

Kurt Opsahl (SBN 191303)  
*kurt@eff.org*  
 Matthew Zimmerman (SBN 212423)  
*mattz@eff.org*  
 Corynne McSherry (SBN 221504)  
*corynne@eff.org*  
 ELECTRONIC FRONTIER FOUNDATION  
 454 Shotwell Street  
 San Francisco, CA 94110  
 Telephone: (415) 436-9333  
 Facsimile: (415) 436-9993

Venkat Balasubramani (SBN 189192)  
*venkat@focallaw.com*  
 Focal PLLC  
 800 Fifth Avenue, Suite 4100  
 Seattle, WA 98104  
 Telephone: 206-529-4827  
 Facsimile: 206-260-3966

Attorneys for Defendant Matthew Inman

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

CHARLES CARREON

Plaintiff,

v.

MATTHEW INMAN, INDIEGOGO, INC.,  
 NATIONAL WILDLIFE FEDERATION,  
 AND AMERICAN CANCER SOCIETY,  
 and Does 1 – 100,

Defendants,

and

KAMALA HARRIS, Attorney General of the  
 State of California,

A Person To Be Joined If  
 Feasible Under F.R.Civ.P. 19.)

Case No.: 12-cv-3112-EMC

**DECLARATION OF MATTHEW INMAN  
 IN OPPOSITION TO PLAINTIFF'S  
 REQUEST FOR A TEMPORARY  
 RESTRAINING ORDER**

Date: TBD

Time: TBD

Courtroom: 5 – 17<sup>th</sup> Floor

Judge: Hon. Edward M. Chen

1 I, Matthew Inman, declare under penalty of perjury as follows:

2 1. The facts contained in the following affidavit are known to me of my own personal  
3 knowledge and if called upon to testify, I could and would competently do so.

4 **BACKGROUND**

5 2. I am the creator of *The Oatmeal* (<http://theoatmeal.com>), an online web-comic.

6 3. I created *The Oatmeal* in 2009 to feature my comics and writing. I remain the site's  
7 primary contributor.

8 4. *The Oatmeal* publishes, among other things, satirical and humorous cartoons on a  
9 variety of subjects, such as cats, grammar, food, animals and technology. *The Oatmeal* also covers  
10 topics that are of current public interest.

11 5. The comics are wholly created by me, and I am the owner of the copyrights in *The*  
12 *Oatmeal's* contents.

13 6. Since its launch, *The Oatmeal* has been highly successful, attracting more than four  
14 million unique visitors per month. I have also published several books and other items such as  
15 calendars based on *The Oatmeal*.

16 7. *The Oatmeal* has been profiled by various media outlets, including for example, *Time*  
17 *Magazine's* "NewsFeed": 5 Questions with Matthew Inman, the Brain (and Hand) Behind *The*  
18 *Oatmeal* <[http://newsfeed.time.com/2011/03/25/5-questions-with-matthew-inman-the-brain-and-](http://newsfeed.time.com/2011/03/25/5-questions-with-matthew-inman-the-brain-and-hand-behind-the-oatmeal/#ixzz1z6VpnArM)  
19 [hand-behind-the-oatmeal/#ixzz1z6VpnArM](http://newsfeed.time.com/2011/03/25/5-questions-with-matthew-inman-the-brain-and-hand-behind-the-oatmeal/#ixzz1z6VpnArM)> and *Washington Post's* "Comic Riffs": The 'Riffs  
20 Interview: 12 Secrets of the insanely viral 'OATMEAL' creator Matthew Inman <  
21 [http://voices.washingtonpost.com/comic-riffs/2011/03/the\\_riffs\\_interview\\_12\\_secrets.html](http://voices.washingtonpost.com/comic-riffs/2011/03/the_riffs_interview_12_secrets.html)>. *Time*  
22 *Magazine* named *The Oatmeal* one of its "Best Blogs of 2010"  
23 [http://www.time.com/time/specials/packages/article/0,28804,1999770\\_1999761\\_1999738,00.html](http://www.time.com/time/specials/packages/article/0,28804,1999770_1999761_1999738,00.html)  
24 True and correct copies of these articles are attached as Exhibits A, B, and C.

25 8. *The Oatmeal* has also cited by media outlets, including for my take on current affairs.  
26 For example, I published a comic about Netflix's decision to rebrand and split its lines of business.  
27 This was covered by *CBS News's* "Tech Talk" blog: Netflix split explained by *The Oatmeal* with  
28 this cute comic strip < [http://www.cbsnews.com/8301-501465\\_162-20108803-501465.html](http://www.cbsnews.com/8301-501465_162-20108803-501465.html)>. A

1 true and correct copy of this article is attached as Exhibit D.

2 9. *The Oatmeal* also weighs in on issues affecting the Internet. For example, when  
3 Congress considered passing the Stop Online Piracy Act (SOPA), I joined in many other websites  
4 that protested SOPA because of its effect on the free-flow of information online.

5 10. Several media outlets that covered the SOPA protest noted my participation in it. See  
6 for example, this *Times of India* article: Part of web goes dark in protest against anti-piracy bills <  
7 [http://articles.timesofindia.indiatimes.com/2012-01-18/internet/30638694\\_1\\_websites-sopa-and-](http://articles.timesofindia.indiatimes.com/2012-01-18/internet/30638694_1_websites-sopa-and-pipa-jimmy-wales)  
8 [pipa-jimmy-wales](http://articles.timesofindia.indiatimes.com/2012-01-18/internet/30638694_1_websites-sopa-and-pipa-jimmy-wales)>. A true and correct copy of this article is attached as Exhibit E.

### 9 **THE ORIGINAL BLOG POST ABOUT FUNNYJUNK**

10 11. About a year ago, on May 25, 2011, I posted an article on *The Oatmeal* blog at  
11 <http://theoatmeal.com/blog/funnyjunk>, entitled What should I do about FunnyJunk.com? A true  
12 and correct copy of this post is attached as Exhibit F.

13 12. In this post, I complained that users of the website FunnyJunk (<http://funnyjunk.com>)  
14 had been copying comics I had posted on *The Oatmeal*, and uploading them to FunnyJunk without  
15 crediting or linking back to my site.

16 13. This post highlighted the dilemma many content owners face. I understand that I could  
17 have used the legal process to try to get my comics taken down from FunnyJunk but I decided to  
18 highlight the issue at a more systemic level and also see whether I could get FunnyJunk to remove  
19 my comics without resorting to the legal process.

20 14. While I knew I had the option of sending a cease and desist letter, I decided instead to  
21 use my blog as a “bully pulpit” to criticize Funny Junk, its apparent business model, and that of  
22 other “comic aggregation” sites.

23 15. The initial blog post about FunnyJunk led to an indirect response from FunnyJunk’s  
24 administrator, who took down some (but not all) of my comics.

25 16. I decided not to pursue the matter further.

### 26 **THE CEASE AND DESIST LETTER FROM CHARLES CARREON**

27 17. Nearly a year later, on June 3, 2012, I received a cease and desist letter, written by  
28 Charles Carreon in his capacity as an attorney for FunnyJunk. A true and correct copy of this letter

1 is attached as Exhibit G.

2 18. Although my contact information is widely available online, Mr. Carreon served a  
3 copy of the letter on my personally, by sending a process server to my Seattle apartment in the  
4 evening of Sunday, June 3, 2012. I believe that the personal service of the letter, with a process  
5 server to knock on my door, was designed to intimidate me.

6 19. The letter claimed that by criticizing FunnyJunk for hosting my copyrighted comics  
7 without authorization, credit or even a link back, I had defamed FunnyJunk and engaged in false  
8 advertising under the Lanham Act. The letter demanded I remove all instances of FunnyJunk's  
9 name on my site, and pay FunnyJunk \$20,000 by June 12, 2012 in order to avoid a lawsuit.

10 20. I believed that FunnyJunk's demand letter was outrageous, and contained numerous  
11 misstatements and illogical conclusions. I also believed that the purpose of the letter was to attempt  
12 to threaten me into removing my negative comments about FunnyJunk with a baseless lawsuit.

13 21. At the time I received the letter, hundreds of copies of *The Oatmeal* comics were still  
14 on the FunnyJunk site, without authorization, credit or a link.

15 22. I decided that I would not comply with FunnyJunk's demand.

16 23. Instead of acceding to the improper legal threat, I decided to use my comic forum to  
17 criticize it, with a humorous and creative response. My attorney wrote a formal response to Mr.  
18 Carreon on June 11, 2012. A true and correct copy of this letter is attached as Exhibit H.

19 24. From my point of view, the FunnyJunk demand letter represented a classic example of  
20 the legal process being used in an improper and inefficient manner. I decided to highlight this, and  
21 also to use this as an opportunity to raise money for charity.

## 22 **THE BEARLOVE CAMPAIGN**

23 25. On June 11, 2012, I republished an annotated version of the cease and desist letter on  
24 *The Oatmeal* at [http://theoatmeal.com/blog/funnyjunk\\_letter](http://theoatmeal.com/blog/funnyjunk_letter). A true and correct copy of this  
25 response is attached as Exhibit I.

26 26. In the annotated version, I redacted Mr. Carreon's address, telephone and fax number  
27 out of respect for his personal privacy. I also annotated the letter by humorously pointing out its  
28 factual inaccuracies and absurd conclusions.

1           27. My purpose was to use the public forum of *The Oatmeal* to criticize the cease and  
2 desist letter, show that I would not be intimidated, and point out the flaws in the letter's absurd  
3 demands. While Mr. Carreon happened to be the one who sent the letter on behalf of FunnyJunk,  
4 my focus was to highlight the absurdity of FunnyJunk's position and its use of the legal process.

5           28. At the end of this blog post, I announced my intended response to the cease and  
6 desist letter. My general plan was as follows: I would (1) encourage readers who agreed the  
7 demand was frivolous to help me raise \$20,000 in donations; (2) photograph the money collected;  
8 (3) sending the photograph to Funny Junk with a comic; and (4) take the money and donate it to the  
9 National Wildlife Federation and the American Cancer Society. I entitled the campaign "Operation  
10 BearLove Good, Cancer Bad."

11           29. The comic I plan to send is a satirical drawing of FunnyJunk's mother seducing a  
12 Kodiak bear. The comic is a humorous visual expression of my lack of intimidation and my  
13 disdain and contempt for FunnyJunk's threat of a frivolous lawsuit.

14           30. I used the website Indiegogo to organize my fund raising project. Indiegogo is a  
15 popular crowd funding website. (<http://www.Indiegogo.com/about/our-story>).

16           31. During the course of Operation BearLove Good, Cancer Bad, I provided updates to  
17 donors through Indiegogo's built-in posting system.

18           32. Operation BearLove Good, Cancer Bad raised the original goal of \$20,000 within 64  
19 minutes. Many comments on the campaign page and elsewhere were very critical of Mr. Carreon.

20           33. I provided readers of *The Oatmeal* with an update on June 18, 2012, posted at  
21 <http://theoatmeal.com/blog/carreon>. In that update I asked my readers to be lawful and civil in their  
22 interactions with Mr. Carreon. A true and correct copy of this update is attached as Exhibit J.

23           34. During the time the campaign was running, Mr. Carreon made public statements to  
24 the effect that he believed the campaign was improper and would try to put a stop to it. While he  
25 never made his motivations totally clear, in one of the news articles, he intimates that he believed  
26 the campaign's method of poking fun at the demand letter was somehow improper. One news  
27 report had the following summary of Mr. Carreon's comments:

28           He compares Inman's charity campaign to when people would sell tickets to throw balls at

women being accused of witches in a dunking tank. Money for charity is raised, of course, but the witches aren't in on it.

See David Their: Funnyjunk Lawyer Charles Carreon Isn't Afraid of The Oatmeal, Forbes (June 15, 2012) < <http://www.forbes.com/sites/davidthier/2012/06/15/funnyjunk-lawyer-charles-carreon-isnt-afraid-of-the-oatmeal/>>. A true and correct copy of this article is attached as Exhibit K.

35. If a particular campaign reaches its goals, Indiegogo retains 4% of all money raised through its website. This was clearly understood by me from a review of the Indiegogo website.

36. Because the amount raised was so much larger than expected, I announced on the Indiegogo site during the course of the fundraiser that I was planning to divide the money among four charities instead of two. A true and correct copy of the Updates page is attached hereto as Exhibit L.

37. Eventually, I decided to divide the money between the original two charities. Accordingly, the funds I receive from the Indiegogo will not be disbursed to any entity except the American Cancer Society and the National Wildlife Federation.

38. I still plan on sending a photograph of the money along with the satirical comic to FunnyJunk. However, in order to avoid having this lawsuit interfere with my expression and to avoid jeopardizing the funds from the campaign in any way, I withdrew funds from my own personal account and photographed those funds.

#### **THE FINAL NUMBERS FOR THE CAMPAIGN AND DISPOSITION OF THE FUNDS**

39. Operation BearLove Good, Cancer Bad ended on June 25, 2012. The final amount of fund funds raised was \$220,024.00. This is almost exactly 11 times the original goal of \$20,000. Less the 4% retained by Indiegogo (\$8,000.96), and a 3% processing fee paid to third parties (\$6600.72), the total money going to charity became \$204,622.32. A true and correct copy of an email sent from Indiegogo to me detailing the amounts raised and deducted is attached hereto as Exhibit M.

40. Of this amount, Indiegogo held \$95,675.68 and the remainder (\$108,946.64) was with PayPal. With respect to the funds that were held by Indiegogo, I have requested that Indiegogo send checks in the amount of those funds (divided in equal parts) directly to the

1 American Cancer Society and the National Wildlife Federation, and understand that Indiegogo has  
2 done so. With respect to the remaining funds, I have written a check to each charity (\$54,473.32  
3 each), and given these checks to my counsel to forward to the American Cancer Society and the  
4 National Wildlife Federation.

5 41. 14,407 people contributed funding to the project.

6 42. 6,986 comments were posted about the project on the Indiegogo page. Most of the  
7 comments expressed support for my response to FunnyJunk, for the fundraising Operation and  
8 disdain for lawyers making frivolous legal threats like FunnyJunk's cease and desist letter.

9 43. I have not received any compensation for Operation BearLove Good, Cancer Bad,  
10 nor am I entitled to receive any such compensation.

11 44. I was not paid by the American Cancer Society, the National Wildlife Federation or  
12 any other entity to raise money on any charity's behalf.

13 45. None of the funds generated from the campaign will benefit me in any way and I  
14 have already indicated to Mr. Carreon my unequivocal intent to remit the entirety of the funds from  
15 the campaign that are disbursed by Indiegogo (or any third parties) to me to the above two  
16 charitable organizations.

17  
18 I declare under penalty of perjury of the laws of the United States and the State of  
19 Washington that the foregoing is true and correct to the best of my knowledge and belief.

20 Executed July 1, 2012, in Seattle, Washington.

21  
22  
23   
MATTHEW INMAN

**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 2012, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

Executed on July 1, 2012, in San Francisco, California.

/s/ Kurt Opsahl  
Kurt Opsahl