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Attorney for Plaintiff Larry Williams

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION**

|   |   |                                       |
|---|---|---------------------------------------|
| LARRY WILLIAMS                              | ) | CASE NO. 09-CV-1836-LAB-WMc           |
|   | ) |                                       |
| Plaintiff,                                  | ) | PLAINTIFF LARRY WILLIAMS'             |
|   | ) | OPPOSITION TO DEFENDANT               |
| -v-   | ) | SCRIBD, INC.'S <i>EX PARTE</i>        |
|   | ) | MOTION FOR LEAVE TO FILE              |
| SCRIBD, INC, a corporation; GalaxiaMia sued | ) | RESPONSE TO PLAINTIFF'S               |
| As DOE 1; api_user_11797_malvik as Doe 2;   | ) | SUR-REPLY TO MOTION TO                |
| alukmanto as Doe 3; api_user_11797_         | ) | DISMISS                               |
| NEBOJSAJE as Doe 4; mikaj as Doe 5;         | ) | Dept: 9                               |
| Srikanthbnm sued as Doe 6; api_user_11797_) | ) | Judicial Officer: Hon. Larry A. Burns |
| Sathis sued as Doe 7; api_user_11797_       | ) |                                       |
| tevado... sued as Doe 8; api_user_11797_    | ) |                                       |
| ingrid...sued as Doe 9; and Does 10 to 40   | ) |                                       |
| are upload infringers to be named;          | ) |                                       |
| Defendants.                                 | ) |                                       |

19 Plaintiff LARRY WILLIAMS respectfully submits the following opposition to  
 20 Defendant SCRIBD, INC.'s ex parte application for leave to file a response to Mr.  
 21 WILLIAMS' Sur-reply to the Reply to the Motion to Dismiss Mr. WILLIAMS' First  
 22 Amended Complaint ("FAC") pursuant to Rule 12(b)(6):

**I. INTRODUCTION.**

24 The court, when it authorized Mr. WILLIAMS' Sur-reply in its Order granting leave to  
 25 file Mr. WILLIAMS' FAC on February 12, 2010, stated: "Now the question is how to handle  
 26 Scribd's pending motion to dismiss. Scribd may either withdraw it and obtain a new hearing

1 date for a new motion to dismiss, or explain in its reply brief why the amended complaint  
2 doesn't survive the motion to dismiss on file. If Scribd opts for the latter option, Plaintiff will  
3 be allowed a sur-reply to explain why his amended complaint should not be dismissed."

4 Scribd made its choice to attack the FAC in its reply. Scribd could have obtained a  
5 new hearing date for a motion to dismiss, but chose to proceed in the manner it did. Had  
6 Scribd chosen to obtain a new hearing date for its motion rather than proceed as it did,  
7 Scribd would have had another bite of the apple in reply to Plaintiff's opposition and response  
8 as to why the FAC survives Scribd's motion to dismiss.

9 Scribd made its choice.

10 Plaintiff was not restrained or bound to only argue from Plaintiff's opposition to the  
11 original motion to dismiss the original complaint. Obviously, many more facts and exhibits  
12 were added in the FAC and the claims for relief were modified.

13 One area that did not change, which Scribd bases this ex parte request upon, is that  
14 the original complaint and the FAC both alleged in numerous paragraphs that Scribd's CEO,  
15 Trip Adler, was a "friend" on GalaxaMia's page. Original complaint, ¶¶s 11, 14, 15, 36, 37,  
16 and FAC, ¶¶ 19, 50, 51.

17 This is not a summary judgment motion. Scribd should answer the FAC and discovery  
18 should proceed.

19 **VII. CONCLUSION.**

20 Based on the foregoing points and authorities, the motion papers, reply, surreply, this  
21 court's orders and Plaintiff's First Amended Complaint, Plaintiff LARRY WILLIAMS  
22 respectfully requests this court deny Defendant SCRIBD's ex parte request to file additional  
23 paper work in support of its Motion to Dismiss pursuant to Rule 12(b)(6).

24 DATED \_\_\_\_\_

LAW OFFICE OF KURT W. HALLOCK

S/ Kurt W. Hallock

By: \_\_\_\_\_

Kurt W. Hallock, Attorney for  
Attorney for Plaintiff Larry Williams

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am over the age of eighteen years and not a party to this  
3 action. I am employed in the County of San Diego where this service occurred. My business  
4 address is 110 West "C" Street, Suite 1905, San Diego, California 92101. I hereby certify  
5 that on February 25, 2010, I electronically transmitted:

6 1) Plaintiff Larry Williams' Sur-Reply in Opposition to Defendant's Rule 12(b)(6) Motion to  
7 Dismiss.

8 To the Clerk's Office pursuant to Electronic Case Filing Administrative Policies and  
9 Procedures using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing  
10 to the Following CM/ECF registrants who have consented to electronic service through the  
11 Court's transmission facilities: (the opposition was also transmitted via facsimile to 619-696-  
12 7124)

13 Richard P. Sybert, e-mail: [rsybert@gordonrees.com](mailto:rsybert@gordonrees.com);  
14 Attorney for Defendant Scribd, Inc.  
15 Yuo-Fong C. Amato, e-mail: [bamato@gordonrees.com](mailto:bamato@gordonrees.com);  
16 Attorney for Defendant Scribd, Inc.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is  
18 true and correct. Executed on February 25, 2010 at San Diego, CA.

19 S/ Kurt W. Hallock

20 \_\_\_\_\_  
21 Kurt W. Hallock