

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

	)	
Arline Paul, James A. Bellanca and	)	
Mark Paul, individuals,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:13-cv-07746
	)	
Eric L. Miller, an individual, and Wicker	)	Hon. Matthew F. Kennelly
Park Press, Ltd.,	)	
	)	Hon. Arlander Keys, Magistrate Judge
Defendants	)	
	)	
_____	)	

**DEFENDANTS’ ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

The Defendants, Eric Miller and the Wicker Park Press, Ltd. (“WPP”), hereby answer the Complaint for Copyright Infringement and Violations of Federal and State Unfair Competition Law, and assert their affirmative defenses as follows:

**I.     NATURE OF THE ACTION**

1(a).   Eric Miller has threatened to assert copyright infringement claims against the Editors, who allege he knows they own the copyright to the work, *Becoming Self-Directed Learners*.

**ANSWER:**   The Defendants deny any knowledge that the Plaintiffs own the copyright to the work. The Plaintiffs granted the Defendants the exclusive rights to the work in their publishing contract executed by them on November 11, 2012. Defendants acknowledge that, when the Plaintiffs attempted to terminate this contract but refused to pay WPP its costs and expenses, as required to terminate the contract, Defendants warned the Plaintiffs that if they

published the book elsewhere without paying WPP its costs and expenses, WPP could sue them for copyright infringement.

1(b). Plaintiffs allege that Eric Miller has willfully infringed their copyright to the Center book.

**ANSWER:** Eric Miller and WPP deny this allegation.

1(c). The Plaintiffs allege that Eric Miller and WPP have engaged in false advertising, and presented public misrepresentations about the sponsorship, source, or affiliation of the WPP edition of the Center book. Bellanca and Paul further allege that Miller is offering the WPP edition of the work for sale under a confusingly similar title to the Plaintiffs' published edition, and in direct competition with it.

**ANSWER:** Eric Miller and WPP deny these allegations. WPP is not offering its originally planned edition of the work for sale, though still authorized to do so under its contract with the Plaintiffs. WPP does have a Web page that presents its edition of the work, as authorized by the contract. However, for several months, that Web page has been marked with the words, "POSTPONED," meaning that the planned publication of the work has been postponed until the current legal dispute can be resolved. All representations about the work from WPP have been truthful and are authorized by the contract between the Parties. The contract also prohibits the Plaintiffs from publishing their own version of the work until they have paid WPP for its costs and expenses; instead, they have published their own edition of the work without paying WPP its costs and expenses. Any possible confusion as to sponsorship, source, or affiliation regarding the work could only arise from the Plaintiffs' breach of contract and other bad faith acts and inequitable conduct directed toward Eric Miller and WPP.

1(d). Plaintiffs allege that Eric Miller and WPP have violated their publicity rights by falsely representing for commercial purposes that the Editors are affiliated with the WPP version of the Center book, which they claim is “unauthorized.”

**ANSWER:** The Defendants deny these allegations. The WPP version of the Center book is authorized by the contract between the Parties, which has not been terminated. WPP has made no false representations about the Editors’ affiliation with its version of the Center book because the publishing contract between the parties has not been effectively terminated, and, therefore, the Editors are still affiliated with the WPP version of the Center book. Any allegedly false representations are authorized by the contract.

## **II. THE PARTIES**

2. The Plaintiffs have volunteered their time to create the Center book. Plaintiffs Bellanca and Arline Paul once taught in the Center for Self-Directed Learning. Mark Paul is Arline Paul’s son. Mark Paul has “extensive experience in marketing.”

**ANSWER:** Eric Miller and WPP admit in part that the Plaintiffs may have volunteered their time to help create the Center book, but deny that they created the Center book without WPP’s work to produce the Center book manuscript. Defendants admit that Arline Paul and James Bellanca taught in the Center from 1972 to 1983. Defendants are without knowledge or information sufficient to form a belief as whether Mark Paul has “extensive experience in marketing.”

3. Eric Miller is the owner of WPP, a corporation registered in Illinois with an address in River Forest, Illinois.

**ANSWER:** Eric Miller and WPP admit these facts.

4. At all times relevant to this action, Wicker Park Press has comprised of Miller and no one else.

**ANSWER:** WPP and Eric Miller admit that at all times relevant to this action, Eric Miller has been the sole owner of Wicker Park Press, Ltd.

### **III. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over the Plaintiffs' copyright infringement cause of action arising under 17 U.S.C. §§ 101 et seq., and over the Plaintiffs' unfair competition causes of action arising under 28 U.S.C. §§ 1331 and 1338(a) and (b). The Court has subject matter jurisdiction over the Plaintiffs' state law unfair competition claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367. The Plaintiffs' request for declaratory judgment is authorized by Rule 65 of the Federal Rules of Civil Procedure (FRCP) in tandem with Rule 57, FRCP, and 28 U.S.C. §§ 2201 and 2202.

**ANSWER:** Eric Miller and WPP admit that this action arises under the Copyright laws and unfair competition laws of the United States. Eric Miller and WPP deny that this Court has subject matter jurisdiction pursuant to 17 U.S.C. §§ 101 et seq. and 28 U.S.C. §§ 1331 and 1338(a) and (b), and therefore also deny that this Court has subject matter jurisdiction to hear the Plaintiffs' state law unfair competition and related claims pursuant to 28 U.S.C. § 1367, and to hear the Plaintiffs' request for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. However, Miller and WPP acknowledge that this Court accepts jurisdiction in its order dated February 10, 2014, and Eric Miller and WPP reserve the right to challenge the Court's subject matter jurisdiction.

6. The United States District Court for the Northern District of Illinois, Eastern Division, is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1391 and 1400(b) because all

the individual parties reside here, the corporate defendant is located here, and the acts alleged in the Complaint are said to have occurred here.

**ANSWER:** Admitted.

**IV. ALLEGED FACTS COMMON TO ALL COUNTS OF THE COMPLAINT**

7. The Defendants served Mark and Arline Paul with a state court complaint filed in the Circuit Court of Cook County, Illinois, captioned, *The Wicker Park Press, Ltd., and Eric Miller v. James Bellanca, Arline Paul, and Mark Paul*, 2013 L 009464. The nine-count complaint is directed at contract issues and includes a count for false light invasion of privacy, and a count for defamation per se.

**ANSWER:** The Defendants admit that they served Mark and Arline Paul with their state court complaint in September 2013. The Defendants also served James A. Bellanca with their state court complaint in August 2013. The nine-count complaint includes three counts for breach of contract, one count for false light invasion of privacy, one count for defamation per se, one count for interference with a business expectancy, one count for common law misappropriation, one count for quantum meruit, and one count for unjust enrichment. In the hearing held on February 6, 2014, on the Plaintiffs' Motion to Dismiss the Defendants' state court claims, the state court upheld the three counts for breach of contract and the one count for defamation per se; dismissed without prejudice the counts for false light invasion of privacy, common law misappropriation, and interference with a business expectancy; and dismissed with prejudice the two counts in equity.

8. The state court complaint does not raise any challenge to the Editors' copyright ownership.

**ANSWER:** Defendants Eric Miller and WPP deny this allegation. The issue of copyright ownership here is subject to the publishing contract between the parties, the validity of which the Plaintiffs have never denied. The contract transferred all exclusive rights that make up the copyright for the Center book to WPP. By asking the state court to adjudicate the Plaintiffs' breach of the contract's termination provisions, the Defendants' here have effectively asked the state court to determine that the contract governs this matter and that this transfer of rights under the contract is still effective under the contract's termination provisions.

9. Eric Miller has not asked the state court to rule on the issue of whether the publishing contract between the parties remains "in full force and effect" until the Plaintiffs here pay WPP for its costs and expenses.

**ANSWER:** Eric Miller and WPP deny these allegations. The contract itself states that in the case that the Editors decide to terminate the Contract, liability continues to exist under the Contract until they pay WPP for all its costs and expenses. By asking the state court to rule on the issue of the Plaintiffs' breach of the contract's termination provision by refusing to pay WPP's costs and expenses, WPP and Eric Miller have effectively asked the court to rule on the scope of liability under the contract.

10. The Defendants' state court complaint seeks only monetary damages and "does not concern any of the issues raised in the current action."

**ANSWER:** Eric Miller and WPP admit this statement in part and deny it in part. While it is true that the Defendants' state court complaint only seeks money damages, the Plaintiffs falsely conclude that it "does not concern any of the issues raised in the current action." This conclusion is false because the state court complaint also quite precisely concerns the

validity of the transfer of the rights to the Center book to WPP and the scope of liability under the contract.

11. The Editors filed a Motion to Dismiss the Complaint in the state court case, on October 15, 2013.

**ANSWER:** Admitted.

12. Plaintiffs are editors and copyright owners of a book titled, *Becoming Self-Directed Learners*, referred to as “the Center Book.” They filed an application to register the copyright to their book on July 12, 2013.

**ANSWER:** Eric Miller and WPP admit that the Plaintiffs are “editors,” but deny that they own the copyright to the Center Book. The Plaintiffs’ transferred exclusive rights to the Center Book—including all publishing rights, all subsidiary rights, all promotional rights, the right to make and license derivative works, the right to perform the work and license performances, the right to license the work, etc.—to the Wicker Park Press by their contract executed November 11, 2012. The Defendants admit that the Plaintiffs, in violation of their contract with WPP, filed to register the copyright to the Center book on July 12, 2013.

13. The Center book project was conceived in 2009 at the request of Center students; the Editors then began to collect the essays that make up the volume.

**ANSWER:** Eric Miller and WPP are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and therefore deny these allegations.

14. The essays to the Center book were contributed for free, and each contributor signed a release granting permission to include his or her memoir in the Center Book.

**ANSWER:** Eric Miller and WPP are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and therefore deny these allegations.

15. The Editors plan to contribute the proceeds from the sales of their version of the Center book to a scholarship fund, after paying the individual “volunteers” who worked on the book.

**ANSWER:** Eric Miller and WPP deny these allegations. Individuals who will be paid for their services are not “volunteers.” Moreover, the Editors planned to sell the book strictly for profit, as evidenced by their contract with WPP, by which they granted the exclusive rights to the Center book in exchange for WPP’s promise to pay them royalties on book sales and licensing.

16. The Editors contacted Eric Miller in Spring 2012 about the possibility of contracting with WPP to publish the Center book. The Plaintiffs state that at this time most of the material for the Center book had already been collected.

**ANSWER:** Eric Miller admits that the Editors contacted him at this time about the idea of having WPP publish the Center Book. However, the Defendants lack knowledge of information sufficient to form a belief as to the truth of whether most of the material for the Center book had already been collected at that time—and therefore deny that alleged fact.

17. In November 2012, the parties entered into a publishing contract.

**ANSWER:** Admitted.

18. Plaintiffs allege that in April 2013, they became “disappointed” with Eric Miller’s “general lack of competence” and therefore emailed him on April 25, 2013, to terminate the publishing agreement, and asking him to provide a record of his “sunk costs,” remove references to the Center Book from his Web site, and return all materials pertaining to the Center book.



**ANSWER:** Eric Miller and WPP admit that the Plaintiffs gave him notice by email on April 25, 2013 of their intention to terminate the publishing agreement. Eric Miller and WPP deny that they lacked any competence in carrying out their duties under the agreement. In their first email, the editors did demand that Eric Miller “take down the web site for the book, and cease any further effort on behalf of the book.” [Pl. Ex. 3]. They also leveled a false accusation that the book was not being produced in a timely manner [Pl. Ex. 3], when in fact the book was almost ready to be sent for proofs. After Eric Miller responded by pointing out that they first had to comply with the contract’s termination provision and pay WPP its costs and expenses in order to terminate the agreement did the Editors write, “per the termination statement, upon receipt of itemized reimbursement of your sunk costs to this date, we will make payments so that we may publish elsewhere.” [Pl. Ex. 4].

19. On April 27, 2013, Eric Miller sent the Editors an invoice for his costs and expenses, including work completed and time spent. Plaintiffs also assert here that this document [Pl. Ex. 5] contains an “unambiguous statement” that Eric Miller drafted the “terminated publishing contract.”

**ANSWER:** Eric Miller and WPP deny that that the publishing contract has been terminated. The contract’s termination provision states that liability continues to exist under the contract until the Editors pay WPP all its costs and expenses. The contract does not provide for any reversion of rights to the editors upon their act of giving notice of their intent to terminate the agreement. Eric Miller and WPP admit that they provided the form of the publishing agreement; however, the Editors participated extensively in negotiating and revising it, as evidenced by the many redactions initialed by them on the executed copy. Miller and WPP admit that they sent the Editors an invoice for their work on April 27, 2013.

20. Plaintiffs allege that Eric Miller has refused to modify the Defendants' Web site, that he is offering the Center book for sale through his Web site, and that he falsely represents that the Editors are affiliated with it.

**ANSWER:** Eric Miller and WPP deny that they are offering for sale any copies of the Center book on the WPP Web site. WPP has suspended all sales of the book since the current dispute arose in April 2013. Eric Miller admits that he has not taken down the page for the Center book on the WPP Web site. He promised the Plaintiffs that he would take down this page once they comply with the publishing contract's termination provision and pay the Press for its costs and expenses incurred in preparing the book for publication. Eric Miller and WPP deny that they falsely represent that the Editors are affiliated with the WPP version of the Center book, because their affiliation with the book is authorized under the contract.

**COUNT 1 (Declaratory Relief, 28 U.S.C. §§ 2201, 2202)**

21. Plaintiffs' reallege and incorporate by reference paragraphs 1 through 20 of the Allegations to their Complaint.

**ANSWER:** The Defendants reallege and incorporate by reference their responses to paragraphs 1 through 20.

22. Plaintiffs allege that Eric Miller is offering a "bootleg version of the Editors' copyright registered Center Book" for sale. They quote Eric Miller's response on the Center Facebook page to Arline and Mark Paul's advertisement of their competing Center book.

**ANSWER:** Eric Miller admits to making the quoted statement on the Center Facebook page in response to Mark and Arline Paul's false and bad faith statement that WPP no longer held any rights to the Center book despite the Editors' failure to properly and effectively terminate their publishing agreement with WPP. Miller and WPP deny that they have offered the

Center book for sale since April 26, 2013. Miller and WPP deny that the Editors hold a valid copyright registration for the Center book.

23. Eric Miller's comments quoted by the Plaintiffs in Paragraph 22 were made on July 9, 2013, in response to comments posted there by Mark and Arline Paul stating that WPP no longer held the publishing rights to the Center book.

**ANSWER:** Admitted.

24. Paragraph 128 of Defendants' state court complaint credits Eric Miller with the creation of the manuscript of the Center book.

**ANSWER:** Admitted. Eric Miller and WPP did create the manuscript of the Center book. The Editors provided WPP with 45 to 50 essays from individual contributors, all in different formats, styles, and file formats, in no particular order, and as separate email attachments sent in a number of different batches sent at different times. WPP edited and arranged them into a single, unified, coherent manuscript.

25. Eric Miller has refused to return Center Book materials to the Editors, and has asked them to return the edition of the manuscript prepared by WPP.

**ANSWER:** Admitted. Eric Miller has made it clear that he will happily return any Center book materials still held by the Press to the Editors once they comply with the contract's termination provision and pay WPP for its costs and expenses. Once he understood that the Editors were advertising and preparing their own publication of the Center book, he asked them to return the manuscript of the Center book that WPP prepared under the contract and sent them for review, which they refused to do.

26. The Editors are "apprehensive" that Eric Miller is misleading third parties into believing that WPP holds the rights to the Center book.

**ANSWER:** Eric Miller and WPP deny these allegations. Although the Editors may be “apprehensive,” they have not effectively terminated their publishing agreement with WPP, and, therefore, Eric Miller states nothing but the truth when he tells others that WPP still holds the rights to the Center book.

27. The Plaintiffs are apprehensive because counsel for Miller and WPP warned them that they could be held liable for copyright infringement if they published their own version of the Center book before properly and effectively terminating their publishing agreement with WPP.

**ANSWER:** Admitted.

28. Plaintiffs allege that Eric Miller and the Press did not provide any creative or proprietary content for the Center book, and that in light of this, there is something wrong with WPP’s claims that the Bellanca-Paul version of the book would infringe WPP’s copyright.

**ANSWER:** Eric Miller and WPP deny this allegation. Eric Miller did provide proprietary and creative content for the Center book by ordering and arranging the pieces of the work, and forming them into a single creative work. Moreover, whether WPP provided creative or proprietary content to the work is not relevant to the fact that WPP acquired the exclusive rights to the work through the still untermiated publishing agreement between the Parties and the Plaintiffs’ grant of rights to WPP contained therein.

29. Plaintiffs’ state that under the contract, Defendants “only had the right to register the copyright ‘in the Author’s name...,’ and could only sue third parties for copyright infringement in the Author’s name.”

**ANSWER:** Eric Miller and WPP deny these allegations insofar as the contract does not state that WPP has the right to sue third parties “only” in the Author’s name, and insofar as

the mere registration of the copyright “in the Author’s name” as required by the contract does not in any way erase the fact that the Plaintiffs granted exclusively to WPP all the rights that make up the copyright in the work. [Pl. Ex. 3]. The Defendants categorically deny that the publishing contract has been terminated, and therefore deny any of the Editors’ claims to own any valid copyright to any version of the Center book.

30. The Defendants threats and claims have been repeated despite the fact that the Contract does not contain a copyright assignment.

**ANSWER:** Miller and WPP deny these allegations in that WPP’s claims to copyright ownership in the Center book are rightfully based on the very broad grant of exclusive rights to the Center book made to them by the Plaintiffs in their contract. The transfer of rights in the contract is identified as a “grant” of exclusive rights, and not as a “license,” as Plaintiffs allege.

31. The Plaintiffs allege that the contract does not contain any relevant survival clauses, that the contract does not give Miller the right to assert rights to the Center book “post contract termination,” and that the termination provision in the contract is “at will.”

**ANSWER:** Miller and WPP deny these allegations. The contract does contain relevant survival clauses; however, their application is not even needed here due to the fact that the termination provision itself establishes that liability continues to exist under the contract until the Plaintiffs pay WPP all its costs and expenses. Miller and WPP also therefore deny that the contract is a “former publishing contract” and that the parties are in any phase “post-contract termination.” [Compl. 8]. Miller and WPP deny that the contract’s termination provision is “at will” in the sense advanced by the Plaintiffs. The contract cannot be terminated “at will,” i.e., simply because the Editors say it is terminated, when payment of the Publisher’s costs and expenses is a term or condition that must first be satisfied in order to terminate the contract.

32. Apparently, the Editors were planning an intensive marketing campaign for their version of the book, and are preparing to finally publish their version of the book, and argue that Eric Miller has made unjustified threats and misleading statements that could harm their plans to publish and market their version of the book.

**ANSWER:** Miller and WPP deny these allegations. Miller and WPP have not made any false or misleading statements; they have merely attempted to enforce their rights under the contract. The Plaintiffs have already launched their marketing campaign and begun selling their book in different venues; the notion that they would be harmed by Eric Miller's attempts to enforce his contractual rights is offensive.

**COUNT II (Copyright Infringement, 17 U.S.C. §§ 101 et seq.)**

33. Plaintiffs reallege and incorporate by reference paragraphs 1 through 32 of the allegations of their Complaint.

**ANSWER:** The Defendants reallege and incorporate by reference their responses to paragraphs 1 through 32.

34. The terminated publishing contract acknowledges that the Editors provided Miller with the Center book manuscript. [Pl. Ex. 3, cl. 2(a)].

**ANSWER:** Eric Miller and WPP deny these allegations: they deny that the publishing contract is terminated, and deny that the Editors ever provided Miller with the Center book manuscript.

35. Plaintiffs allege that Miller makes contradictory assertions when he points out that he produced the Center book manuscript and that Editors "submitted" the book manuscript to him.

**ANSWER:** Miller and the Press deny these allegations. The Plaintiffs are playing games with words. WPP created the Center book manuscript. The Editors merely provided it

with individual essays in separate files and disparate forms. The use of the word “manuscript” in Plaintiffs’ exhibit 10 merely refers to the fact that the editors submitted an individual essay in manuscript form, and many individual essays in many manuscript forms, and not to the manuscript for the work itself.

36. Plaintiffs allege that the contract created a “temporary bailment” that required some special duty of care on Miller’s part.

**ANSWER:** Miller and WPP deny this allegation.

37. Plaintiffs allege that the contract is terminated and that it provided that either the Editors or the Publisher could revise or edit the manuscript. [Ex. 3. cl. 2(d), cl. 2(3)].

**ANSWER:** Eric Miller and WPP deny these allegations. The contract has not been effectively terminated. Paragraph 2(a) of the contract specifies that the Editors must furnish a copy of the manuscript “acceptable to the Publisher in form and content for publication,” and that if the Editors fail to do so, the Publisher “shall, at its sole discretion, have the right to reject the manuscript and terminate the agreement, or edit, revise, or otherwise modify the manuscript to suit its requirements.” [Ex. 3, cl. 2(d)].

38. Plaintiffs allege that nothing in the contract “cedes ownership of the Center Book in any form or under any conditions to Miller.” [Compl. 10].

**ANSWER:** Eric Miller and WPP deny this allegation. The Plaintiffs granted broad exclusive rights to the Center book to WPP. WPP still holds these rights—including the rights to sell, copy, distribute and license the work—due to the Plaintiffs’ refusal to terminate the contract as required. Moreover, the Plaintiffs never provided WPP with any single, coherent manuscript. WPP alone created the manuscript of the work, and this is WPP’s work product.

39. Plaintiffs allege that Defendants' possession of the manuscript and the right to make copies of it were pursuant to license, which was extinguished when the publishing contract was terminated.

**ANSWER:** Miller and WPP deny these allegations. The contract has never been effectively terminated due to the Plaintiffs' refusal to pay WPP its costs and expenses.

40. The Editors directed Miller to return to them the Center book materials, and Miller ignored this request.

**ANSWER:** Miller and WPP deny these allegations in part: the Editors did ask Miller to return the Center book materials; however, he did not ignore the request but clearly replied that he would be happy to return the materials as soon as the Plaintiffs terminate the contract properly and pay WPP its costs and expenses.

41. Miller has accused the Plaintiffs of misappropriating the manuscript, has demanded its return, and has asked for money damages arising from the Plaintiffs' misappropriation of WPP's work product.

**ANSWER:** Admitted.

42. Plaintiffs accuse Miller of "impermissibly" copying and retaining their "copyright protected manuscript even after the Editors have demanded its return" and again repeat their allegation that Miller is offering the Center book for sale.

**ANSWER:** Miller and WPP deny these allegations. Eric Miller is not offering the Center book for sale. He has not impermissibly copied or retained the Editors' "copyright-protected manuscript" because: (1) the contract between the parties is still enforceable, and therefore any alleged copying or retention of the manuscript are authorized by the contract; and



(2) WPP alone produced the manuscript, and the contract gives WPP the rights to copy it and to retain it and use it in many other ways.

43. Plaintiffs allege the order page for the Center book on WPP's Web site states that the work is "in stock" and for sale at a price of \$22.50 or in paperback for \$9.95, "coming in October 2013."

**ANSWER:** Eric Miller and WPP deny these allegations. They have not sold or offered for sale any copies of the Center book since this dispute first developed in late April 2013. We are well past October 2013, and WPP has not sold any copies of the book since.

44. An alleged Google search leads to the WPP's Web page for the work.

**ANSWER:** Eric Miller and WPP are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 and therefore deny these allegations.

45. Plaintiffs speculate that willful copyright infringement is occurring and that the threat of copyright infringement is imminent because on-demand publishing allow books to be printed only once ordered.

**ANSWER:** The Defendant-Publishers deny these allegations. They have not engaged in any copyright infringement, willful or otherwise. The Plaintiffs other remarks here are entirely speculative and inappropriate.

46. Plaintiffs claim they are directly injured by the allegedly confusing presence of the Center book on the WPP's Web page.

**ANSWER:** Miller and WPP deny these allegations. As previously stated, the presence of the Center book on a page of WPP's Web site is authorized by the contract between the parties, which also prohibits the Plaintiffs from advertising or publishing their version of the

book until they terminate the agreement according to its terms. The alleged injury is entirely speculative and highly unlikely, and would result from the Plaintiffs own harmful actions.

47. Plaintiffs allege that orders taken by WPP for the Center book, even before they sent notice of their intention to terminate the contract, somehow “directly injure” the Editors of the non-authorized edition of the work.

**ANSWER:** Miller and WPP deny these allegations. The alleged harm is entirely speculative and fabricated. Insofar as the alleged harm is supposed to result from some confusion of consumers, any such confusion, even if it were actually to occur, would arise exclusively from the Plaintiffs’ breach of contract and inequitable conduct in trying to escape their liability under the contract with the WPP.

48. Plaintiffs allege again that Miller and WPP are willfully infringing their copyright to the Center book.

**ANSWER:** The Publishers deny these allegations.

**COUNT III (False Advertising, 15 U.S.C. § 1125(a) et seq.)**

49. Plaintiffs reallege and incorporate by reference paragraphs 1 through 48 of the allegations of their Complaint.

**ANSWER:** The Defendants reallege and incorporate by reference their responses to paragraphs 1 through 48.

50. Plaintiffs allege that they terminated the publishing contract on April 25, 2013 and then told Miller to remove all references to the Center book from the WPP Web site.

**ANSWER:** Miller and WPP deny that the Plaintiffs terminated the publishing contract: the contract requires them to pay WPP all its costs and expenses in order to terminate

the contract. [Pl. Ex. 3, 2(g)]. Admitted: the Plaintiffs did ask Miller to remove all references to the Center book from the WPP Web site in an email dated April 25, 2013.

51. Plaintiffs allege that Eric Miller refused to comply with their request to remove the Web page with the Center book from his Web site.

**ANSWER:** Admitted in part and denied in part. Eric Miller replied to the Plaintiffs' request to remove the page on his Web site displaying his edition of the Center book by responding that he would be happy to take down the image as soon as the Plaintiffs pay WPP for its costs and expenses. They have refused to pay WPP for its costs and expenses and to this day have refused to negotiate in good faith to settle this dispute.

52. The titles to the WPP version of the Center book and the Editors' version are similar. Plaintiffs therefore conclude that the WPP edition is likely to mislead or confuse consumers in a harmful way to consumers and the Editors.

**ANSWER:** Miller and WPP deny these allegations. While the titles to the works are similar, the WPP version is authorized by the still unexpired contract with the Editors. The authorized WPP version of the work was also the first to be presented to the public, so any confusion, however unlikely, would result exclusively from the Plaintiffs' bad faith efforts to market their work without terminating their contract with WPP. It is not the WPP edition that would confuse consumers, but the new ads for the Plaintiffs' new version of the work.

53. Plaintiffs' allege that the WPP version of the work is "a substantial copy of the Center book manuscript," while also conceding that their edition is a "significantly improved product since termination of the former publishing contract."

**ANSWER:** Miller and WPP deny these allegations. The contract has not been terminated; it is not “former”; it is still current. The “Center book manuscript” produced by the Plaintiffs is in fact a derivative copy of the manuscript prepared by Miller and WPP.

54. Plaintiffs allege that Eric Miller is publishing false advertising and is offering the Center book for sale in a false association with the editors’ names and biographical information.

**ANSWER:** Miller and WPP deny these allegations: they are not offering the Center book for sale and have ceased taking pre-orders for the book since late April 2013. The contract in fact forbids the Plaintiffs from advertising or publishing their version of the work elsewhere until they pay WPP all its costs and expenses. Only then will the contract between the parties be effectively terminated. The impression that the Editors are associated with WPP is an accurate one until they step up to the plate and terminate the contract properly.

55. The Editors claim that they are harmed or likely to be harmed by the single Web page on the WPP Web site that displays the WPP version of the Center book.

**ANSWER:** Miller and WPP deny these allegations. The alleged harm, again, is entirely speculative. Miller is not offering the work for sale. The WPP version of the work is authorized by the still existing contract between the parties. The Editors’ version of the work is unauthorized, as they have committed several breaches of their contract with the Press in order to rush their version to market.

56. The Plaintiffs allege that Miller and WPP are engaged in illicit acts designed to intentionally deceive consumers.

**ANSWER:** Miller and WPP deny these allegations.

**COUNT IV**  
**(State Law Consumer Fraud and Deceptive Business Practices, 815 ILCS 505/1 et seq.)**

57. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 57 of the allegations of their Complaint.

**ANSWER:** The Defendants reallege and incorporate by reference their responses to paragraphs 1 through 57.

58. Plaintiffs again allege that Miller and WPP are selling, advertising and taking orders for the Center book titled *On Becoming a Self-Directed Learner*, which has a title similar to the Plaintiffs' version, *Becoming Self-Directed Learners*.

**ANSWER:** Miller and WPP deny these allegations, as they are not selling or taking any orders for the Center book. Any alleged confusion or deception would result solely from the Plaintiffs' bad faith actions of breaching their contract with WPP, appropriating WPP's work in order to produce their own version of the book without compensating WPP for this work, and rushing their own version of the book to market before properly and effectively terminating their contract with WPP. Because the Plaintiffs transferred the exclusive rights to the book to WPP, their claim to own the copyright to the work is false and deceptive.

59. Plaintiffs allege deceptive behavior on the part of the Defendants due to alleged representations that present the authors' names in association with the work.

**ANSWER:** Defendants deny these allegations.

60. Plaintiffs again allege that Eric Miller is offering the Center book for sale, and therefore, that he is employing deception or omission of material facts to deceive consumers in the marketplace.

**ANSWER:** Defendants deny these allegations. Eric Miller and WPP are not offering the Center book for sale and are not attempting to deceive consumers. Until the Editors terminate

their contract with WPP, their association with its version of the Center book persists, and statements of this fact are truthful.

**COUNT V (State Law Deceptive Trade Practices, 815 ILCS 510/1 et seq.)**

61. Plaintiffs reallege and incorporate by reference paragraphs 1 through 60 of the allegations of their Complaint.

**ANSWER:** The Defendants reallege and incorporate by reference their responses to paragraphs 1 through 60.

62. Plaintiffs allege a likelihood of confusion to arise from acts attributed to the Defendants including offering the Center book for sale, taking orders for it, and advertising an unauthorized version of it.

**ANSWER:** Miller and WPP deny these false allegations. Miller and WPP are not offering the Center book for sale, nor taking orders for it. They have not taken any pre-orders for the Center book since late April 2013 when the current dispute arose. Moreover, their Web page presenting the Center book is authorized by their contract with the Plaintiffs, which has not been terminated.

63. Plaintiffs allege that Eric Miller is competing with them for sales of the Center book, and that they are therefore likely to be harmed by what they call Miller's deceptive trade practices.

**ANSWER:** Miller and WPP deny these false allegations.

**COUNT VI (State Law Right to Publicity, 765 ILCS 1075/1 et seq.)**

64. Plaintiffs reallege and incorporate by reference paragraphs 1 through 63 of the allegations of their Complaint.

**ANSWER:** The Defendants reallege and incorporate by reference their responses to paragraphs 1 through 63.

65. Plaintiffs allege that Miller is using their rights to publicity in a way that is highly offensive to them and misleading to consumers.

**ANSWER:** Miller and WPP deny these allegations. The Plaintiffs, by their contract with the Press, granted the exclusive promotional rights to the work to WPP, including “the right to use the name, likeness, and biography of the Author and to publicly display the Work in advertising, promotion, publicity and otherwise in connection with the exercise of the rights granted in paragraph 1a and 1b, and the right to authorize others so to do.” [Compl. Ex. 3, 1(c)]. These rights remain vested in the Press until the Plaintiffs terminate the contract as they agreed to do. Again, while highly speculative, any consumer confusion in this situation would arise only from the Editors unauthorized publication of their edition of the Center book.

66. Plaintiffs allege the same as preceding.

**ANSWER:** Miller and WPP deny these allegations. They are neither selling nor offering for sale, nor taking orders for any version of the Center book, and, even if they were, they would be authorized to do so by their contract with the Plaintiffs.

67. Plaintiffs allege that Miller and WPP are violating the Editors’ publicity rights by identifying the Wicker Park Press as “editors, generally.”

**ANSWER:** Miller and WPP deny these allegations. It is a common task of any publisher to work and provide services as an editor or as “editors, generally.” If the Plaintiffs mean that Eric Miller is wrong to identify the Editors as editors for the Wicker Park Press, the association, once again, is authorized by the still unterminated publishing agreement between the Parties, and is not deceptive in any way, nor intended to be, if such statement in fact exists.

### **GENERAL PRAYER FOR RELIEF**

On all counts, Eric Miller and WPP deny that the Plaintiffs are entitled to a judgment in their favor and deny that the Plaintiffs are entitled to the relief requested.

### **AFFIRMATIVE DEFENSES**

#### First Affirmative Defense – Lack of Subject Matter Jurisdiction

1. The Court lacks subject matter jurisdiction to hear the Plaintiffs' claims.

#### Second Affirmative Defense – Failure to State a Claim on Which Relief can be Granted

2. The Complaint fails to state a claim for which relief can be granted.

#### Third Affirmative Defense – Non-Infringement

3. Non-Infringement. No copyright infringement by the Defendants has taken place.

#### Fourth Affirmative Defense – Contract (Conditions Precedent, License)

4. Contract – Conditions Precedent and License:

(a) Conditions Precedent. The publishing contract that the Parties entered into on November 11, 2012, has a termination provision clearly stating that in the case where the Editors (“Author”) decide to terminate the agreement, liability continues to exist under the contract until they pay the Publisher any and all its costs and expenses. The contract’s termination provision also specifies that the Editors’ payment of the Publisher’s costs and expenses is not only a condition precedent to the contract’s termination by the Editors, but also a condition precedent that must be satisfied before the Editors may publish the work elsewhere. The Editors have done everything in their power to avoid complying with these terms, but have, nevertheless, published the work elsewhere, and, in bad faith,



repeated over and over the willful misrepresentation that the contract has already been terminated.

(b) License: Because the Plaintiffs have not effectively terminated the contract, the exclusive rights to the Center book, i.e., the copyright, remain with the Publisher. Therefore, the Publisher continues to hold all the exclusive rights granted to it under the contract, including all promotional rights (i.e., the right to advertise the work), and all publishing rights, licensing rights and rights to make and license derivative works. This precludes any possible copyright infringement, false advertising, consumer fraud, or deceptive trade practices, or violations of publicity rights as alleged by the Plaintiffs against Eric Miller and WPP.

#### Fifth Affirmative Defense – Estoppel

5. Estoppel. The Editors are estopped from claiming that the contract and its grant of copyright and promotional rights to WPP have been terminated. This is by virtue of their course of conduct and initial statements manifesting their clear understanding of the contract's requirement that they pay WPP its costs and expenses in order to terminate the contract.

#### Sixth Affirmative Defense – Fraud

6. Fraud. Despite their clear understanding of the contract and its termination provision, the Plaintiffs have fraudulently asserted left and right, high and low, that WPP no longer holds the rights to the Center book, and that the contract has already effectively been terminated. They have made these false statements in order to induce consumers to purchase their edition of the work, to believe that WPP has made false statements about its rights to the work, to believe that their version of the work is the only authorized one, and to believe that WPP did not produce the original complete manuscript of the work.

### Seventh Affirmative Defense – Inequitable Conduct

#### 7. Inequitable Conduct.

(a) When the current dispute arose in late April 2013, and at every point up to now, the Plaintiffs have refused to negotiate in good faith with WPP to work out a settlement to this dispute.

(b) The Plaintiffs have knowingly made numerous false and deceptive statements to others and to likely consumers of the Center book, pretending that the contract has been terminated, that their work is the only authorized version of the Center book, that the Wicker Park Press did not produce the manuscript that they used to produce their own version of the Center book, and that the Wicker Park Press no longer holds any rights to the Center book. These are only choice examples and not meant as an exhaustive list.

### Eighth Affirmative Defense – Reservation of Right to Assert Other Defenses

8. Defendants reserve the right to assert additional affirmative defenses as they discover the basis for them.

### **DEFENDANTS' COUNTERCLAIMS**

For its counterclaims against the Plaintiffs, Eric Miller and WPP state as follows:

1. This Court has jurisdiction over these counterclaims arising under federal law pursuant to 17 U.S.C. §§ 101 *et seq.* and 15 U.S.C. §§ 1125 *et seq.*, and pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court has subject matter jurisdiction over the substantially related state law claims pursuant to 28 U.S.C. §§ 1338(b) and by 28 U.S.C. § 1367.

2. Venue is proper pursuant to 28 U.S.C. § 1391. All of the individual parties reside here, the corporate defendant is located here, and the acts complained of were initiated here and continue to occur here. Venue is also proper pursuant to 28 U.S.C. § 1400 because these acts

include acts of copyright infringement for which redress is sought under the 17 U.S.C. §§ 101 *et seq.*

**COUNT I**  
**(COPYRIGHT INFRINGEMENT, 17 U.S.C. §§ 101 *et seq.*)**

3. The Wicker Park Press filed to register its copyright in the Center book with the U.S. Copyright Office on June 30, 2013. [Defs.' Ex. 1].

4. The Wicker Park Press still holds the bundle of rights that make up the copyright to the work by the grant of the exclusive rights to the work made to it by the Plaintiffs in their publishing contract.

5. The Plaintiffs have not effectively terminated the publishing contract between the Parties; the contract states that liability continues to exist under it until the Editors reimburse the Publisher for “any and all costs and expenses incurred by it in connection with the Work,” and that the Editors “shall not allow the work to be published elsewhere” until such reimbursement is made. [Compl. Ex. 3, 2(g)].

6. The Wicker Park Press completed its manuscript of the Center book in late March, 2013, and sent a copy to the Editors for review as an email attachment on March 30, 2013.

7. Upon learning of the Editors' plans to publish a competing version of the Center book, Eric Miller, by way of counsel, sent their attorney C. Michael Kendall a letter dated July 8, 2013, reminding them that WPP still holds the rights to the work and requesting the return of the manuscript prepared by WPP under the contract. This request was ignored.

8. The Plaintiffs have refused to reimburse WPP for its costs and expenses and refused to negotiate in good faith for a settlement to effect their reimbursement.

9. In breach of their publishing contract with WPP, the Plaintiffs have allowed the Center book to be published elsewhere without first terminating the contract.

10. The Plaintiffs have prepared and distributed copies of the Center book, in violation of their contract with WPP, also infringing the WPP's copyright in the work.

11. On information and belief, the Plaintiffs have sold copies of their infringing version of the work, initially offered for sale at the 28th Annual Self-Directed Learning Symposium, held from February 5 – 7, 2014 in Cocoa Beach, Florida.

12. The Plaintiffs have offered their infringing copies of the Center book for sale through the Windy City Press, a self-publishing company they hired to publish and distribute the work for them.

13. The Plaintiffs have copied, distributed, and sold the work with full knowledge that they previously granted the exclusive rights to the Center book to WPP, and that their contract with WPP has not been properly or effectively terminated: their infringement of WPP's copyright in the work is willful.

14. The Plaintiffs have offered their infringing copies of the Center book for sale on various online retail Web sites including Amazon, Barnes & Noble, and other sites. [Defs.' Ex. 2].

WHEREFORE, the Defendants Eric Miller and the Wicker Park Press respectfully request that this Court enter judgment in their favor and against the Plaintiffs and request the following relief:

- (a) Temporarily enjoin the Plaintiffs from copying, selling and offering for sale the Center book until the Plaintiffs pay WPP for its costs and expenses, whether by settlement or adjudication of the current dispute;
- (b) Award monetary damages to the Wicker Park Press for all its costs and expenses incurred in its preparation of the Center book;

- (c) Award monetary damages to the Wicker Park Press for any infringing sales of the Center book by the Plaintiff-Editors or their agents on their behalf, including a complete disgorgement of all lost profits on sales of the Center book;
- (d) Enter an order for the destruction of any and all infringing copies of the Center book as published by the Defendants, whether under the imprint of the Windy City Press, the Off Center Press, or any other imprint;
- (e) Enter judgment in favor of the Defendants and against the Plaintiffs for statutory damages for willful copyright infringement;
- (f) Award the Eric Miller and WPP their reasonable costs and attorneys' fees; and
- (g) Award the Defendants any and all other relief as this Court deems necessary and just.

**COUNT II**  
**FALSE ADVERTISING (15 U.S.C. § 1125(a), et seq.)**

15. The Defendant Publisher incorporates by reference each of the preceding paragraphs numbered 1 through 14.

16. The valid publishing agreement between the Parties contains the Plaintiffs' covenant not to "publish or furnish to any other publisher, for sale or trade or otherwise, any material taken from or based on material in the Work, or any work or material upon the same subject, that might compete with the sale of the Work." [Pl. Ex. 3, 9a]. The Plaintiffs have done just this.

17. The Defendants' Web page advertising the work is authorized by the contract, and has been in place since February 2013.

18. The Plaintiffs' advertisements for their competing edition of the Center book first appeared on the weekend of February 8-9, 2014, although they initially advertised their

competing edition of the book, to be published by the Off Center Press, in their postings on the Center's Facebook page in late June 2013 and at subsequent dates.

19. By advertising their unauthorized competing version of the Center book titled *Becoming Self-Directed Learners*, on Facebook and, later, on Amazon, Barnes & Noble, and Google Books Web sites, the Plaintiffs have introduced into interstate commerce a confusingly similar product to the Wicker Park Press's planned edition of the Center book, *On Becoming a Self-Directed Learner*. The Plaintiffs' confusingly similar title is likely to mislead reasonable consumers to their own detriment and to the detriment of the Wicker Park Press.

20. Because WPP first advertised the Center Book, as authorized by the Contract, long before the Plaintiffs' advertisements for their unauthorized competing work, the Plaintiffs' advertisements for their work give rise to a reverse confusion amongst the relevant group of consumers for this work.

21. The Plaintiffs' acts in advertising their competing work while refusing to properly terminate their contract with WPP have been undertaken intentionally and, we believe, in a bad faith attempt to evade their liability under the contract.

WHEREFORE, the Publisher respectfully requests this Court to enter judgment in its favor and against the Plaintiffs James Bellanca, and Mark and Arline Paul, and to:

- (1) Temporarily and preliminarily enjoin the Plaintiffs from selling, advertising, and marketing their edition of the Center book, whether through the Windy City Press, the Off Center Press, or any other agent or outlet in any media, until the current dispute is resolved by way of settlement or trial;

- (2) Award the Defendant Publisher all lost profits on sales of the unauthorized, deceptively advertised work by the Plaintiff-Editors, in light of their inequitable conduct in advertising the Center book;
- (3) Award the Publisher all costs and expenses for its preparation of the non-infringing work;
- (4) Award the Publisher punitive damages for the Plaintiffs' inequitable conduct;
- (5) Award the Defendant Publisher any and all other relief as the Court deems necessary and just, including the Defendants' costs and attorneys' fees.

**COUNT III**  
**STATE LAW CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES**  
**(815 ILCS 505/1 et seq.)**

22. Defendants hereby incorporate by reference each of the preceding paragraphs numbered 1 through 21.

23. Plaintiffs are advertising, selling, and taking orders for a version of the Center book that is not authorized by its copyright holder's rightful owner, WPP. The offending book bears the title, *Becoming Self-Directed Learners*, which is confusingly similar to the Defendants' authorized version of the Center book, *On Becoming a Self-Directed Learner*.

24. The Plaintiffs have made numerous confusing and deceptive misrepresentations in advertising their unauthorized edition of the Center book, which they created for the purpose of competing with WPP's version of the Center book, with the intent that consumers rely on those deceptive statements to their detriment.

WHEREFORE, the Publisher respectfully requests that this Court enter judgment in its favor and against the Plaintiffs, James Bellanca and Mark and Arline Paul, and:

- (1) Temporarily and preliminarily enjoin them from advertising, selling or marketing their infringing version of the Center book in any media whatsoever until the current dispute has been resolved by settlement or decision of this Court;
- (2) Award the Defendant Publishers any and all other relief that this Court deems necessary and just.

**COUNT IV**  
**(State Law Deceptive Trade Practices, 815 ILCS 510/1 et seq.)**

25. Defendant Publishers hereby incorporate each of the preceding paragraphs numbered 1 through 24.

26. By advertising, offering for sale, and taking orders for a derivative, inferior, and unauthorized version of WPP's Center book under a title that is confusingly similar and misleadingly similar to that of the real book, the Editors have created the false impression that their book is the only authorized and copyrighted version of the Center book. They are therefore creating a likelihood of confusion and reverse confusion as to the source and sponsorship of their offending goods.

27. As the Plaintiffs assert in their Complaint at paragraph 63, they are in direct competition with WPP's edition of the Center book.

WHEREFORE, the Publishers respectfully request that this Court enter judgment in their favor and against the Plaintiffs James Bellanca, Arline Paul, and Mark Paul, and grant the following relief:

- (a) Temporarily and preliminarily enjoin the Plaintiffs from copying, publishing, distributing, selling, advertising, and marketing their unauthorized version of the Center



book in any media whatsoever until the current dispute has been resolved by settlement agreement or decision of the Court;

- (b) Award the Defendants monetary damages for their lost profits and costs and expenses;
- (c) Award the Publisher-Defendants any and all other relief as the Court deems necessary and just.

Dated: February 17, 2014

Respectfully Submitted

/s/ Gareth E. Gollrad  
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