

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELF-MAN, LLC,

Plaintiff

v.

ERIC CARIVEAU, an Individual,
et al.

Defendants.

Case No. 13-cv-0507 RSL

DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT

JURY TRIAL DEMANDED

Defendant Sharon White (“Defendant”), by and through undersigned counsel, hereby answers Plaintiff ELF-MAN, LLC, (“Elf-Man”)'s complaint against Defendant as follows:

INTRODUCTION

1. Defendant denies the Plaintiff's allegations in Paragraph 1, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

2. Defendant denies the Plaintiff's allegations in Paragraph 2, because

the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

3. Defendant denies the Plaintiff's allegations in Paragraph 3, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

4. Defendant denies the Plaintiff's allegations in Paragraph 4, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

5. Defendant denies the Plaintiff's allegations in Paragraph 5, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

6. Defendant denies the Plaintiff's allegations in Paragraph 6, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

7. Defendant denies the Plaintiff's allegations in Paragraph 7, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

8. Defendant denies the Plaintiff's allegations in Paragraph 8, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

9. Defendant denies the Plaintiff's allegations in Paragraph 9, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

10. Defendant denies the Plaintiff's allegations in Paragraph 10.

JURISDICTION AND VENUE

11. Defendant avers that Paragraph 11 of the Complaint makes legal conclusions that do not require a response, except that Defendant agrees that Plaintiff is seeking relief under the Copyright Act (Title 17 U.S.C. § 101 et seq).

12. Admitted.

13. Admitted only as to the instant Defendant. Defendant is without sufficient knowledge to admit regarding any other defendant.

PARTIES

14. Defendant denies the Plaintiff's allegations in Paragraph 14, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

15. Defendant denies the Plaintiff's allegations in Paragraph 15, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

16. Defendant denies the Plaintiff's allegations in Paragraph 16, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

17. Defendant denies the Plaintiff's allegations in Paragraph 17, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

18. Defendant denies the Plaintiff's allegations in Paragraph 18, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

19. Defendant denies the Plaintiff's allegations in Paragraph 20, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

20. Defendant denies the Plaintiff's allegations in Paragraph 20, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

21. Denied as to the instant Defendant.

THE DEFENDANTS

In General

22. Defendant denies the Plaintiff's allegations in Paragraph 22.

23. Defendant denies the Plaintiff's allegations in Paragraph 23.

24. Denied as to the instant Defendant. Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations as to the remaining defendants.

25. Defendant denies the Plaintiff's allegations in Paragraph 25.

26. Defendant denies the Plaintiff's allegations in Paragraph 26, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Identification of Named Defendants

27. Defendant denies the Plaintiff's allegations in Paragraph 27, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

28. Defendant denies the Plaintiff's allegations in Paragraph 28, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

29. Defendant denies the Plaintiff's allegations in Paragraph 29, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

30. Defendant denies the Plaintiff's allegations in Paragraph 30, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

31. Admitted.

32. Defendant denies the Plaintiff's allegations in Paragraph 32, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations. Specifically denied that the instant Defendant performed any of the acts alleged in the complaint.

33. Defendant denies the Plaintiff's allegations in Paragraph 33, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

34. Defendant denies the Plaintiff's allegations in Paragraph 34, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

35. Defendant denies the Plaintiff's allegations in Paragraph 35, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

36. Defendant denies the Plaintiff's allegations in Paragraph 36, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

37. Defendant denies the Plaintiff's allegations in Paragraph 37, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

38. Defendant denies the Plaintiff's allegations in Paragraph 38, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

39. Defendant denies the Plaintiff's allegations in Paragraph 39, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

40. Defendant denies the Plaintiff's allegations in Paragraph 40, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

41. Defendant denies the Plaintiff's allegations in Paragraph 41, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

42. Defendant denies the Plaintiff's allegations in Paragraph 42, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

43. Defendant denies the Plaintiff's allegations in Paragraph 43, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

44. Defendant denies the Plaintiff's allegations in Paragraph 44, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

45. Defendant denies the Plaintiff's allegations in Paragraph 45, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

46. Defendant denies the Plaintiff's allegations in Paragraph 46, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

47. Defendant denies the Plaintiff's allegations in Paragraph 47, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

48. Defendant denies the Plaintiff's allegations in Paragraph 48, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

49. Defendant denies the Plaintiff's allegations in Paragraph 49, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

50. Defendant denies the Plaintiff's allegations in Paragraph 50, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

51. Defendant denies the Plaintiff's allegations in Paragraph 51, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

52. Defendant denies the Plaintiff's allegations in Paragraph 52, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

53. Defendant denies the Plaintiff's allegations in Paragraph 53, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

54. Defendant denies the Plaintiff's allegations in Paragraph 54, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

55. Defendant denies the Plaintiff's allegations in Paragraph 55, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

56. Defendant denies the Plaintiff's allegations in Paragraph 56, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

57. Defendant denies the Plaintiff's allegations in Paragraph 57, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

58. Defendant denies the Plaintiff's allegations in Paragraph 58, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

59. Defendant denies the Plaintiff's allegations in Paragraph 59, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

60. Defendant denies the Plaintiff's allegations in Paragraph 60, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

61. Defendant denies the Plaintiff's allegations in Paragraph 61, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

62. Defendant denies the Plaintiff's allegations in Paragraph 62, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

63. Defendant denies the Plaintiff's allegations in Paragraph 63, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

64. Defendant denies the Plaintiff's allegations in Paragraph 64, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

65. Defendant denies the Plaintiff's allegations in Paragraph 65, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

66. Defendant denies the Plaintiff's allegations in Paragraph 66, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

67. Defendant denies the Plaintiff's allegations in Paragraph 67, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

68. Defendant denies the Plaintiff's allegations in Paragraph 68, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

69. Defendant denies the Plaintiff's allegations in Paragraph 69, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

70. Defendant denies the Plaintiff's allegations in Paragraph 70, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

71. Defendant denies the Plaintiff's allegations in Paragraph 71, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

72. Defendant denies the Plaintiff's allegations in Paragraph 72, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

73. Defendant denies the Plaintiff's allegations in Paragraph 73, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

74. Defendant denies the Plaintiff's allegations in Paragraph 74, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Further Identification of the remaining Doe Defendants

75. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

JOINDER

76. Defendant denies the Plaintiff's allegations in this paragraph.

77. Defendant denies the Plaintiff's allegations in this paragraph.

78. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

79. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

80. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

81. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

FACTS COMMON TO ALL CLAIMS

IP Addresses

82. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

83. Denied. An IP address identifies only a piece of hardware; it does not identify either an account holder or user.

84. Denied. An IP address identifies only a piece of hardware; it does not identify either an account holder or user.

85. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

86. Denied.

Peer-To-Peer Internet Piracy Via BitTorrent

87. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

88. Denied as to the instant Defendant.

89. Defendant denies the Plaintiff's allegations in this paragraph, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

90. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

91. Denied as to the instant Defendant.

92. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

93. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

94. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

95. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

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99. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

100. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

101. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

102. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

103. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

104. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

105. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

106. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

107. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

108. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

109. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Conduct of Defendants

110. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

111. Denied as to the instant Defendant.

112. Denied as to the instant Defendant.

113. Denied as to the instant Defendant.

114. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

115. Denied as to the instant Defendant.

116. Denied as to the instant Defendant.

117. Denied as to the instant Defendant.

118. Denied as to the instant Defendant.

119. Denied as to the instant Defendant.

Exemplar Defendant

120. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

121. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

122. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

CLAIMS FOR RELIEF STATED IN THE ALTERNATIVE

FIRST CLAIM FOR RELIEF

Copyright infringement

123. Defendant re-affirms the answers provided in paragraphs 1 – 122.

124. Defendant denies the Plaintiff's allegations in this paragraph.

125. Defendant denies the Plaintiff's allegations in this paragraph.

126. Defendant denies the Plaintiff's allegations in this paragraph.

127. Defendant denies the Plaintiff's allegations in this paragraph.

128. Defendant denies the Plaintiff's allegations in this paragraph.

129. Defendant denies the Plaintiff's allegations in this paragraph.

130. Defendant denies the Plaintiff's allegations in this paragraph.

131. Denied as to the instant Defendant.

SECOND CLAIM FOR RELIEF

Contributory infringement

132. Defendant re-affirms the answers provided in paragraphs 1 – 122.

133. Defendant denies the Plaintiff's allegations in this paragraph.

134. Defendant denies the Plaintiff's allegations in this paragraph.

135. Defendant denies the Plaintiff's allegations in this paragraph.

136. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

137. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

138. Defendant denies the Plaintiff's allegations in this paragraph.

139. Denied as to the instant Defendant.

THIRD CLAIM FOR RELIEF

Indirect Infringement of Copyright

140. Defendant re-affirms the answers provided in paragraphs 1 – 122.
141. Defendant denies the Plaintiff's allegations in this paragraph.
142. Denied. The law does not recognize such “indirect” liability.
143. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
144. Denied.
145. Denied as to the instant Defendant.
146. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
147. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.
148. Defendant denies the Plaintiff's allegations in this paragraph.
149. Defendant denies the Plaintiff's allegations in this paragraph, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

DAMAGES

150. Defendant denies that Plaintiff is entitled to any damages award under any theory alleged in the Complaint.

Notice of Further Claims

151. Plaintiff's "notice" does not appear to call for either an admission or denial. To the extent this paragraph does state facts that should be denied, Defendant denies those allegations as being without sufficient knowledge.

152. Plaintiff's "notice" does not appear to call for either an admission or denial.

153. Plaintiff's "notice" does not appear to call for either an admission or denial.

DEFENSES

FIRST DEFENSE

Declaratory Judgment of Non-infringement

Plaintiff incorrectly alleges that Defendant willfully infringed their exclusive rights under United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act").

Defendant has not infringed the copyrights of Plaintiff nor violated and exclusive rights held by Plaintiff under the aforementioned statutes. The defendant denies the allegations of copyright infringement raised by Plaintiff.

Defendant is entitled to a declaration as a matter of law that Defendant has not infringed any of the exclusive rights alleged to be held by Plaintiff.

SECOND DEFENSE

Rule 12(b)(6), Fed. R. Civ. P.

Defendant argues that Plaintiff has failed to state a sufficient factual basis to constitute a cause of action on any count, and therefore request a dismissal of Plaintiff's Complaint.

Because Plaintiff is unable to demonstrate the Defendant committed a volitional act of infringement Plaintiff is wrongfully suing Defendant.

Plaintiff is unable to prove that the alleged activities even constitute an act of infringement because it cannot be demonstrated based on the evidence provided that any defendant made a complete copy of the work alleged by Plaintiff.

THIRD DEFENSE

De Minimis Non Curat Lex

Defendant submits that Plaintiff's claim for copyright infringement is barred by the doctrine of *de minimis non curat lex* (the law cares not for trifle) or *de minimis* use.

Plaintiff's allegations, even if true, demonstrate at best evidence of *de*

minimus infringement, and as such, the claim should be barred.

FOURTH DEFENSE

Failure to Mitigate Damages

Plaintiff has made no attempt to mitigate any actual or perceived damages, which Defendant expressly denies; therefore, Defendant requests dismissal of Plaintiff's Complaint because Plaintiff has failed to take the reasonable and necessary steps to mitigate any damages.

FIFTH DEFENSE

Innocent Infringement

Notwithstanding any other defenses disclosed herein or without admitting any conduct alleged by Plaintiff, if Defendant is found liable for infringing Plaintiff's copyrighted material, such infringement was innocent because other unknown personnel must have used her Internet connection without her knowledge or consent.

SIXTH DEFENSE

Barring of Statutory Damages and Attorney's Fees

Plaintiff's claim for statutory damages is barred by the U.S. Constitution. Amongst other rights, the Fifth Amendment right to due process bars Plaintiff's claim. As the Supreme Court has held, due process will prohibit an award of

statutory damages meeting or exceeding a proportion of ten times or more actual damages. See *State Farm Mutual Automobile Insurance Co., v. Campbell* 528 U.S. 408, 123 S. Ct. 1513, 1524 (2003); see also *Parker v. Time Warner Entertainment Co.*, 331 F. 3d 13, 22 (2nd Cir. 2003); in *Re Napster, Inc.*, 2005 WL 1287611, 377 F. Supp. 2D 796, 77 U.S. P. Q.2d 1833, (N.D. Cal. 2005). In fact, an award of statutory damages at four times actual damages “might be close to the line of constitutional impropriety.” *Id.* If all of Plaintiff’s settlements for infringement of the works in question are added together, the damages likely exceed beyond the statutory maximum allowed by the copyright statute.

SEVENTH DEFENSE

License, Consent, and Acquiescence

Plaintiff’s claims are barred by Plaintiff’s implied license, consent, and acquiescence to Defendant because Plaintiff authorized use via Bit Torrent.

EIGHT DEFENSE

Unclean Hands

Plaintiff’s claims are barred by the doctrine of unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Defendant having fully answered and pled to the causes of actions herein, Defendant requests a jury trial on the claims herein insofar as they can be

properly heard by a jury and an order granting the following relief:

A. A judgment in favor of Defendant denying Plaintiff's requested relief and dismissal of Plaintiff's Complaint with prejudice by this court;

B. An award of attorneys fees against Plaintiff under 17 U.S.C. § 505 for bringing and maintaining this action; and

C. Such other relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Dated: October 28, 2013

Respectfully submitted,

/s/ John Whitaker

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Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned attests that the foregoing document has been served on all parties of record via the Court's ECF service system on the date indicated below.

DATED: October 28, 2013

/s/ John Whitaker
John Whitaker