

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Rod Marquardt,)
)
Plaintiff,)
 v.)
)
Stephen King;)
Simon & Schuster Global Services,)
Inc., d/b/a Simon & Schuster, Inc.;)
et al;)
)
Defendants.)
)

CIVIL ACTION NO.

**JURY TRIAL
DEMANDED**

COMPLAINT FOR COPYRIGHT INFRINGEMENT

COMES NOWS Plaintiff, Rod Marquardt, through undersigned counsel, Johnson P.C., alleges for its complaint for Copyright Infringement against Defendants, Stephen King and Simon & Schuster Global Services, Inc., d/b/a Simon & Schuster, Inc.(collectively referred to as the “Defendants”) as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for, *inter alia*, injunctive relief, declaratory judgment and damages for acts of copyright infringement engaged in by Defendants under the laws of the United States and the State of Georgia,

in connection with the 2008 novel “Duma Key”, an unauthorized derivative work of the copyrighted original literary work “*Keller’s Den*” published in 2002.

JURISDICTION AND VENUE

2. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.

3. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332, 1338(a) and supplemental jurisdiction under 28 U.S.C § 1367.

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

THE PARTIES

5. Plaintiff, Rod Marquardt, a resident of South Carolina, is an author engaged in the business of writing literary works. Rod Marquardt is the copyright owner and owner of exclusive rights under the United States Copyright Act with respect to the original novel entitled “*Keller’s Den*.”

6. Upon information and belief, Defendant Stephen King (“Stephen King”), is an author of contemporary horror and fantasy fiction, and is a resident of the State of Maine in Bangor. Upon information and belief, Stephen King is the author of a novel entitled “*Duma Key*.”

7. Upon information and belief, Defendant Simon & Schuster Global Services, Inc., d/b/a Simon & Schuster, Inc., (“Simon & Schuster”) is a corporation duly organized and existing under the laws of the State of Maryland with its principal place of business at 1230 Avenue of the Americas, New York, NY 10020, and is duly qualified to transact business in the State of Georgia. Upon information and belief, Simon & Schuster may be served at 1230 Avenue of the Americas, New York, NY 10020 or its principal executive office at 51 W 52ND Street, New York, NY 10019, via an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. Upon information and belief, Defendant Simon & Schuster is a division of CBS Corporation. Upon information and belief, Defendant Simon & Schuster has previously published, and continues to publish, the novel “Duma Key.” Upon further information and belief, Defendant Simon & Schuster is a publisher and consists of numerous imprints, including Simon & Schuster, Pocket Books, Scribner, Free Press, Atria, Fireside, Touchstone, Gallery Books, Howard Books, Atheneum Books for Young Readers, Little Simon, and Simon Spotlight.

BACKGROUND FACTS

8. Rod Marquardt is an author engaged in the business of composing original literary works. Rod Marquardt is the author and owner of the United States copyright in and to the original literary work entitled "*Keller's Den*" published in 2002 by Publish America/America House Publishing having U.S. Copyright Registration Number TX0007118190. Rod Marquardt has the exclusive rights to, *inter alia*, distribute and offer for sale the to the original literary work "*Keller's Den*" ("Copyrighted work"); to reproduce the Copyrighted work and any derivative work; to distribute copies of the Copyrighted work or any derivative works to the public by sale or other transfer of ownership; and to perform the Copyrighted Work publicly by means of a digital audio transmission (including digital download).

9. On or about April 2002, Plaintiff completed and published his original literary work "*Keller's Den*." Upon information and belief, authorized hard-back, soft-cover, and digital download copies of the copyrighted original literary work "*Keller's Den*" have been and continue to be provided for sale in interstate commerce through various traditional and online multimedia venues including Amazon and Barnes & Noble.

10. On or before January 22, 2008, Defendant Steven King completed and published, through Defendant Simon & Schuster, "*Duma Key*." Upon

information and belief, “Duma Key” has been, and continues to be offered for sale to the public

11. Upon information and belief, that the novel “Duma Key” contains original creative copyrightable elements, derived from Plaintiff’s copyrighted original literary work “Keller’s Den”, throughout the course of the literary work created by Defendant Stephen King.

12. Upon information and belief, Defendant Steven King’s 2008 novel entitled “Duma Key” is substantially similar to Plaintiff Rod Marquardt’s original literary work “Keller’s Den in the following ways, but not limited to, plot, plot devices, structure, sequence of events, setting, characters, characterizations, character function and relationships.

SUBSTANTIAL SIMILARITIES BETWEEN <i>KELLER’S DEN AND DUMA KEY (TRUNCATED LIST).</i>	
a.	In Keller’s Den, the hypnotic state “controlled him like the talons of an eagle wrapped around a harmless garter snake (page 21).” In Duma Key, “I was like a bird hypnotized by a snake (page 447).”
b.	Both main characters look at a blank canvas, waiting for the impulse, or the calling to determine what they will paint (Keller’s Den, page 212 – Duma Key, page 438).
c.	The main characters in both novels (Martin Keller and Edgar Freeman) gain a mysterious and rapid ability to paint beyond their natural ability.

Keller's Den

Chapter 3, 5, and 7 are the main chapters that provide indication of Martin's mysterious and rapid increased ability to paint.

Duma Key

Edgar's mysterious and rapid ability to paint are demonstrated in the following excerpts:

"In the last thirty years, my contribution to the world of art had consisted of little more than doodles while taking telephone calls (page 17)."

"I went downstairs, took up one of my sketch-pads, and found myself reduced to the sort of doodles I'd done in my other life while taking phone calls (page 197).

"Last year at this time I was doodling on phone pads while I was on hold (page 292)."

Dr. Kamen stated, "I am stunned by the rapidity of your growth as an artist (page 106)."

"I don't know anything about art. I don't know how I grew (page 275)."

Edgar progressed from drawing to oil paints and brushes (pages 241, 252, 256, etc).

"My new found talent (page 475)."

Also, it is mentioned that Elizabeth, the old mysterious lady was an artist. Her rapid advancement is noted on pages 209, 427. Also, "Daddy was amazed by the rapidly growing sophistication of her pictures (page 151)."

d.	<p>In reference to the main character being unaware of their surroundings while they paint, both of the novels use the same exact excerpt:</p> <p>[Keller’s Den] “As Martin skillfully painted a lone diver, he drifted into an unknown world around him, not aware that smoke from his burning pizza was spreading, filling the kitchen and working its way into the adjacent rooms.” The following excerpt is when Janet arrives at Martin’s house. “Inside, she waved her arms through the swelling smoke . . . through the lingering smoke she worked her way to the hallway where the smoke alarm was blasting a warning (page 222).”</p> <p>[Duma Key] “If the smoke detectors would have gone off downstairs announcing a fire, I would have paid no attention (page 110).”</p>
e.	<p>Both novels convey an eerie feeling that the drawing/painting room emanated causing each main character to convey the exact same thoughts (Keller’s Den, page 40, “he suddenly wanted to leave the den” -- Duma Key, page 108, “suddenly I didn’t want to be here”).</p>
f.	<p>The paintings in both novels depict a mysterious part of the main character’s life, past or present, something that the main character wasn’t aware existed:</p> <p>[Keller’s Den]</p> <p>Martin paints horses that were involved in a genocide incidents that he never knew existed, and Frank Keller who was a sergeant in the Civil War, whom he had never heard of (chapters 3, 5, 7, and page 143).</p> <p>Martin painted his fiancée with Jack Keller, his grand-father,</p>

	<p>whom he also had never met or seen before (page 58).</p> <p>Martin paints an ocean scene regarding an earlier ancestor (Dane Keller) whom he had never had any knowledge (pages 225, 226).</p> <p>Martin paints Savov Keller, the ancestor who was responsible for the novel's premise, whom he had never had any knowledge (page 249).</p> <p>[Duma Key]</p> <p>Edgar draws his ex-wife and two men who had an affair with his wife. Edgar wasn't aware of this was going on until he drew it (pages 110, 111, 112).</p> <p>Edgar drew his daughter, Ilse, and her fiancée, and was unaware she had a fiancée until he drew him (pages 67, 68, 69).</p> <p>Edgar painted his daughter in a dress that she had actually purchased without Edgar's knowledge (page 380).</p> <p>Edgar painted girls in a series of paintings, unaware of who the girls were while he was painting them (388).</p> <p>Edgar painted Mrs. Eastlake's sister's rocking horse without knowing anything of its existence (page 390).</p> <p>Edgar painted Mrs. Eastlake's sister without having met or seen her (page 390).</p> <p>Edgar paints Mrs. Eastlake's red picnic basket without having ever seen it (page 424).</p> <p>Both novels reference a primitive drawing or painting (Keller's Den, page 73 -- Duma Key, page 556).</p>
g.	Subconsciously, both main characters painted or drew the following details within the same piece of work:

	<p>In Keller’s Den, Martin painted his fiancée (Janet) in the nude (page 58). In Duma Key, Edgar drew his ex-wife (Pam) in the nude (page 110).</p> <p>In Keller’s Den, Martin painted a nude man within the painting (page 58). In Duma Key, Edgar drew two nude men within the painting (page 110).</p> <p>In Keller’s Den, Janet’s head was cocked (page 58). In Duma Key, Pam’s head was slightly bent (page 111).</p> <p>In Keller’s Den, the man was grinning (page 58). In Duma Key, the man was smiling (page 111).</p>
h.	Both main characters could see faces of the past that were killed by the evil influence (Keller’s Den, page 251 – Duma Key, page 579). The deceased faces of the past in Keller’s Den were on a fiery canvas, while the deceased faces of the past in Duma Key were on a muddy wall.
i.	Two secondary characters from each novel try to convince both main characters to leave the house after a scary incident, but both main characters stay alone at their house (Keller’s Den, pages 229, 230 -- Duma Key, page 433).
j.	Both novels begin in October around Halloween (Keller’s Den, pages 16, 67 – Duma Key, pages 17, 57).and both novels used the coastline of Florida as a setting.
k.	Both novels use information from a library or librarian that originated from old newspapers to convey historical tragic news of multiple deaths (Keller’s Den page 210, Miami Herald -- Duma Key pages 135, 200, Tampa newspaper). Additionally, both stories

	made the headlines.
l.	Both novels include prominent elderly ladies with a mysterious past that is significant to the story line (Keller's Den -- Mrs. Gladys Baxter, chapters 13, 14, 15, 47, 50, 51, pages 91, 237 -- Duma Key, Miss Elizabeth Eastlake, pages 120, 121, 123, 124, 125, 131, 133, 134, 135, 138, 141, 142, 144, 145, 146, 147, 151, 152, 160, 175, 182, 184, 185, etc.).
m.	In Duma Key, Elizabeth dies of an apparent stroke (page 394) induced by the curse. In Keller's Den, Joe Keller dies of an apparent stroke (page 242) induced by the curse. Also, both main characters deny that it was a stroke that killed the two secondary characters (Keller's Den, page 242 – Duma Key, page 394).
n.	Both novels use the following in regards to the old ladies: Keller's Den is Old Lady Baxter (pages 89, 91), while Duma Key is Ole Miss Elizabeth (page 120).
o.	Mrs. Baxter has a roadmap of creases on her skin in Keller's Den (page 89). Edgar has a roadmap of scars on his skin in Duma Key (page 581).
p.	Four secondary characters are killed on both novels (Keller's Den – Sarah, Courtney, Father Sherman and Joe, pages 133, 190, 232, 242 -- Duma Key -- Tom, Dr. Kamen, Ilse and Mary Ire, pages 455, 456, 480, 467, 473, 490, 493, 496, 497).
q.	The black sari in Keller's Den (pages 86, 87, 119, 142, 212, 238, 240) equates to the red cloak and robe in Duma Key (pages 68, 74, 159, 265, 326, 367, 430, 467, 471 565, 580). They are both referenced to the curse and are worn by females.
r.	76. Both novels have a secondary character that is diagnosed with "chemical imbalance." (Keller's Den, pages 101, 133 – Duma Key, page 378).

s.	Both main characters use a psychiatrist to help them cope with tragedies (Keller's Den -- Dr. Cameron, chapters 21, 22, 24, pages 184, 209, 226 -- Duma Key, Dr. Kamen, pages 13, 14, 15, 16, 17, 24, 29, 322, 316, etc.) Incidentally, if you pronounce Cameron and Kamen they even sound similar. Secondary characters in Duma Key also see a psychiatrist to deal with the death of a loved one (Wireman page 226). Pam, Edgar's ex-wife also seeks therapy (page 304).
t.	Both novels cite "earthbound" (Keller's Den, page 247 – Duma Key, page 488).
u.	The first mention of a specific color while painting or drawing is yellow (Keller's Den used Indian Yellow, page 213 – Duma Key used Venus Yellow, pages 43, 57, 58).
v.	Both intruders (non-human) speak to the main character (Keller's Den, page 56 -- Duma Key, page 447, 448).
w.	Both novels use the word "cavalry" as being rescued from the intruder when someone else shows up (Keller's Den, page 61 – Duma Key, page 448).
x.	Both novels reference an evening breeze through a back door just before someone is killed (Keller's Den, page 189, 190 -- Duma Key, page 562) -- an amazing sequence of chance.
y.	An asylum is references in both novels (Keller's Den, pages 101, 147 – Duma Key, page 133, 515).
z.	Both novels reference younger days of a character that went to church on Sunday (Keller's Den, page 193 -- Duma Key, page 560).
aa.	In both novels skeletons come to life in the ocean (Keller's Den, pages 217, 218, 219, 220 – Duma Key, page 430, 550, 565).
bb.	The skeletons in Keller's Den existed on a ship of the dead (old

	<p>pirate ship, pages 217 – 220). This compares to Duma Key “And beneath me the murmur of the shells had become the gossip of dead things telling secrets in bone voices. How could I have not heard that before?</p> <p>Dead things, yes! A ship had come here, a ship of the dead with rotted sails (the sails compare to Keller’s Den – “the mighty masts had sustained the most damage . . . large shreds remained attached to the towers and laggardly swished about in the ocean’s current pages 216, 217), and it had offloaded living corpses” (page 279).</p>
cc.	Both novels mention the skeletons as wearing tattered clothes, headbands or rags (Keller’s Den, pages 217, 218, 219, 220, 220 – Duma Key, page 575, 587).
dd.	Both novels mention skeletons as having weapons (Keller’s Den, pages 217, 218, 219, 220 -- Duma Key, page 575). Skeletons in Keller’s Den hold their weapons high (page 219). Skeletons in Duma Key raise their arms in salute (page, 550, 565).
ee.	Both main characters fainted and eventually were awoken by the phone (Keller’s Den, page 241, 242– Duma Key, page 280, 281).
ff.	Both novels reference Ouija Board (Keller’s Den, pages 227, 246 -- Duma Key, page 425, 467).
gg.	<p>In reference to other people looking at each of the main character’s paintings or drawings:</p> <p>In Keller’s Den (page 39), Martin asks Janet, “What do you think?”</p> <p>In Duma Key (page 73), Edgar asks Ilse, “What do you think?”</p> <p>In Duma Key (page 166), Edgar asks Jack, “What do you think?”</p> <p>In Keller’s Den (page 39), Janet asks Martin, “You did this?” and “When did you do this?”</p> <p>In Duma Key (Page 73), Ilse asks, “You really did these?” and</p>

	<p>“When did you do this?” In Duma Key (page 17), Dr. Karman asks Edgar, “You do this?” In Duma Key (page 256), Wireman asked Edgar, “When did you do this?”</p> <p>In Keller’s Den (page 39), Janet says, “It’s so God-damned good.” In Duma Key (page 17), Dr. Karman says, “This is pretty good.” In Duma Key (page 73), Ilse says, “They’re good. Maybe better than good.”</p> <p>In Keller’s Den (page 40), Martin asks “You really like it?” In Duma Key (page 88), Edgar asks “Do you like it?”</p>
hh.	<p>Joe Keller drowned and turned in to a ghost (chapter 50). Emery drowned and turned into a creature (page 554, 446, 447, 448, 449). The twins drowned and turned into ghost-like creatures (pages 582, 588).</p>
ii.	<p>Words were written by ghosts on a canvas in both novels (Keller’s Den, pages 246, 247, 248 – Duma Key, pages 424, 425). The ghost in Keller’s Den used an “empty canvas” while the ghosts in Duma Key used a “fresh canvas.”</p>
jj.	<p>Martin experienced strobe-like visions in his head, nightmares and pictures that flashed in his mind like a slide presentation (pages 48, 51), and visions that played over like a slow motion movie (page 133). Edgar has a vision of a nightmare that flickered like an old movie (page 514).</p> <p>Stairs and banisters in the main character’s homes are referenced (Keller’s Den, page 51 – Duma Key page 28). In both novels, a scary incident occurs on the stairs at night during a storm (Keller’s Den, pages 50, 51– Duma Key, page 280).</p>

kk.	In both novels rain cascades, pelts or beats against windows and lightening illuminates both houses during a storm and during the storm, a painting was significant. (Keller's Den, pages 50, 63 -- Duma Key, page 205, 279).
ll.	Both novels reference the same graffiti drawing on the wall – a heart shape with initials in the heart. Incidentally, Duma Key uses Joe (as in Joe Keller) as one of the names in the heart, whereas Keller's Den uses Jack. (Keller's Den, page 240 – Duma Key, page 523).
mm.	Both main characters had a table next to their easel (Keller's Den, pages 11, 12, 245 -- Duma Key, page 107, 606). In Keller's Den, Martin fell from the stool in front of the easel (page 31). In Duma Key, Edgar fell off the chair in front of the easel (page 109). After their fall, both main characters experienced similar pain. In Keller's Den, Martin's neck hurts (page 31). In Duma Key, Edgar's hip and arm hurt and his thoughts were that he could have sprained or broken his neck (page 109).
nn.	In the last sentence (before Epilogue) in Keller's Den, the main character notices a wisp of air (Keller's Den, page 252). In the second to last sentence in Duma Key, the main character notices a puff of air (page 607).
oo.	In last page of each novel, God is mentioned (Keller's Den, page 252 – Duma Key, page 607).
pp.	In both novels, each ex-wife was messing around with a business associate (Keller's Den (attorney) page 54 – Duma Key (accountant), pages 111, 115, 155 and 303).
qq.	Both novels contained prominent characters who coughed a lot (Joe Keller in Keller's Den, pages 134,135, 138, 142, 143 – Elizabeth in Duma Key, pages 141, 181)
rr.	Both main characters had liquor cabinets but seldom drank hard

	liquor (Keller's Den, pages 86, 181 – Duma Key, page 153).
ss.	When each main character tries to explain their premonitions and mysterious events, they receive the following responses: in Keller's Den, Martin's fiancée asks "Do you believe in that stuff?" (page 186). In Duma Key, Edgar's ex-wife asks "Do you really believe that, Edgar – any of it?" (page 197).
tt.	Telepathic inference takes place in both novels – In Keller's Den, Joe uses telepathic power and taps into Martin's thoughts during episodes of ancestral influence and knows what Martin is doing or painting (chapters 4, 29, pages 140, 142, 144). In Duma Key, Jerome Wireman uses telepathic powers (pages, 164, 197, 205). On some of his paintings or sketches, Edgar Freeman uses telepathic powers that can affect people (pages 227, 282, 289, 291, 299, 300, 422). Mrs. Eastlake asks Edgar "have you painted the ship yet?" without any way of knowing (page 361). Edgar had already painted a ship at that point. Mrs. Eastlake also says "put it next to the one you've already started," without having known Edgar started one (page 390). In Duma Key, empathy got raised to telepathy (page 401). Without knowing or seeing, Edgar paints the same ship and other pictures that Elizabeth drew or painted (pages 429, 430, 552).
uu.	In Keller's Den, Martin's father drowns in a bathtub (page 242) while Edgar's daughter in Duma Key drowns in a bathtub (page 490, 493, 496, 497). Martin Keller envisions his dead mother surfacing and then submerging below the ocean's crest (page 115). Also, Martin Keller apparently was resuscitated in a mysterious painting incident (chapter 44). Duma Key uses an ocean drowning for twin girls throughout Duma Key (pages 135, 200 282, 286, 324, 350, 351, 353, 358, 433, 438, 511, etc.). Emory Paulson drowns (page 545). Both characters that drown in the bathtub came back from the dead to have an influence on each novel (Keller's Den, chapter 50 -- Duma Key, page 596).
vv.	Both novels reference ancient weaponry. Keller's Den referenced the Civil War and old rifle (pages 28, 30, 31, 143), while Duma Key

	referenced the Revolutionary War and old rifle (page 204) and an old spear pistol (page 431).
ww	An old black and white photo of ancestors is referenced (Keller's Den, page 91 – Duma Key, pages 206, 297, 354). The quality of older pictures is also referenced (Keller's Den, page 91 – Duma Key, page 354).
xx.	Martin sees water at the foot of his easel after a loss of conscious during a painting (page 230). After painting, Edgar sees water at the stair landing after a loss of conscious (page 281).
yy.	A storm with thunder knocked out power in main character's house in both novels (Keller's Den, pages 52, 53 -- Duma Key, page 281). Something frightening was seen when power was re-stored in both novels (Keller's Den, pages 57, 58 -- Duma Key, page 281). Both novels reference fear of reaching for the light switch and a power outage (Keller's Den, page 57 – Duma Key, page 379). In this reference, Keller's Den refers to somebody standing there at the switch with a Grinch-like grin. Duma Key refers to shadows with teeth.
zz.	An ambulance comes after both old ladies (Keller's Den, pages 251, 252 – Duma Key, page 394).
aaa.	Both novels reference the curse in the following comparison to a vampire: Keller's Den -- "His sudden artistic impulses drew him to the canvas much in the way that a vampire is drawn to the uncontrollable urges that force his fangs into the necks of innocent victims. While stroking the brush across the canvas was satisfactory for one, the taste of blood was equal for another (page 12)."

	<p>Duma Key – “We’re talking about something far older and more monstrous. Hungry too. That much it does have in common with vampires. Only hungry for souls, not blood. (page 462).” The vampire reference here in Duma Key is more of a coerced association with the thoughts in Keller’s Den than it is corresponding into the story line in Duma Key. In other words, it’s out of place in Duma Key, but King liked this Keller’s Den excerpt well enough to squeeze it into Duma Key, particularly the part when King tries to contrast the Keller’s Den association to vampires that are hungry for blood. The hungry for souls, not blood part is comparable to the ancestry in Keller’s Den that is hungry for souls and “the taste of new blood to host his wretched soul” (Keller’s Den - page 145).</p>
bbb	<p>In Keller’s Den, “angry red skies and blood-soiled ground” (page 5). In Duma Key, “sky bleeds red” (page 366) and “blood across the infected sky” (page 388), and “reflected the sun and appeared to be full of blood (page 389).”</p>
ccc	<p>Both main characters think about suicide (Keller’s Den, pages 104, 168 – Duma Key, pages 15, 157, 319, 475).</p>
ddd	<p>Both novels (Keller’s Den, page 244 – Duma Key, pages 455, 456, 579) referenced the following from a character from each novel who was cursed and contemplates suicide to save the life of others:</p> <p style="padding-left: 40px;">In Keller’s Den, Martin was speeding at 85 miles per hour In Duma Key, Tom was speeding at 70 miles an hour or more</p> <p style="padding-left: 40px;">In Keller’s Den, Martin was driving along highway 13 In Duma Key, Tom was driving along highway 23</p> <p style="padding-left: 40px;">In Keller’s Den, Martin swerved to avoid a guard rail In Duma Key, Tom drove into a retaining wall</p> <p style="padding-left: 40px;">In Keller’s Den, Martin found himself in mid-air In Duma Key, Tom drove into a concrete cliff</p>

eee.	Both novels refer to a middle aged male professional with pony tails, both in their fifties, (Keller’s Den, Father Sherman, page 194 – Duma Key, attorney, page 239).
fff.	An autopsy was referenced for both dead dogs (Keller’s Den page 95 -- Duma Key page 30).
ggg	Both main characters experience waking up from a bad dream and experience the following similarities: <p style="padding-left: 40px;">In Keller’s Den, Martin hears thunder (page 46). In Duma Key, Edgar’s heart was thundering (page 29).</p> <p style="padding-left: 40px;">In Keller’s Den, Martin encountered his fiancée, Janet, who had sharp teeth (page 46). In Duma Key, Edgar experienced a frog that had sharp teeth (page 29).</p> <p style="padding-left: 40px;">In Keller’s Den, the digital clock radio read 2:19 (page 46). In Duma Key, the digital clock radio read 3:19 (page 29).</p>
hhh	In Keller’s Den, a cloudy human-like figure posed itself above Martin and its “features changed like clouds on a windy day” (page 114). In Duma Key, regarding a sandy human-like figure, the wind “caused her features to shift like landscape under rapidly passing summer clouds” (page 596, 597). Also, both novels described this phenomenon as “hypnotic” (Keller’s Den, page 114 -- Duma Key, page 596). The sand creature also smells of saltwater (598), which could parallel Janet in Martin’s dream.
iii.	Both novels reference using an old wooden ladder (Keller’s Den, page 218, 219 – Duma Key, page 548, 552, 570, 573, 576, 577, 578, 579, 583). Additionally, both wooden ladder excerpts are used with skeletons and flashlights in each novel.
jjj.	In both novels, the pen or the brush took control (Keller’s Den,

	<p>chapters 50, 51 – Duma Key, page 440 and page 443 indicates that Edgar’s hand took over. Edgar’s hand drew “dassn’t stop” (page 556).</p>
<p>kkk</p>	<p>The main characters in each novel are controlled by a cryptic force, which sometimes determines what they will paint. This painting phenomenon is unique to Keller’s Den and Duma Key. Also, both characters feel strong urges to draw or paint.</p> <p>Keller’s Den Chapters 3, 5, 7, 42 and 50 provide indication that something beyond Martin’s comprehension controls his paintings and his desires to paint. “He wasn’t worried about what he would paint. That would be decided by a force on a different plane (page 245).”</p> <p>Duma Key “All at once I wanted to draw (page 67).” Pages 67, 68, 69 and 71 indicate that Edgar Intended to sketch his daughter, Ilse, but found his efforts being altered, and sketched Carson Jones, Ilse’s fiancée, without having any prior knowledge of Carson Jones. “I meant to draw Ilse” (page 67). Edgar also painted the word Zales pages 68, 69), indicating an engagement ring without having known about the engagement or the ring, which transpired without Edgar’s knowledge. Edgar’s daughter asked, “Why did you put a rocking horse into the picture (page 75)?” Edgar replied, “I don’t know. It just wanted to be there.” When Ilse asked if Edgar was drawing from memory, Edgar replied, “No, I can’t seem to do that (page 75).” “I also felt a strong desire to draw. I didn’t know what, but I would know when I was sitting in Little Pink with one of my pads propped on my easel (page 84).” “When did you draw it?” Ilse asked of Edgar. Since Edgar didn’t know he replied “while you were sleeping . . . by the time I was finished I felt better.” Then Edgar’s thoughts were -</p>

	<p>- although I remembered very little about making the drawing. I remembered enough to know the story was a lie (pages 88, 89).</p> <p>“I saw what I’d drawn while in my dazed pre-nap state (page 88).”</p> <p>“As with the picture I called The End of the Game, I don’t remember much about the actual creation of Friends with Benefits (page 110).”</p> <p>Page 203 indicates that the pen that Edgar used to sketch with was in control of what was being drawn. This parallels chapter 50 in Keller’s Den, when the painting brush was in control of what was being painted.</p> <p>“I was thinking of how I’d started my time on Duma Key and with one assumption – that I had chosen the place – and had since come to believe that maybe it had chosen me (page 248).”</p> <p>“The picture seemed to demand it – or my missing arm (page 253).”</p> <p>“What they were looking at had come from a place beyond talent (page 254).”</p> <p>“What got into you? What possessed you (page 257)?”</p> <p>Referring to paintings, “I could feel their live presence in this room (page 267).”</p> <p>“I don’t remember when it stopped being me that was doing the painting (page 279).”</p> <p>“How do I talk about a process (painting) that’s partially supernatural (page 301)?”</p> <p>Edgar conveys his sentiments that suggests something let him live from his accident just so he could paint (page 364).</p> <p>“We may as well call it what it is: magic (page 507).”</p>
<p>III.</p>	<p>Both novels use the following similar or identically named characters:</p> <p>Keller’s Den has Officer Jones, (pages 62, 63, 65) and Dr. Jones (pages 253, 254).</p> <p>Duma Key has Carson Jones, (pages 70, 71, 74, and many</p>

more).

Keller's Den has Jack Keller (pages 24, 138 and many more).
Duma Key has Jack Cantori (pages 35, 36, 42, 248, and many more, and also has Jack Fineham, a cop).

Keller's Den has Steve Smith (page 163), one of Martin's co-workers.

Duma Key has Sandy Smith, Edgar's realtor (page 190).

Keller's Den has Frank Keller (pages 31, 43) ancestry of Martin's.

Duma Key has Frank O'Hara, the poet (page 146).

Keller's Den has Keller (throughout).

Duma Key has Garrison Keilor, the poet (pages 146, 188).

Keller's Den has John Armstrong, Fire Marshall (page 210).

Duma Key has John Sanford, author (page 12), John Hastings, Edgar's neighbor (page 25), John Eastlake, Elizabeth Eastlake's father (page 135), and John MacDonald, a doctor (page 233).

Keller's Den has Tina Avery (page 193).

Duma Key had Tina Garibaldi (pages 215, 216, 217, 218, 257 and more).

Keller's Den has Richard Williams, attorney (page 211).

Duma Key has Richard Wilbur, poet (page 216).

Keller's Den has Jimmy Henderson (pages 47, 48).

Duma Key had Jimmy Yoshida, curator (pages 265, 267, 293, 295, 316).

Keller's Den has David Townsend (page 210), David (221), David Copperfield (233).

	<p>Duma Key has Dave Davis (pages 328, 329, 330, 348, 525, 552).</p> <p>If Martin and Janet were to have a daughter they were going to name her Miranda (page 89). Edgar's daughter was named Melinda (pages 61, 63, 71, 156, 199, 247, 259, 381, 384, 385, 391, 418, 457, 603, etc).</p> <p>Keller's Den has Billy (pages 129, 130, 131, 132, 144). Duma Key has Bill (page 395).</p> <p>Keller's Den has Joe Keller (many chapters). Duma Key has Joe (page 523).</p> <p>Keller's Den has Samson (page 13). Duma Key has Samson (page 592).</p>

13. Upon information and belief, Simon & Schuster is in the business, among other things, of publishing and offering for sale literary works in print, audio and digital format. Upon information and belief, Defendant Simon & Schuster has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the Plaintiff's Copyrighted work in the State of Georgia, in this Judicial District, and elsewhere in the United States, by, among other things, making the unauthorized derivative of the Copyrighted work available for unlawful and unauthorized sale, digital download and distribution and/or performance to the

public. Defendant Simon & Schuster is thus liable for infringement of Plaintiff's exclusive Copyrights pursuant to 17 U.S.C. §§ 101 et seq.

14. Plaintiff Rod Marquardt has the exclusive rights, *inter alia*, to produce derivative works based on the copyrighted original literary work entitled "*Keller's Den*" and to distribute such derivative works to the public. Upon information and belief, Defendants , and each of them, have made, copied, reproduced and/or distributed a novel entitled "*Duma Key*" (Infringing Work), an unauthorized derivative work of the copyrighted original literary work "*Keller's Den*", and made the Infringing Work available for unlawful and unauthorized distribution and/or performance to the public.

15. Through its conduct averred herein, Defendants have engaged and continues to engage in the business of knowingly and systematically inducing, causing, and materially contributing to the above-described unauthorized reproductions and/or distributions of copies of the Copyrighted Work and thus to the infringement of plaintiffs' copyrights and exclusive rights under the Federal Copyright Act, 17 U.S.C. §§ 101 et seq.

16. Defendants' acts have violated and continue to violate Plaintiff's exclusive rights to reproduce, create derivative works, publish, publicly display, offer for sale, and distribute these works. Defendants' acts were willful and

intentional and constitute both direct and indirect copyright infringement under the Federal Copyright Act, 17 U.S.C. §§ 101 et seq.

FIRST CAUSE OF ACTION
(Copyright Infringement)

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 17 of the complaint as if fully set forth herein.

18. At all relevant times, Rod Marquardt is and has been the rightful owner of the copyrights to and in the original literary work entitled “*Keller’s Den.*”

19. Defendants have no license or any other form of permission to distribute, offer for sale, or otherwise claim copyright ownership in the original literary work “*Keller’s Den*” or to sell or distribute any derivative work thereof.

20. Defendants have infringed Plaintiff Rod Marquardt’s copyright in the “*Keller’s Den*” literary work, in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, by copying, publishing, offering for sale, and/or distributing the Copyrighted work without Plaintiff’s express written authorization.

21. Defendants’ infringement of the copyrights and unauthorized exploitation in the “*Keller’s Den*” literary work was intentional, willful, and with full knowledge of Plaintiff’s copyrights - all to Plaintiff’s substantial irreparable damage

22. By reason of the foregoing acts of copyright infringement, Plaintiff Rod Marquardt is entitled to a permanent injunction enjoining Defendants from continuing the aforesaid acts of infringement pursuant to the Copyright Act, 17 U.S.C § 502.

23. By reason of the foregoing acts of copyright infringement, Plaintiff Rod Marquardt is entitled to the impounding and destruction of all copies which have been made or used in violation of Plaintiff's exclusive rights, and of all masters or other articles by means of which such copies may be reproduced pursuant to the Copyright Act, 17 U.S.C. §503.

24. By reason of the foregoing acts of copyright infringement, Plaintiff Rod Marquardt is entitled to actual damages including all profits reaped by the Defendants as a result of their infringement pursuant to the Copyright Act, 17 U.S.C. §504. Alternatively, Plaintiff is entitled to the maximum statutory damages pursuant to 17 U.S.C. §504(c) for each infringement. Therefore, Plaintiff Rod Marquardt demands an accounting to ascertain such profits.

PRAYER FOR RELIEF

25. WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, as follows:

- (a) Declaring that Defendants' unauthorized creation and/or distribution of any derivative works of the Copyrighted work willfully infringed Plaintiff's copyrights in violation of the Copyright Act;
- (b) For a preliminary and permanent injunction enjoining Defendants and their respective agents, employees, officers and directors, attorneys, successors, licensees, and assigns, and all those persons acting in concert and combination therewith, from further infringement of Plaintiff's copyrights in the "*Keller's Den*" Literary work, including but not limited to the sale and distribution of the Copyrighted work or any derivative work;
- (c) Ordering that the Defendants deliver up for destruction all copies which have been made or used in violation of the Plaintiff's exclusive rights, and of all masters or other articles by which such copies may be reproduced;
- (d) For a judgment and Order awarding Plaintiff, at its election, either (i) actual damages and the profits derived by Defendants, and each of them, as a result of its infringing

activities, pursuant to 17 U.S.C. § 504(b), or (ii) statutory damages in the maximum amount of \$150, 000 with respect to the “*Keller’s Den*” Literary work, pursuant to 17 U.S.C. §504(c);

- (e) For a judgment and Order directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that any products or services manufactured, sold or otherwise circulated or promoted by Defendants are authorized by Plaintiff or related in any way to Plaintiff or its original literary works.
- (f) For an accounting, the imposition of a constructive trust and restitution and disgorgement of Defendants’ unlawful profits and benefits obtained as a result of their misappropriation and unfair competition and damages according to proof;
- (g) For a judgment and Order awarding Plaintiff prejudgment and post-judgment interest according to law;
- (h) A judgment and Order requiring Defendants to pay Plaintiff’s attorney’s fees, full costs, and expenses pursuant to 17 U.S.C. §505; and

- (i) For a judgment and Order awarding Plaintiff such other and further relief as the Court deems just and proper.

JURY DEMAND

26. Plaintiff, Rod Marquardt, hereby demands a jury trial in this case.

RESPECTFULLY SUBMITTED this 3rd day of December, 2010.

s/ *S. Quinn Johnson* .
S. Quinn Johnson
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ATTORNEY FOR PLAINTIFF,
Rod Marquardt

CERTIFICATE OF COUNSEL REGARDING FONT SIZE

Counsel certifies that the foregoing COMPLAINT FOR COPYRIGHT INFRINGEMENT has been prepared using Times New Roman font size 14 in accordance with Local Rules 5.1(B)(3) and 7.1(D).

This 3rd day of December, 2010.

s/ *S. Quinn Johnson*
S. Quinn Johnson
Georgia Bar No. 120573

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMPLAINT FOR COPYRIGHT INFRINGEMENT has been served with the Clerk of Court and upon parties to this proceeding accepting service electronically via the CM/EFC or has been sent via U.S. Mail, on this 3rd day of December, 2010.

SIMON & SCHUSTER GLOBAL SERVICES, INC. d/b/a SIMON & SCHUSTER, INC.

C/o Officer or General Agent
1230 Avenue of the Americas,
New York, NY 10020

STEPHEN KING

47 West Broadway
Bangor, Maine 04401

s/ S. Quinn Johnson .
S. Quinn Johnson
Georgia Bar No. 120573