, defendants
9 **ADMIT** paragraph 15 but **DENY** paragraphs 16 through 20, inclusive, for lack of
10 knowledge thereof, and defendants expressly **DENY** paragraph 21 because defendants
11 have no knowledge of Plaintiff nor of the motion picture titled *Elf-Man*, which motion
12 picture they have never even known existed, have never downloaded from the Internet,
13 have never seen, and have no desire to see.
14

15 Answering paragraphs 22 through 71 regarding the other named defendants,
16 these defendants lack knowledge of the truth or falsity of the allegations therein, know
17 none of said other named defendants, nor have these defendants had any transactions
18 or dealings with any of them of any kind at any time – neither by the Internet nor in any
19 other manner; accordingly, these defendants **DENY** paragraphs 22 through 71,
20 inclusive.
21

22 Answering paragraph 72, defendants **ADMIT** the same.
23

24 Answering paragraph 73, defendants **ADMIT** that, at all times material, they have
25 resided in Rochester, Washington, and that they currently reside in Rochester,
26 Washington.
27

- 2 -

28 Verified Answer of Defendants Jerry L. Graff
and Vandy Graff, husband and wife (PRO SE)

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1 Answering paragraph 74, defendants **DENY** the same: they could not possibly
2 have been observed infringing Plaintiff's motion picture on 12/11/12 at 8:02:34 AM UTC
3 because (a) they did not infringe Plaintiff's motion picture then or at any other time; (b)
4 they were both at home, asleep, at that location (i.e., their Rochester residence) of the
5 cited IP address 67.183.126.251 at 8:02:34 AM UTC (i.e., 2 minutes, 34 seconds past
6 midnight, local time), to get ready for their next day's work (Jerry L. Graff at 8 a.m. PST,
7 Vandy Graf 7:30 a.m. PST), as attested to by their respective employers on
8 Attachments A, B and C, which Attachments, by this reference, are incorporated herein;
9 and (c) these defendants are neophyte personal computer users who are wholly
10 incapable of downloading a motion picture from the Internet, legally or otherwise (they
11 only know how to turn their portable personal computer on and off and how to send and
12 receive e-mails). Accordingly, the allegations of paragraph 74 are ludicrous.
13

14
15 Answering paragraph 75 regarding identification of the remaining Doe
16 defendants, said paragraph does not require an answer from these defendants.
17

18 Answering paragraphs 76 through 81 regarding joinder, defendants, lacking
19 sufficient information or knowledge thereof, **DENY** the same.

20 Answering paragraphs 82 through 86 regarding IP addresses, defendants
21 **ADMIT** the same.

22 Answering paragraphs 87 through 109, defendants lack knowledge thereof and
23 have grave difficulty understanding the content and meaning therein because much of
24 the terminology is wholly unfamiliar to them as are the concepts there expressed.
25 Accordingly, defendants **DENY** the same.
26

1 Answering paragraphs 110 through 119, inclusive, regarding the alleged conduct
2 of the defendants, defendants **DENY** the same.

3 Answering paragraphs 120 through 122, inclusive, regarding an alleged
4 exemplar defendant, defendants have no knowledge thereof and therefore **DENY** the
5 same.

6
7 Answering paragraphs 123 through 131, inclusive, regarding a first claim for relief
8 for alleged copyright infringement, defendants restate their admissions and denials of
9 paragraphs 1 through 122, inclusive, above, and **DENY** paragraphs 124 through 131,
10 inclusive.

11
12 Answering paragraphs 132 through 139, inclusive, regarding a second claim for
13 relief for alleged contributory infringement, defendants restate their admissions and
14 denials of paragraphs 1 through 122, inclusive, above, and **DENY** paragraphs 133
15 through 139, inclusive. Not only did these defendants not download the motion picture
16 titled *Elf-Man* from the Internet, they did not conspire or cooperate with, aid, permit or
17 observe anyone else to download said motion picture anywhere, by any means, at any
18 time.

19
20 Answering paragraphs 140 through 149, inclusive, regarding a third claim for
21 relief for alleged indirect infringement, defendants restate their admissions and denials
22 of paragraphs 1 through 122, inclusive, above, and **DENY** paragraphs 141 through 149,
23 inclusive.

24
25 Answering paragraph 150 regarding alleged damages, defendants **DENY** the
26 same.

1 Answering paragraph 151 through 153, inclusive, the plaintiff has no valid, legally
2 cognizable claim for damages against these defendants under any of its causes action;
3 accordingly, as to these defendants, said paragraphs are irrelevant and defendants
4 DENY the same.

5
6 **AFFIRMATIVE DEFENSES**

- 7 1. Improper venue; Rule 12(b)(3), Federal Rules of Civil Procedure.
8 2. The Complaint fails to state a claim upon which relief can be granted; Rule
9 12(b)(6), Federal Rules of Civil Procedure.

10 **DEFENDANTS' PRAYER FOR RELIEF**

11 WHEREFORE, these defendants pray for judgment against the plaintiff as
12 follows:
13

- 14 1. Change of venue to Tacoma, Washington;
15 2. Refusal of a temporary and/or permanent injunction against these
16 defendants from directly, contributorily or indirectly infringing plaintiff's rights in plaintiff's
17 motion picture as lacking adequate basis in fact and law for granting such relief to the
18 plaintiff;
19 3. A finding in favor of these defendants of no direct, contributory and/or
20 indirect copyright infringement;
21 4. Denial of all of the plaintiff's claims for relief against these defendants;
22 5. Dismissal of all the plaintiff's claims for relief against these defendants
23 with prejudice;
24
25
26
27

6. Judgment in favor of these defendants for court costs and reasonable attorney fees incurred herein by them, in the sound discretion of the Court and as authorized by 17 U.S.C. § 505. See also, *Fantasy v. Fogerty*, 94 F.3rd 553, 555 (9th Cir. 1996); *Mattel Inc. v. MGA Entertainment, Inc.* (9th Cir, No. 11-56357, Jan. 24, 2013); and

7. For such other and additional relief as the court deems just.



Respectfully submitted by defendants JERRY L. GRAFF and VANDY GRAFF, husband and wife, this 22nd day of October, 2013.

Residence Address: 18225 Sunshine Lane SW; Rochester, WA 98579
Mailing Address: P.O. Box 6282; Olympia, WA 98507
e-mail address: jlgraff@yahoo.com
Daytime telephone number: (360) 943-0491
Facsimile number: (360) 943-5002.

VERIFICATION

We, Jerry L. Graff and Vandy Graff, husband wife, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America that we have read the above and foregoing Verified Answer of Defendants Jerry L. Graff and Vandy Graff, know the contents thereof, and that the same is true and correct.

WITNESSETH:

 
JERRY L. GRAFF: date: 10-22-2013 VANDY GRAFF; date: 10-22-2013

CERTIFICATION OF SERVICE

I hereby certify under penalty of perjury that on October 22nd 2013, I served, by United States Postal Service mail, postage prepaid, a true copy of the above and

1 foregoing Verified Answer of Defendants Jerry L. Graff and Vandy Graff, husband and
2 wife, on the attorneys for the plaintiff at the following address: The VanderMay Law Firm
3 PC; 2021 S. Jones Blvd.; Las Vegas, Nevada 89146.

4 

5 Jerry L. Graff, defendant
6 P.O. Box 6282; Olympia, WA 98507
7 Tel: (253) 576-6170 (cell)
8 E-mail: jlgraff73@yahoo.com



Northwest Recycler Core

2815 29th Ave. SW
 Tumwater, WA 98512
 Office # 1-360-943-0491
 Fax # 1-360-943-5002
 E-mail sales@nwrcca.com

PAY PERIOD BEGINS		PAY PERIOD ENDS	
		12/15/12	
NAME	REGULAR TIME	REGULAR TIME	REGULAR TIME
Gerry Graff		DEC 10 A 7 :59	
		DEC 10 P 4 :30	
		DEC 11 A 7 :59	
		DEC 11 P 4 :30	
		DEC 12 A 6 :01	
		P 4:30	
		DEC 13 A 7 :59	
		DEC 13 P 4 :31	
		Dec-14	
		VG Sick	

PAY PERIOD BEGINS		PAY PERIOD ENDS	
		12/15/12	
NAME	REGULAR TIME	REGULAR TIME	REGULAR TIME
Vandy Graff		DEC 10 A 7 :21	
		DEC 10 P 4 :35	
		DEC 11 A 7 :30	
		DEC 11 P 4 :34	
		DEC 12 A 7 :26	
		DEC 12 P 4 :41	
		DEC 13 A 7 :30	
		DEC 13 P 4 :55	
		DEC 14 A 7 :27	
	DEC 14 P 4 :46		



The Recycler Core Company, Inc.

A Full Line Core Supplier for Rebuilders

May 5, 2013

Ms. Vandy Graff – Payroll Manager
North West Recycler Core Company
2815 29th Ave SW
Tumwater, WA

Re: Request for Confirmation of Jerry Graff's Status on December 11, 2012

Dear Ms. Graff,

I, Marius Serban, Payroll Manager for The Recycler Core Company, certify on the date mentioned above, Mr. Jerry Graff was at work according to our records. A copy of the Weekly Attendance for week ending December 15, 2012 is attached:-

I have been employed by The Recycler Core Company for 18 years and have served in the capacity of Payroll Manager for 8 years.

Sincerely,

Marius Serban – Payroll Manager

Attachments: Weekly Attendance for week ending 12/15/2012

NORTHWEST RECYCLER

2815 29th Ave SW
 Tumwater, WA 98512
 360-943-0491

Date: 12/17/12

BATCH # 351

WEEKLY ATTENDANCE

TO: PAYROLL DEPT., RECYCLER CORE CO.
 FAX: 951-276-2957

WEEK ENDING 12/15/12

FILE NO	EMPLOYEE NAME	HOURLY	O.T.	COMM.	SALARY	HOL	SICK	VAC	BRV	JURY DUTY	DAYS OFF	
											EXCUSED	UNEXCUSED
1511	PATRICK WEST	36.75	0.00									
1533	DEREK WILLIAMS	39.00	0.00									
1550	JERRY GRAFF	32.00	0.00									
1565	KEVIN EUTENEIER	40.00	4.42								8.00	
1585	VANDY GRAFF	40.00	3.50									
1589	JOHN MYERS III	40.00	1.25									
1601	ROBERT BERNAL	40.00	5.50									
1608	ROBERT JORDAN	40.00	0.33									
1612	WALTER HUFFMAN	40.00	4.00									
1623	ELIZABETH HARTWICK	40.00	0.00									
TOTAL HOURS		387.75	19.00									8.00

NOTES: KEVIN AND GARY ARE SALARIED.
 JERRY GRAFF WAS OFF SICK ON FRIDAY 12/14/2012.



PAYROLL MANAGER: VANDY GRAFF GENERAL MANAGER: KEVIN STEVENS

filenames: payroll.xls

Attachment C