

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE JONES

11 CIV 5501

STEVAN MENA,

Plaintiff,

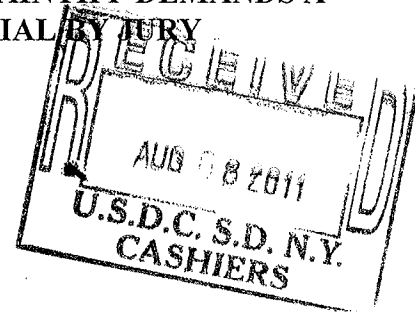
-against-

FOX ENTERTAINMENT GROUP, INC., FOX BROADCASTING COMPANY, FOX TELEVISION STATIONS, INC., DAVID HUDGINS, HUDGINS PRODUCTIONS INC., CRAIG PERRY, PRACTICAL PICTURES INC., JASON KOFFEMAN, LOU PITT, LOU PITT PRODUCTIONS, WARNER BROS. TELEVISION INC., WARNER BROS. TELEVISION DISTRIBUTION INC., WARNER BROS. ENTERTAINMENT INC., BONANZA PRODUCTIONS, INC., TOM LUSE, SCOTT SWANSON, and DERAN SARAFIAN,

Defendants.

COMPLAINT

PLAINTIFF DEMANDS A TRIAL BY JURY



Plaintiff Stevan Mena, by his attorneys, Davis & Gilbert LLP, for his Complaint against Fox Entertainment Group, Inc., Fox Broadcasting Company, Fox Television Stations, Inc., David Hudgins, Hudgins Productions Inc., Craig Perry, Practical Pictures Inc., Jason Koffeman, Lou Pitt, Lou Pitt Productions, Warner Bros. Television Inc., Warner Bros. Television Distribution Inc., Warner Bros. Entertainment Inc., Bonanza Productions, Inc., Tom Luse, Scott Swanson, and Deran Sarafian, alleges as follows:

SUMMARY OF THE ACTION

1. This is an action for copyright infringement arising from the willful and unauthorized copying and exploitation of Stevan Mena's screenplay *Transience* by the writers,

producers, directors, distributors, and broadcasters of *Past Life*, a television series that aired on Fox Television.

2. Mena, an experienced writer, director and producer of independent horror films, spent years writing and re-writing *Transience*, a gripping and distinctive thriller which he had the means, ability and intent to produce as his fourth feature film. Well-known by horror-film fans and aficionados, Mena painstakingly developed *Transience* to be his break-out film – his largest-budget motion picture to date and the one that would establish him with mainstream movie audiences.

3. Mena's plans were shattered, however, soon after he sent *Transience* in September 2008 to Craig Perry, a producer who expressed great interest in it and who is closely connected to Warner Brothers. Shortly after Mena told Perry that he would not sell his rights to the screenplay unless he was "attached" as the director, *Transience* reappeared in modified form as a draft of the pilot episode of what became *Past Life* (the pilot episode will be referred to as the "Infringing Work" or "*Past Life*"). Television writer David Hudgins apparently "created" *Past Life* at Warner Brothers' request. Mena's distinctive storyline was then disclosed to more than nine million viewers when the Infringing Work aired as *Past Life*'s first episode, premiering in the time slot following *American Idol* in February 2010. As a result, it is now virtually certain that Mena will never be able to produce and direct *Transience*, causing years of hard work and planning to go to waste.

4. *Past Life* blatantly infringes Mena's copyright in *Transience*. *Transience* and *Past Life* both concern a child who has recently begun to have frightening and confusing visions of being beaten and murdered. In both works, a mental health professional with extensive knowledge of "regressive" therapy concludes that the child is a reincarnated murder victim

whose visions are actually terrifying memories from a past life. In both works, the mental health professional convinces a reluctant, skeptical, homicide detective to apply his considerable crime-solving skills to decipher clues from the child's vague but traumatic memories. In both stories, the detective is a dejected and damaged loner who has been self-medicating with drugs and/or alcohol since his wife died in a tragic accident for which he feels responsible. In each work, the investigation – and the possibility of reincarnation – gives the detective hope, potential salvation, and a renewed connection to the world.

5. In addition to being reincarnation stories, *Transience* and *Past Life* are also “crime procedurals” in which the detective solves an abduction/murder that took place more than a decade earlier, while simultaneously rescuing a kidnapped young woman who was believed to have been dead. In both cases, the primary clues used to solve the mystery come from a child who was born just months after the victim was murdered; who has little or no conscious recall of the events surrounding the murder; and whose traumatic “regressive” memories are typically brought on by “triggers” relating to the child's past life. The triggers in both works, and the child's reactions to them, are substantially similar, and include a vision of a tower that is closely connected to the abduction; the sight of an approaching dog; and the child's panic when brought to a location that is near where the murder took place.

6. The most dramatic moment in each work arguably comes at the end of Act II, when the child is taken to the home of the deceased girl's family – the deceased girl who was abducted and murdered many years ago – to see if it triggers any memories. It does. In both works, the child's statements and actions provide convincing proof that “this is real” – the child was, in fact, the abducted and murdered girl, and, in both works, there is then an emotional reunion with the victim's mother, who is the child's mother in the child's previous life.

7. Although it feels as if the works could both end after this reunion, they instead continue on with the search for the killer. There is a false lead in each work (a man believed to be the killer turns out to be innocent), but the stories conclude soon after the mystery of the child's cryptic New Testament reference is solved. In *Transience*, the child repeatedly says "Find Jesus"; in *Past Life*, the child refers to "Maria," which is Spanish for Mary. Once it is determined in each work that this is actually a visual clue, a reference to something the child *saw* shortly before her death, the murderer is captured and a young, female kidnapping victim, who most everyone had assumed to be dead, is miraculously found alive in the murderer's home.

8. In addition to these uncanny similarities, *Transience* and *Past Life* share dozens of additional similarities regarding, among other things, plot, themes, mood, characters, sequencing, dialogue, and overall concept and feel. Indeed, the similarities between the two works are so pervasive – right down to similar character names – and the similarities so striking on so many levels, that Hudgins *must* have had access to and copied the screenplay of *Transience* when he hastily wrote *Past Life* in the weeks following Perry's receipt of Mena's work.

9. Defendants stole Mena's screenplay, deprived him of his right to produce his break-out film, and infringed his rights under the Copyright Act by preparing, distributing, and broadcasting an unauthorized derivative work. Mena is entitled to receive substantial damages for copyright infringement, including (a) actual damages arising from being deprived of the ability to produce and direct *Transience*, and otherwise exploit his screenplay; and (b) disgorgement of all of Defendants' profits that are attributable or reasonably related to their infringement of Mena's rights.

JURISDICTION AND VENUE

10. This action arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a). Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1400(a). A substantial part of the events giving rise to Plaintiff's claims occurred in this District.

11. Mena has complied with all prerequisites to commencing this lawsuit. The United States Copyright Office issued Mena a certificate of registration effective November 7, 2008 with respect to *Transience*. Following his submission of a September 2008 version of *Transience* to the Copyright Office, Mena continued to revise and refine the screenplay, creating several versions of *Transience*, including versions dated as of December 1, 2008 and December 28, 2008. *Past Life* infringes Mena's copyright in each and every version of *Transience*. A copy of the December 28, 2008 version of *Transience* is attached hereto as Exhibit 1. A copy of the September 2008 version of *Transience* is attached hereto as Exhibit 2. A DVD containing *Past Life* is attached hereto as Exhibit 3.

PARTIES

12. Plaintiff Stevan Mena is a screenwriter and filmmaker who resides in the State of New York. Mena has completed three full-length feature films in the horror film genre. Mena is the sole author of *Transience*.

13. Defendants Fox Broadcasting Company and Fox Television Stations, Inc. are subsidiaries of Defendant Fox Entertainment Group, Inc. (collectively, "Fox"). Fox is in the business, among others, of distributing and broadcasting television programs. Fox maintains its principal executive offices at 1211 Avenue of the Americas, New York, New York 10036. In

2010, Fox distributed *Past Life* for broadcast on television stations both in the United States and internationally.

14. Defendant David Hudgins is a natural person who, upon information and belief, resides in the State of California. Hudgins is a lawyer and television writer who purports to have created the television program *Past Life* and to have authored several episodes of it, including the Infringing Work.

15. Defendant Hudgins Productions Inc. (“HPI”) is, upon information and belief, a production company in the business of producing, among other things, television programs. Upon information and belief, HPI maintains a place of business at 808 Jones Street, Old Hickory, Tennessee 37138 and is owned, in whole or in part, by Hudgins. Upon information and belief, HPI was a producer of *Past Life*.

16. Defendant Craig Perry is a natural person who, upon information and belief, resides in the State of California. Upon information and belief, Perry either directly or indirectly provided *Transience* to Hudgins, and induced, caused, and/or materially contributed to the infringement of Mena’s copyright in *Transience*.

17. Defendant Practical Pictures Inc. (“Practical Pictures”) is, upon information and belief, a production company in the business of producing, among other things, feature films and television programs. Upon information and belief, Practical Pictures maintains a place of business at 2211 Corinth Ave., Suite 303, Los Angeles, California 90064, and is owned, in whole or in part, by Perry. Upon information and belief, Practical Pictures either directly or indirectly provided *Transience* to Hudgins, and induced, caused, and/or materially contributed to the infringement of Mena’s copyright in *Transience*.

18. Defendant Jason Koffeman is a natural person who, upon information and belief, resides in the State of California. Upon information and belief, Koffeman, Perry's assistant, either directly or indirectly provided *Transience* to Hudgins, and induced, caused, and/or materially contributed to the infringement of Mena's copyright in *Transience*.

19. Defendants Warner Bros. Television Inc. and Warner Bros. Television Distribution Inc. are, upon information and belief, subsidiaries of Defendant Warner Bros. Entertainment Inc. (collectively, "Warner Brothers"). Warner Brothers is in the business, among others, of producing and distributing television programs. Warner Brothers maintains its principal executive offices at 1 Time Warner Center, New York New York, 10019. Upon information and belief, Warner Brothers was a producer or co-producer of *Past Life*.

20. Defendant Lou Pitt is a natural person who, upon information and belief, resides in the State of California. Upon information and belief, Pitt was an executive producer of *Past Life*.

21. Defendant Lou Pitt Productions ("LPI") is, upon information and belief, a production company in the business of producing, among other things, television programs. Upon information and belief, LPI maintains a place of business in the State of California and is owned, in whole or in part, by Pitt. Upon information and belief, LPI was a producer of *Past Life*.

22. Defendant Bonanza Productions, Inc. ("Bonanza") is, upon information and belief, a production company in the business of producing, among other things, television programs, and maintains a place of business at 1175 Chattahoochee Ave NW, Atlanta, Georgia 30318. Upon information and belief, Bonanza was a producer or co-producer of *Past Life*.

23. Defendant Tom Luse is a natural person who, upon information and belief, resides in the State of Georgia. Upon information and belief, Luse was a producer or co-producer of *Past Life*.

24. Defendant Scott Swanson is a natural person who, upon information and belief, resides in the State of California. Upon information and belief, Swanson was a producer or co-producer of *Past Life*.

25. Defendant Deran Sarafian is a natural person who, upon information and belief, resides in the State of California. Upon information and belief, Sarafian was the director of *Past Life*.

FACTUAL ALLEGATIONS

Stevan Mena

26. Stevan Mena is a self-taught screenwriter and filmmaker. He has completed more than ten full-length screenplays, and he has been making films since he was eleven years old. In the late 1990s, Mena expanded one of his screenplays into a 500-page novel called *Malevolence*, a horror story about a serial killer who kidnaps and murders his victims. Mena later broke the novel up into three distinct screenplays.

27. In 2003, Mena completed *Malevolence* as his debut feature-length film, which he produced on a shoe-string budget and financed with credit card debt. In addition to writing the screenplay, Mena personally produced, directed, edited, and composed the score to *Malevolence*. *Malevolence* generated a number of rave reviews and won awards at several festivals, including the Long Island International Film Expo and the New York City Horror Film Festival.

28. *Malevolence* was so well received that, in 2004, it was released in theaters as the first theatrical release of Anchor Bay, a well-known video distribution company. The film was

very successful and became a cult classic on DVD. *Malevolence* earned Mena recognition as an accomplished filmmaker in the “horror” genre.

29. Shortly after the release of *Malevolence*, Mena completed his second feature-length film, *Brutal Massacre: A Comedy*, which he produced, directed, and edited. *Brutal Massacre* represented a 180-degree turn for Mena: it was a comedy, showcasing a variety of familiar horror genre characters playing against type in comedic roles.

30. The success of his first two films – and *Malevolence* in particular – earned Mena the respect and recognition necessary to produce his third feature film, *Bereavement*, with a much larger budget. Produced and distributed with a budget of more than \$2.4 million, *Bereavement*, a “prequel” to *Malevolence*, stars a number of well-known actors, including John Savage (*The Deer Hunter*), Alexandra Daddario (*Percy Jackson and the Olympians*), and Michael Biehn (*The Terminator*, *The Rock*). *Bereavement* represented a major step forward in Mena’s filmmaking career.

31. In July 2010, *Bereavement* was named Best Feature at the Long Island International Film Expo, and Mena also received the award for Best Director. Mena then won the award for Best Director at the New York City Horror Film Festival for *Bereavement*. *Bereavement* went on to win the award for Best Horror Feature at the Atlantic City Film Festival. In March 2011, *Bereavement* was theatrically released in major cities throughout the United States, and it has received substantial critical acclaim. In August 2011, *Bereavement* will be released on DVD through Anchor Bay Entertainment.

32. Through skill and perseverance, Mena positioned himself to produce his next feature film with an even larger budget and to promote the film in a way that would potentially expose him to a much broader audience. For many years, Mena’s goal has been to use his

experience and recognition in the horror-film genre as a springboard to a career as a filmmaker for broader, mainstream audiences, and *Transience* was the cross-over film he intended to produce to make this important transition.

The Development of *Transience*

33. Shortly after the birth of his first child, Mena observed certain bizarre phenomena that piqued his interest in reincarnation. Thereafter, he read several books on reincarnation, researched the topic extensively, and eventually decided to write a screenplay about reincarnation. He recognized, however, that kidnapping and serial murder (the primary criminal activity in both *Malevolence* and *Bereavement*) were the filmmaking topics he knew best, so he ultimately decided to write a screenplay on reincarnation in the context of a crime procedural about a kidnapping and a serial killer.

34. In 2002, Mena began the long and difficult process of writing what eventually became *Transience*. One problem Mena faced was the basic question of how to structure a reincarnation story in the context of a crime procedural. If, as in most reincarnation stories, the reincarnated person recalls details clearly, then there cannot be a crime procedural; the reincarnated person would simply tell the detective what happened, identify the murderer, and the story would end. Mena solved this problem by giving *Transience* a distinctive and original structure: the story would revolve around a reincarnated child with vague, unclear memories, thereby requiring the detective to decipher clues to solve a kidnapping and murder that occurred in the child's previous life.

35. Having settled on this distinctive story structure, Mena faced the daunting task of telling the story so that it would be dramatic, coherent and plausible. If the screenplay were not carefully and meticulously structured, it could potentially come off as unbelievable or even silly.

During breaks while shooting other films, Mena worked for four years on *Transience* before registering the completed screenplay with the Writers Guild of America in July 2006 and providing it to an agent for distribution to potential producers. Subsequently, Mena determined that further revisions and honing were necessary, and he continued to refine the screenplay into 2008.

Allegations Concerning Access

36. In 2008, Mena provided *Transience* to an agent of the Paradigm Agency, which provided it to many readers and studios. Although substantial interest was expressed, no deals initially materialized.

37. In early 2008, Craig Perry, a producer and a principal of Practical Pictures, contacted Mena about potentially working together. Perry is a well-known Hollywood producer, best known for the *American Pie* and *Final Destination* motion pictures. Perry has very close ties to Warner Brothers, which has produced and distributed several of the *Final Destination* horror films, including *The Final Destination* (Final Destination 4). Upon information and belief, *The Final Destination* was produced in 2008 and early 2009; introduced to the general public at the July 2009 Comic-Con convention in California; and theatrically released in August 2009.

38. Perry was familiar with *Malevolence*, and he contacted Mena and asked whether he wanted to direct a remake of the cult horror film *Motel Hell* for MGM. Although Mena was pleased to receive an offer from a well-connected Hollywood producer of horror films, he nevertheless declined the offer.

39. In late September 2008, Mena sent a copy of *Transience* to Perry. Perry expressed substantial enthusiasm for this unique script; told Mena that he wanted to produce *Transience*;

and convinced Mena to take it off the market while they worked together to hone it. Mena agreed. For about one year thereafter, Mena revised *Transience* several times, consulting throughout this time period with Perry and his assistant, Jason Koffeman. Early in the process, Perry specifically expressed interest in shopping and producing *Transience* with someone else as director. Mena declined because he intended to direct *Transience* as his break-out film.

40. In or around October 2008, Perry told Mena that he had provided copies of *Transience* to a number of his Hollywood connections and that Perry had certain changes that he would like Mena to make to the screenplay based, at least in part, on feedback Perry had received from his connections and colleagues.

41. In or around October 2008, Perry requested an outline of the plot and key elements of *Transience*. Mena complied. In or around December 2008, Mena also sent Perry a revised version of *Transience*, which incorporated certain of Perry's editorial suggestions. Thereafter, Mena sent Perry several additional revised versions of *Transience*. Mena had many lengthy conversations and communications with both Perry and Koffeman about changes and potential changes to *Transience*.

42. In 2008, upon information and belief, Perry and/or Koffeman either directly or indirectly provided a copy of *Transience* to David Hudgins, a lawyer and television writer who also has close ties to Warner Brothers. Upon information and belief, from 2002 to 2006, Hudgins was a writer for *Everwood*, a television series that ran on Warner Brothers' now-defunct WB television network. After Hudgins left for two years to write for the teenage television drama *Friday Night Lights*, Warner Brothers apparently lured him back by requesting that he create a television show about reincarnation. Although he lacked experience and appears, based

on his own public statements, to have lacked interest in either the supernatural or crime procedurals, Hudgins accepted Warner Brothers' offer and "created" *Past Life*.

43. By January 2009, upon information and belief, Hudgins surfaced with a draft of the pilot for the television series that became *Past Life*. In or around January 2009, it was reported in the press that Fox had authorized Warner Brothers' production of a pilot episode of *Past Life*. In or around April 2009, Warner Brothers produced the pilot episode of *Past Life* – the *Infringing Work*. Throughout this time period, Mena had no knowledge that his screenplay had been pilfered and used to form the basis of a potential network television series.

44. The production of even a pilot episode of *Past Life* is powerful evidence of *Transience's* distinctive, unique, and compelling storyline. In any given year, television writers (such as Hudgins) present thousands of potential ideas for television shows to producers (such as Perry) and studios (such as Warner Brothers). These producers and studios then "pitch" a subset of these ideas during the television "development season" to the television networks and cable channels that could potentially purchase them. In a typical year, upon information and belief, Fox's development executives listen to hundreds of these pitches during the development season; commission a very small number of these pitches to be expanded into full-length scripts; and, ultimately, authorize production of perhaps seven to ten pilots based on the full-length scripts. It is exceedingly difficult to create a series that is "picked up to pilot," particularly without a well-known actor or actress "attached" to it.

45. After pilots are completed in April or May of each year, Fox (and other networks and cable channels) make their final cuts and decide which of the approximately seven to ten pilots are "going to series" and will end up on the fall or spring schedule. Typically, a network such as Fox will choose perhaps three to five one-hour shows for its fall or spring schedules.

Just as it is exceedingly difficult to create a series that is picked up to pilot, it is even more difficult to create a show that is “picked up to series.” In fact, the odds against it are enormous – perhaps one in a thousand or less.

46. In July 2009, Warner Brothers introduced *Past Life*, its new television series, to the general public at the Comic-Con convention in California. At or about this time, it was announced that *Past Life* would air in early 2010 on Fox Television. The fact that *Past Life* was picked up to series by one of the major networks provides additional powerful evidence of *Transience*’s distinctive, unique, and compelling storyline.

47. Warner Brothers introduced *Past Life* at the very same time that it introduced *The Final Destination*. Although Perry appeared on the same Comic-Con panels and had to know about the Infringing Work, he did not disclose this information to Mena. Instead, Perry feigned continued interest in *Transience* and, in reliance, Mena continued to keep *Transience* off the market. Perry and Koffeman spent many hours over the course of about a year reviewing and commenting upon various iterations of *Transience*.

48. In January 2010, Mena learned about *Past Life* for the first time when he saw a television commercial advertising the new television program. After viewing trailers and reading whatever information he could find about the program, Mena was confident that *Transience* had been stolen. When first confronted about the theft, Perry professed ignorance of *Past Life*. Shortly thereafter, however, Perry conceded that he was familiar with *Past Life*, but he expressed great confidence that it did not constitute “plagiarism.” Perry also falsely stated that he had *not* provided *Transience* to anyone in 2008, directly contradicting what he had told Mena at the time in 2008.

49. In January 2010, Koffeman – who had been actively providing comments concerning *Transience* – also conceded that he had been aware for months that *Past Life* had been in development. Despite knowing that *Past Life* – which concerned precisely the same subject matter as *Transience* – was in development, neither Perry nor Koffeman ever told Mena this critical fact and instead convinced him to keep *Transience* off the market in the months preceding *Past Life*'s premiere.

50. Moreover, although *Transience* and *Past Life* are strikingly similar, and although Perry and Koffeman had worked on and expressed great interest in *Transience*, they were completely unfazed by the fact that *Transience*'s unique storyline was to be aired before millions of viewers in connection with a television series produced by the same entity that had produced the *Final Destination* films. Although *The Final Destination* was intended to be the final chapter in the franchise, Warner Brothers announced in March 2010 – one month after *Past Life* premiered – that it had decided to produce *Final Destination 5*. Following the premier of *Past Life*, Perry never expressed any sincere interest in *Transience*, despite having many times stated his desire to produce it as one of his next films.

51. Based on the information Mena currently possesses, there is a reasonable possibility that Hudgins obtained access to *Transience*, either directly or indirectly, through Perry, Koffeman, and Practical Pictures. Upon information and belief, Hudgins, in fact, obtained access to *Transience* through Perry, Koffeman, and Practical Pictures.

52. Regardless of how Hudgins obtained access to it, *Past Life* is so strikingly similar to *Transience* that it cannot reasonably be argued that Hudgins independently created it.

Past Life is Transience in Modified Form

53. There are an enormous number of similarities between the works which collectively establish substantial similarity between *Past Life* and protectible expression in *Transience*. Both *Transience* and *Past Life* take a tragic reincarnation story and place it in a crime procedural in which a detective solves a mystery and averts a tragedy.¹ In *Transience*, a young, reincarnated murder victim's terrifying visions of being beaten and murdered provide clues that a detective and a psychiatrist use to solve a murder that took place more than a decade ago. As noted above, what makes the storyline and structure of *Transience* distinctive is that the reincarnated child cannot clearly remember the details from the past life, thereby requiring the detective to solve the crime by piecing together the clues as they emerge. This story structure – using vague “regressions” to a past life that are “triggered” by contemporaneous events – (a) differentiates *Transience* from other reincarnation stories, in which the reincarnated person often remembers details clearly and must convince others that the memories are real, and (b) drives the narrative and allows the detective story to be told. In *Transience*, the reincarnated child's flashbacks of being murdered in a past life ultimately lead to, among other things, the discovery of the killer, an emotional reunion with the deceased child's mother, and the dramatic rescue of a kidnapping victim who miraculously is still alive.

54. In the pilot episode of *Past Life*, Hudgins clearly copied *Transience's* story structure, along with most key aspects of Mena's screenplay. Like *Transience*, *Past Life* is a reincarnation story and a crime procedural, in which a young, reincarnated murder victim's terrifying visions of being beaten and murdered provide clues that a detective and a psychologist

¹ As noted, *Past Life* is substantially similar to each and every version of *Transience*. Except where otherwise noted, all of the identified similarities between the works set forth in the Complaint can be found in the version of *Transience* dated December 28, 2008.

use to solve a murder that occurred more than a decade ago. As in *Transience*, the reincarnated child in *Past Life* cannot clearly remember the details from the past life, thereby requiring the detective to solve the crime by piecing together the clues that emerge from vague “regressions” to a past life that are “triggered” by contemporaneous events. And in *Past Life*, as in *Transience*, the reincarnated child’s flashbacks of being murdered in a past life ultimately lead to, among other things, the discovery of the killer, an emotional reunion with the deceased child’s mother, and the dramatic rescue of a kidnapping victim who miraculously is still alive.

55. The evidence of infringement extends well beyond these rather distinctive points, however, and encompasses most aspects of *Past Life*’s execution, including characters, plot, tone, themes and sequence of events. Virtually every scene, character, and plot point in *Past Life* can readily be traced back to an analogous portion of *Transience*. Some of the similar elements between the works are set forth below in paragraphs 56 to 127. All of the identified elements appear in both works, except where otherwise noted.

Past Life: Similarities to Transience

56. In both works, an opening visual sequence depicts a circle of light on a black screen. At first, the screen is completely black. Then the circle of light appears, growing and dancing as it seems to move closer to the viewer. Eventually, the light encompasses the whole screen, and it feels as if the viewer passes through the light and emerges into the sequence that follows. *Transience* begins: “On Black: A tiny circle of LIGHT appears. It grows as it moves towards us...dancing, spiraling. We pass through the light—.” In *Past Life*, the title sequence begins on a black screen, upon which a small circle of light, shimmering, rotating, and dancing as it moves forward, appears. As the light seems to move toward the viewer, growing larger on the screen, the words “Past Life” appear, and the dancing light eventually grows large enough

that it engulfs the entire screen before the viewer seemingly emerges on the other side as the next sequence begins. The circle of light in each work represents the transference of a dying person's soul and its re-emergence into our world.

57. Both works begin with a sequence in which a child, who we later learn has been reincarnated (the "Reincarnated Child" or the "Child"), has a terrifying vision in which an unidentified person is chased, attacked, beaten, and presumably killed. The unidentified person is also unseen because the sequence is shown from the first-person point of view. The sequence feels frantic as the victim desperately flees through a wooded area, trying to escape from a murderous assailant. In *Transience*, these visions occur during a nightmare, and the unidentified person's desperation is shown by the following scene description: "we run first person, frantic, the trees and brush a blur." In *Past Life*, these visions occur during a school event, and the unidentified person's desperation is shown by the shaking of the camera.

58. In both works, the unidentified person eventually falls, at which point the assailant reaches, attacks, and presumably kills the victim. At this point, we do not know who the victim is. Shortly thereafter, however, we learn that the unidentified person is actually the Reincarnated Child, who is having a frightening flashback – referred to in both works as a "regression" – to a past life in which she was brutally murdered near a body of water. These regressions grow in intensity as the works progress.

59. In each work, we learn later on that the Reincarnated Child is an only child who was born about a month after being murdered in the past life. The last name of the Reincarnated Child is almost identical in each work. In *Transience*, the Child is a girl named Rebecca *Lowell*; in *Past Life*, the Child is a boy named Noah *Powell*. In each work, the Reincarnated Child was a young girl in the past life.

60. In each work, the murdered Child's body was not recovered as of the commencement of the narrative and for at least a decade after her death. In *Transience*, the murderer buried the Reincarnated Child near a river; in *Past Life*, the murderer threw the Reincarnated Child into the ocean.

61. In both works, the initial flashback sequence ends when the Reincarnated Child is drawn out of the regression and back into the present by the voice of the Child's mother (the "Mother"). In *Transience*, the Mother says "I'm here. I'm here." as her troubled daughter emerges from her regression. In *Past Life*, the Mother says "Noah, what's the matter?" as her troubled son emerges from his regression.

62. In each work, the Mother is present for several of the Reincarnated Child's regressions, and we learn early on that the Child has been having these frightening visions for only the last several months. The Mother is attractive, but she looks tired and worn out, as if the Reincarnated Child's episodes have taken a serious toll on both her physical and emotional well-being. The Mother is also at a loss about what to do concerning her troubled Child's visions. The Child's father is a marginal character, described or shown to be either cold or absent.

63. In *Past Life* and the December 1, 2008 version of *Transience* ("*Transience* 12/1/2008"), the scene that immediately follows the Reincarnated Child's initial episode briefly shows the Child in the waiting room of a mental health professional (the "Psychiatrist").² In both works, the brief waiting room scene is immediately followed by a meeting between the Mother and the Psychiatrist, who has believed in reincarnation since before the narrative commenced. We learn that the Mother has taken the Reincarnated Child to other mental health professionals,

² In the December 28, 2008 version of *Transience*, one brief scene follows the first regression and precedes the scene in the waiting room.

but ultimately came to see the Psychiatrist because it became clear that her Child needed better care. The Psychiatrist has close ties to law enforcement. In *Transience*, the Psychiatrist is in private practice and has served as an expert witness in many criminal cases. In *Past Life*, there are several Psychiatrists who work for the Talmadge Center for Behavioral Health, an institution that studies and investigates past life experiences, and the primary Psychiatrist has friends in law enforcement who she contacts to help her when necessary.³

64. In both works, the Psychiatrist explains the theory behind reincarnation: that we are all reincarnated and have untapped memories from prior lives, which generally do not surface. But when something extremely traumatic occurred in a past life that is too awful to forget – such as a violent murder – those painful memories from a prior life can materialize in the next life through regressions. There is good news though: A person who experiences regressions can heal and move on by confronting and addressing the unresolved and painful memories from the prior life.

65. In each work, the Psychiatrist asks whether the Reincarnated Child has been taking certain prescribed medications to treat the frightening memories. It turns out that the Reincarnated Child is not currently taking medication; has taken medication in the past to treat the condition; and did not like taking the prescribed medication. In both works, the Psychiatrist warns that if left untreated, the Child's condition will only get worse. In *Transience*, the Psychiatrist advises the Child's mother, regarding the Child's regressions, "it's going to get

³ The Talmadge Center is a reference to a novel called *The Reincarnationist*, upon which *Past Life* allegedly was based. *The Reincarnationist*, however, is a mystery about a man who comes to believe that he has been reincarnated and previously lived in ancient Rome. *The Reincarnationist* is an historical mystery/adventure that has been compared, and is similar in certain respects, to *The Da Vinci Code*. Except for the shared topic of reincarnation, *The Reincarnationist* is not similar to *Past Life* in the slightest. Indeed, M.J. Rose, author of *The Reincarnationist*, specifically made this very point in a press interview concerning *Past Life*.

worse before it gets better.” In *Past Life*, the Psychiatrist later makes the point to the Child, regarding the regressions, “it’s only going to get worse if we don’t do something about it.”

66. In both works, the Reincarnated Child is tired and distraught and unable to control the regressions. The Child also has trouble remembering details from the past life; the regressions reveal snippets of information that are difficult to fully understand. In both works, the Reincarnated Child’s regressions are shown to have been recorded by the Psychiatrist for the purpose of further examining and analyzing the often cryptic information that emerges during the episodes. In *Transience*, the Psychiatrist made audio tape recordings of his interviews with the Reincarnated Child; in *Past Life*, the Psychiatrist made a video recording of an interview with the Reincarnated Child.

67. The Psychiatrist in each work reaches the same conclusion: the Child is a reincarnated murder victim, and in each work a homicide detective (the “Detective”) is enlisted to decipher the Reincarnated Child’s cryptic clues and solve the mystery of how the Child was murdered.

68. In both works, the Detective is the protagonist. He is a hard-nosed, no-nonsense character who, we learn, is haunted by the tragic loss of his wife. The Detective appears to drink to excess and takes a number of prescription medications. The audience will see him go through a significant transformation as the narrative progresses – from a reincarnation non-believer who goes by “facts and evidence” to a somewhat astonished and hopeful believer. In *Transience*, the Detective is still in the police department and is investigating the recent kidnapping of a young woman; in *Past Life*, we learn that the Detective’s employment with the police department has recently been terminated.

69. Early on in both works, and immediately before he is contacted by the Psychiatrist, we see the Detective at home. Although voicemail has made answering machines virtually obsolete, the Detective in each work has one. The Detective listens to a message but does not return the call. His home is in disarray and alcohol is shown. The Detective is a drinker and is clearly down on his luck. We see a visual image or reference to his wife. In *Transience*, as the Detective is listening to the answering machine, we see a framed photograph of him, smiling with his arm around a beautiful woman. In *Past Life*, the Detective rifles through some mail and pauses at an invitation obviously directed to a husband and wife. In both works, the audience does not know why the Detective's wife is absent, but the circumstances suggest tragedy, and we later learn that she died under circumstances that have left him wracked with guilt and remorse.

70. In both works, the Detective has overslept and is awakened by a phone call from the Psychiatrist. The Psychiatrist, who is not involved in law enforcement, calls to tell the Detective that he/she needs him to come to the Psychiatrist's office as soon as possible to discuss what turns out to be the investigation of the Reincarnated Child's murder in his/her past life.

71. After we see him at home, the very next scene in each work shows the Detective arriving for the first time at the Psychiatrist's office. At the office, the Psychiatrist tells the Detective about the Reincarnated Child's condition, how the episodes began, and how they progressed. The Psychiatrist tells the Detective that the Reincarnated Child described how she/he was murdered, and it becomes clear that the Detective may be able to use clues from the Child's regressions to solve an unsolved murder. The Psychiatrist plays a taped interview for the Detective, who hears (and, in *Past Life*, views) the Child's first-person account of a horrible event from a past life. In both works, the Detective is skeptical, but agrees to pursue the leads

provided by the recordings because it is all he has to go on. In *Transience*, these events unfold over two meetings between the Detective and the Psychiatrist; in *Past Life*, Hudgins condensed the two scenes into one.

72. In both works, the initial scenes between the Psychiatrist and the Detective starkly juxtapose the Psychiatrist's certainty with the Detective's skepticism – the believer and the uninitiated – and highlight a challenge posed by the former to the latter to use his investigation skills to mine the Reincarnated Child's regressions for clues to solve a crime. In *Transience*, the Detective at one point says, "What does it mean?" in connection with the Child's inexplicable ability to speak fluent Spanish. The Psychiatrist pointedly responds: "You're the detective." In *Past Life*, the Detective views a video of the Child and says, "That's it...we're supposed to figure out who killed this kid based on that?" To which one of the Psychiatrists in the Talmadge Center replies: "That's why you were hired detective. That boy's memories [are] his regressions, that is your crime scene, it's time for you to earn your keep."

73. After the Detective in each work learns just how little information he is being given to potentially solve the crime, he specifies the type of additional information that would be helpful, and as an example, the Detective specifies a particular type of evidence that would identify the assailant. In both works, the Psychiatrist tells the Detective that the Reincarnated Child never provided that type of specific information, and the Detective responds by telling the Psychiatrist that the minimal clues from the recording are insufficient to solve the crime.

74. In both works, a pointed challenge is made to the Psychiatrist's belief in reincarnation and regressions. In *Transience*, the Detective asks the Psychiatrist: "You really believe this?"; in *Past Life*, the Reincarnated Child asks the Psychiatrist: "You really believe all this crap?"

75. As Act I unfolds in both works, we see that the Detective also has a personal motive, in addition to a professional one, for participating in or actively pursuing this case, and that motive relates to his deceased wife.

76. In both works, the Reincarnated Child has a second regression that once again shows, with additional detail, the circumstances surrounding the murder that took place during the Child's past life. Once again, it is a harrowing scene, shown from the Child's point of view. The viewer sees a flash of light, then more flashes of what seems to be a waking dream. At least once, the camera reverses to show the Child, who is obviously in the throes of a violent regression. From the victim's point of view, the viewer sees hands coming toward her! There is blood and terror! The victim is looking up through the branches of a tree! The visions come faster and faster! The screen is tinted red, symbolizing blood and death! . . . When the regression finally ends, the Reincarnated Child appears to be dazed and vacant.

77. In both works, one of the initial regressions is triggered by a stressful event that occurs in a school recreation area and that involves an incident that is in at least some respect reminiscent of the traumatic event from the past life. In *Transience*, the second regression is triggered when the Reincarnated Child is thrown down by schoolmates in the playground. She is on the ground and they are above her, and this triggers a regression because her physical position vis-à-vis her assailants is similar to her positioning when she was attacked and murdered in her past life. In *Past Life*, the first regression is triggered by sounds of loud shouting near the school's indoor pool. After performing poorly in a basketball game, the Reincarnated Child hears a swimming coach shouting loudly at some of his schoolmates. Hearing shouts near water apparently triggers a regression because the assailant in the past life shouted at his victim and killed her near water.

78. Because the Reincarnated Child cannot clearly remember what happened in the past life, the Detective and/or the female lead (the “Female Lead”) in each work use an identical strategy in an effort to solve the mystery: they take the Child to specific locations to see if something triggers a memory that might provide clues. In *Transience*, the Female Lead is the Mother. Hudgins took certain characteristics of the Female Lead from *Transience* and transferred them to the female Psychiatrist, who is the Female Lead in *Past Life*. He did so out of necessity to create a character that could remain the lead in an ongoing television series. The roles played by the Female Leads are extremely similar throughout the works.

79. In *Transience*, the Detective, as part of his normal job duties, is investigating the recent abduction of a young girl named Angelina. Using the Reincarnated Child’s clues, the Detective discovers in a wooded area near a river a dead body that he believes to be Angelina, but is actually Carmen Muñiz, who died a decade earlier. We ultimately learn that the Reincarnated Child was Carmen in her past life. The Detective comes to believe that Angelina may have been abducted by the same person who murdered Carmen.

80. After the Detective realizes that the Child may actually have been reincarnated, the Detective and the Female Lead in each work take the Reincarnated Child to a wooded area that they believe may trigger a regression and elicit a memory that might provide a clue about the identity of the killer. In *Transience*, the Reincarnated Child is brought to the location where Carmen had been buried, and this does, in fact, trigger a terrifying memory from her past life. In *Past Life*, the Reincarnated Child is brought to a location where a dog is present, and this does, in fact, trigger a terrifying memory from his past life. The choice of a dog as a trigger in *Past Life* also directly parallels a later scene in *Transience* in which a dog is used to trigger a past-life

memory. In addition, in both works, the Reincarnated Child is brought to the location where she/he was murdered/buried in the past life, and it causes the Child to panic.

81. In *Past Life* and another version of *Transience*, a past-life memory triggered in or near a park induces the Reincarnated Child to suddenly bolt away from the Detective and the Female Lead, both of whom give chase. They lose sight of the Child, who runs into a building. They eventually locate the Child, who is unharmed.

82. In *Past Life*, the Detective and the Female Lead, along with the Mother, locate the Reincarnated Child sitting alone on the floor in a bathroom, crying and despondent. This scene directly parallels a later scene in *Transience* in which the Detective and the Female Lead (who is also the Mother) find the Reincarnated Child sitting alone on the floor in a bathroom, crying and despondent. After the Child is found in the bathroom, both works depict the Detective remaining outside the bathroom, while the Mother goes in alone to console the troubled Child.

83. This same scene from *Transience* is also paralleled at another point in *Past Life*. In both works, the Reincarnated Child seems to force a regression by submerging himself/herself in water, fully clothed and outside the presence of both the Female Lead and the Detective. In *Transience*, the Child triggers a regression by breaking glass, cutting herself, and submerging herself in a shower, fully clothed. In *Past Life*, the Child triggers a regression by jumping off a diving board into his school's indoor pool, fully clothed.

84. The scene from *Past Life* in which the Reincarnated Child induces a regression while at school also parallels the scene in *Transience* in which the Child has a regression in the schoolyard. In both works, as soon as the regression ends, the scene immediately cuts to a hospital office/nurse's office where the Mother rushes to see her Child and find out his/her condition.

85. In both works, the Psychiatrist speaks to the Reincarnated Child while she/he is in the midst of a regression, asks where the Child is, and the Child responds that she/he wanted or wants to help a victim from the past life. In *Transience*, the Psychiatrist asks the Child during a therapy session where she is. The Child responds, referring to the murder victim, in a way that makes clear that she wanted to help her. In *Past Life*, the Psychiatrist speaks to the Child while he is having an episode in the park and says: “Tell me where you are.” The Child responds mysteriously that he wanted to “help her.”

86. Neither work contains an actual romantic relationship between the Detective and the Female Lead. In both works, however, the Detective and the Female Lead are both single and the possibility of a romantic relationship between them is plainly suggested.

87. In both works, events strongly suggest to the Detective that the Reincarnated Child is, in fact, a reincarnated murder victim. Nevertheless, at or about the end of Act I (slightly later in *Transience*), the Detective reasserts his position that he only goes on facts and evidence, expresses disbelief in reincarnation, and suggests that sometimes coincidences happen. In both cases, the Psychiatrist expresses a different view. In *Transience*, the Detective references a situation as a “bizarre coincidence,” to which the Psychiatrist responds: “There are no coincidences.” In *Past Life*, the Detective and the Psychiatrist arrive, seemingly by chance, outside a café that the Detective used to frequent with his now-deceased wife. When the Psychiatrist begins to discuss the slim odds that they would arrive there by chance, the Detective cuts her off and says “It’s just a coincidence.” The Psychiatrist responds with a knowing glance that conveys the message: “There are no coincidences.”

88. In both works, the Mother makes a frantic call reporting that the Reincarnated Child has gone missing. It turns out that the Child is extremely upset and has run off. In both

works, the Detective goes straight to the Child's house to see what has happened. The Detective sees that the Mother is upset and says: "Don't worry, we'll find her" (in *Transience*) and "Don't worry, we're gonna find him" (in *Past Life*).

89. In *Past Life*, the Detective and the Female Lead go to the Reincarnated Child's room, which is covered with dozens of photographs the Child has taken. It is clear that the Child is a gifted photographer. This directly parallels *Transience*, in which the Child is a gifted artist, and the walls of the Child's room are adorned with numerous examples of her work. In both works, the Child's artwork conveys visually what is going on in the Child's mind. In particular, the Child's work depicts places and events that are closely related to the Child's death in the previous life. In both works, it is also clear that the Reincarnated Child is extremely bright and gifted.

90. In both works, the Detective and the Female Lead head out in search of the Reincarnated Child after the Detective uses the Child's most recent communications to determine where the Child is likely to be found. In *Transience*, the Detective asks the Mother to tell him what the last thing was that the Child said. When she responds that the Child keeps asking to "go home," they head toward the house Carmen lived in before she was murdered. In *Past Life*, the Detective looks on the Child's computer while in the Child's house and sees an "instant message" that mentions a nearby park. Upon reading the message, they head toward the referenced park. This scene in *Past Life* is also paralleled by a scene in *Transience* 12/1/2008 in which the Detective examines a suspect's computer while in the suspect's house and uses recent e-mail activity to determine his current location.

91. In both works, the Detective and the Female Lead search for the Reincarnated Child under similar circumstances. It is night. The Detective has a flashlight. They find the

Child alone, on the ground. The Mother, worried sick, exclaims, “Oh my god” when she sees the Child. The Child has been overcome by the regressions. A crisis point has been reached.

92. In both works, the Female Lead asks the Reincarnated Child why she/he chose to come to this particular location. In *Transience*, the Female lead asks: “What brought you out here?” In *Past Life*, the Female Lead asks: “Why did you come here, is there a reason?” The Child in each work is unable to provide a helpful response, and instead answers in a way that demonstrates that she/he is scared and concerned that she/he is either going “crazy” or is perceived to be going crazy. The Reincarnated Child then gives a notable stare. In fact, in both works, the Child was drawn to this location by reference points from the past life. In *Transience*, the Reincarnated Child fell off her bicycle as she tried to return to the house in which she lived in her past life; in *Past Life*, the Reincarnated Child is drawn to a park because of a tower – a beacon – that reminds the Child of a significant tower from the past life.

93. In *Past Life*, the Mother is concerned when she sees the Reincarnated Child on the ground in the park that he might have hurt himself with a sharp object. He is not hurt, however; he is distraught but he simply cut his hair short. This element directly parallels a scene in *Transience* in which the Detective and the Mother find the Child sitting on the floor in the shower. The Mother is concerned that the Reincarnated Child might have hurt herself with a sharp object. She is not hurt, however; she is distraught but she simply has a small cut from a piece of glass.

94. In *Past Life*, the scene in which the Reincarnated Child is found sitting on the ground contains a clue that is critical to solving the mystery of the Child’s murder: on a notepad, the Child writes a cryptic reference to “Maria.” Why has he written this? What is the meaning of this seemingly religious reference? Hudgins “borrowed” the clue name “Maria” from

Transience, in which it is featured prominently. In *Transience*, the murder victim, Carmen Muñiz, was from a Spanish-speaking and devoutly Catholic family, and the screenplay contains numerous references to Maria. In addition, the reference to “Maria” directly parallels a cryptic biblical reference to Jesus in *Transience*. In *Transience*, the Child repeatedly states “Find Jesus” during her recorded regressions. Why has she said this? What is the meaning of this seemingly religious reference? As it turns out, and as is discussed more thoroughly below, these references turn out *not* to be, in a plot twist shared by both works, religious symbols at all; instead, the importance of the Jesus and Maria clues results from the physical presence of these words near the site of the Child’s demise. In *Transience*, “Find Jesus” are words found on a water tower within view of the house in which the Child was held captive; in *Past Life*, “Maria” is the name of the boat from which the Child was thrown. These questions concerning the biblical references puzzle the Detective and remain unanswered until late in Act III of both works.

95. In *Past Life*, the scene in which the Reincarnated Child is found sitting on the ground also contains another important clue: the Child is found gazing at a tower. As discussed below, the Detective eventually learns that the Reincarnated Child had been abducted from her own home, and a tower was visible from the window through which the kidnapper entered the house. This clue parallels a scene in *Transience* in which a tower also provides an important clue. As discussed below, the Detective eventually learns that the Child had been abducted and taken to the kidnapper’s home, and a tower was visible from the window of the room in which the Child was held.

96. Both works have the same tone and overall concept and feel: they are intensely serious and unapologetically dramatic. Nevertheless, both works have one secondary character that is intended to provide some comic relief (the “Co-Worker”). In both works, the Co-Worker

works for the organization that is trying to solve the murder, making periodic appearances that do little to advance the plot. In *Transience*, the Co-Worker works for the police department. In *Past Life*, the Co-Worker works for the Talmadge Center.

97. In each work, the Detective stays up all or most of the night doing research on the case. The Co-Worker is exhausted and wants to go home, but through guilt or other cajoling is convinced by the Detective to stay up doing research as well.

98. In both works, there is an abducted child named *Rebecca*. In *Past Life*, the Detective, through implausible deductive reasoning, determines that the murder the Reincarnated Child remembers must relate to the abduction of two sisters who were kidnapped years ago – a month before the Reincarnated Child was born – in Washington, D.C. This conclusion flowed from, among other things, the Detective’s determination that the tower the Child was staring at in the park symbolized the Washington Monument. The names of the abducted sisters are Rachel and Rebecca. As noted, Rebecca is the Reincarnated Child in *Transience*, and Carmen was also murdered a month before Rebecca was born.

99. At or around the mid-point of *Past Life* and *Transience* 12/1/2008, an individual does an exhaustive analysis of computer records in an effort to either identify a victim or a suspect. In *Transience* 12/1/2008, a colleague of the Detective does an exhaustive analysis that leads the Detective and his colleague to believe that that they may have determined the identity of a murderer. In *Past Life*, the Detective and a colleague do an exhaustive analysis that leads the Detective and his colleague to believe that they may have determined who the Reincarnated Child was in his past life: either Rachel or Rebecca Bell.

100. The determination in *Past Life* that two girls were abducted sets up the possibility that one of the sisters may still be alive. This, in turn, lines up completely the storylines of the

two works. The plot of *Transience* is highly unorthodox because the Detective is simultaneously trying to find out who murdered the Reincarnated Child in her past life many years ago and determine the whereabouts of an abducted young girl who just might still be alive. In *Past Life*, after it is determined that two girls had been abducted, the plot becomes similarly unorthodox; at that point, the Detective is simultaneously trying to find out who murdered the Reincarnated Child in his past life many years ago and determine the whereabouts of a young girl who just might still be alive.

101. In both works, the Detective expresses a very strong and personal desire to find the missing child. This flows from a desire to protect human life that seems to be related to the death of the Detective's wife.

102. In *Past Life* and *Transience* 12/1/2008, the Detective travels to another city to meet with a law enforcement official concerning an old case involving the murder and/or abduction of a young girl. In both, the law enforcement official allows the Detective to review the case file. We see the Detective reviewing the case file, and we also see certain portions of the case file itself. In *Transience* 12/1/2008 and a draft of *Past Life* dated January 5, 2009,⁴ the scene in which the Detective reviews the case file ends with nearly identical dialogue, followed by an immediate cut to the next scene. In *Transience* 12/1/2008, the Detective says, "You have a copy machine I can use?" In the draft of *Past Life*, the Detective says, "Just need a copy and I'm out of your hair."

⁴ The draft of *Past Life* was obtained through online research. Most of the similarities between *Transience* and the pilot episode of *Past Life* are also found in the draft of *Past Life*. In addition, there are a number of other similarities between *Transience* and the *Past Life* draft that are probative of copying.

103. In both works, the Detective looks at a map that depicts places that the victims could have been and marks the map to denote a place of interest brought to the Detective's attention as a result of his investigation into the Reincarnated Child's regressions.

104. In both works, the Mother decides to take the Reincarnated Child to visit his/her family from the past life. In both works, we learn that the abducted child either had been or may have been fighting with at least one of her parents shortly before the abduction. In *Transience*, Carmen had been fighting with her mother; in *Past Life*, it appears that Rachel may have been fighting with her father.

105. In both works, there are characters with the relatively uncommon first name "Carmen," and an Hispanic last name. In *Past Life*, the Detective and the Female Lead first try to get in touch with the family of the abducted sisters by contacting their lawyer. The lawyer's name is Carmen Santos. As discussed, the murder victim in *Transience* is Carmen Muñiz. In addition, the name "Jack" appears in both works. In *Transience*, the Detective's name is Jack. In *Past Life*, there is a dog named Jack that actually sets into motion one of the Child's regressions. Although the name Jack is common, and there is no similarity between the protagonist in *Transience* and a dog, what emerges is that the names of *four* of the most important characters in *Transience* (with a minor variation on one of them) also appear in *Past Life*: the Detective (Jack); the Child (Rebecca); the Mother (Mrs. Lowell/Powell); and the murder victim (Carmen). As noted, both works also share the use of the name "Maria."

106. In each work, the Detective pays a visit to a university professor who is either a murder suspect or the actual murderer. In *Transience*, the Detective visits an art professor who had taught Carmen, a child prodigy as an artist. In *Past Life*, the Detective visits Rebecca and Rachel's father, who is also a professor and who was and apparently remains a murder suspect.

The scene in *Transience* in which the Detective visits the art professor at a school Carmen had attended is directly paralleled by a scene in the draft of *Past Life* in which the Detective visits a school that the Bell girls had attended and speaks to the Principal. In both cases, the Detective visits the school in an effort to obtain clues about an abduction/murder that took place many years ago; a female employee expresses sadness about the loss of the girl/girls; and the Detective does not obtain any useful information about the abduction/murder. In the draft of *Past Life*, the Principal references an art teacher who had worked in the school years ago. In *Transience*, the art professor the Detective visits turns out to be the murderer.

107. In both works, the death of the Detective's wife helps him forge a special bond with the father of the missing child (the "Father"). In *Transience*, the Detective repeatedly shows concern for the suffering of the Father. At one point, the Father asks whether the Detective has any children. Because the Detective replies that he does not, the Father tells him that he cannot possibly understand what the Father is going through. In fact, however, the Detective has great empathy for the Father's suffering because he lost his own wife in a tragic accident. In *Past Life*, the Father of the missing child is resistant to the idea that the Child might be his reincarnated daughter. But after the Detective tells the Father about the death of his wife in a tragic accident and the guilt he feels, the Father relents and agrees to meet the Reincarnated Child.

108. Late in Act II of each work, the Detective describes, in the Female Lead's presence, the heart-wrenching details of his wife's death. In *Transience*, we learn that the Detective's wife died in a car accident; in *Past Life*, we learn that the Detective's wife died in a cliff-diving accident.

109. In both works, the Detective is consumed by overwhelming grief and guilt brought on by his wife's untimely death, and in both cases, it is clear that he hopes that this

investigation will reunite him with his wife, make some amends for his wife's death, or otherwise provide him with a renewed connection to the world.

110. Late in Act II of *Past Life*, the Detective and the Female Lead spend time together and discuss what has occurred. They try to understand what "Maria" means. The Detective discusses how he has seen some amazing things in the last few days. It is implied that the Detective and the Female Lead may be falling for each other. This scene directly parallels several scenes in *Transience* in which the Detective and the Female Lead spend time together; the Detective tries to understand what "Find Jesus" means; the Detective describes how he has made more progress on his case in the days since he met the Reincarnated Child than he had in the preceding several months; and it is implied that the Detective and the Female Lead may be falling for each other.

111. Act II of each work ends with a dramatic and emotional scene in which the Reincarnated Child returns to the house in which she lived in the past life and is reunited with the past-life mother. In both works, the Reincarnated Child first looks around part of the house with interest. Then, the Child sees a painting on the wall that she/he remembers from, and that triggers memories of, the past life. As the Reincarnated Child remains in the house, more memories are triggered and the Child remembers more and more details. In both works, the mother of the deceased child collapses onto a bed/chair from the emotion of this encounter and a relative reaches over to comfort her. In both works, someone inside the house at the time of the reunion grows skeptical and asks the Reincarnated Child to leave.

112. In both works, the Reincarnated Child says something during the visit to the house in which she lived in the past life that only the mother's actual daughter would know. Upon hearing it, the mother calls out, realizing that her reincarnated daughter is there, sobs, and

apologizes to her long lost child. In *Transience*, the mother calls out "...Jesus bring you back... I'm sorry. Forgive me." In *Past Life*, the mother calls out the name of her deceased daughter and says "Is that you? I'm so sorry."

113. In both works, the reunion at the end of Act II between the Reincarnated Child and her mother from her prior life is extremely touching and emotional. Notably, however, there are no significant interactions between these characters for the remainder of the works, despite the obvious bond between them.

114. At the conclusion of Act II, several important issues in both works have been resolved. In both works, there is no longer any remaining doubt that the Reincarnated Child has, indeed, been reincarnated. The Detective, who had been skeptical at the end of Act I, is now a believer, and the Reincarnated Child has now been reunited with his/her mother from a previous life.

115. Nevertheless, in addition to the ongoing effort to find the murderer, additional important questions remain, namely: What has become of the missing child? Is she alive or dead? What is the significance of the seemingly biblical reference?

116. In both works, certain evidence leads the Detective to believe that the murderer has been located. In *Transience*, a fellow officer reads to the Detective from a printout containing a suspect's criminal history, and they determine that this must be their man. In *Past Life*, an FBI agent reads to the Detective from a printout containing a suspect's criminal history, and determines that this must be their man.

117. In both works, however, this is not their man, and we know this, in part, because the Reincarnated Child has no reaction when she/he sees the suspect face to face. In *Transience*, the suspect passes the Reincarnated Child, and she has no reaction, suggesting that this is not the

murderer. In *Past Life*, the Reincarnated Child is brought to the suspect and the Child has no reaction; he says that this is not the murderer and we know that he is correct. In both works, the Detective interrogates the suspect.

118. In both works, the story speeds toward its conclusion after the mystery of the biblical reference is finally solved. As it turns out, the biblical reference is neither a prayer nor a person; instead, it is a visual clue – it is one of the last things that the Reincarnated Child saw before being murdered. In *Transience*, the Detective ultimately realizes that the words “Find Jesus” are written on the side of a water tower visible from the house in which the Reincarnated Child’s kidnapper kept her before he murdered her, and that the words “Fruits of Our Labor” (another of the Child’s cryptic references) are found on a fruit cart that is also within view of the house. In *Past Life*, the Detective and the Psychiatrist ultimately realize that the word “Maria” is written on the back of the boat from which the Reincarnated Child was thrown to her death.

119. In both works, the characters go through a process by which they come to realize the significance of the seemingly biblical reference – that it is actually something the Reincarnated Child saw. The process involves a series of visual images which the character sees in succession, and which the viewer also sees in succession because they are depicted from the character’s point of view. As each image passes, the character (and the viewer) begins to realize the significance of the reference, until finally a conclusion has been reached! A big conclusion! The solution to the case! In *Transience*, the Detective, while driving, suddenly passes and notices a water tower with the words “Find Jesus” on it. He puts the car in reverse. Then, a second visual clue: he sees a church, and the Reincarnated Child mentioned hearing church bells during her recorded sessions with the Psychiatrist. Then, a third visual clue: a fruit stand, which leads the Detective to slam on the brakes. Finally, the viewer sees what the Detective sees on the

fruit stand: it says “The Fruits of Our Labors,” another reference from the Reincarnated Child’s recorded regressions. The Detective now realizes that “Find Jesus” was a visual clue, and all he has to do is find the nearby house where the Child had been held captive. In *Past Life*, the Detective and the Psychiatrist are at a marina and they realize that the Child had been thrown off a boat to drown. The Psychiatrist suddenly notices a boat with a woman’s name written on its stern. Then, a second visual clue: another boat with a woman’s name on it. Then, a third clue: another boat. Finally, after a fourth boat is shown with a woman’s name on the stern, the Psychiatrist realizes that “Maria” was a visual clue, and all they have to do is find the boat named “Maria” from which the Child was thrown.

120. In both works, as noted, a *tower* visible through a window of a house is another important clue. In *Transience*, as discussed, the Reincarnated Child saw the tower with the words “Find Jesus” on it through the window of her abductor’s house. In *Past Life*, the Reincarnated Child saw a tower through the window of her own house just before she was abducted.

121. In both works, a doll from the Reincarnated Child’s past life has an important connection to the murder. In *Transience*, the Psychiatrist asks the Reincarnated Child to recall her favorite doll from childhood, and that memory is used as part of the process of conjuring up the circumstances of her murder. In *Past Life*, a doll – presumably the Reincarnated Child’s favorite doll in the past life – is thrown into the water with her as she drowns.

122. The revelation of the visual clue eventually leads law enforcement to the home of the real killer. In *Transience*, it turns out to be an art professor who knew Carmen from art school; in *Past Life*, it is an unknown vagrant, who had apparently seen the Child and her sister while they were attending summer school (for sailing). In both cases, law enforcement enters the

house, kicks open a door to a dark room, and, miracle of miracles, finds the missing girl is there and she's alive. In *Transience*, the screenplay reads, "She's ALIVE!" In *Past Life*, a law officer says, "She's Alive!"

123. In *Past Life*, the rescued child is the Reincarnated Child's long lost sister, and the two of them are reunited after so many years. This scene directly parallels a scene earlier in *Transience* in which the Reincarnated Child is reunited with her long lost brother after so many years.

124. In both works, the rescued child is reunited with at least one of her elated parents, who thought for sure that she was dead. It is a touching "happy" ending to the investigation.

125. In both works, it is suggested that the soul of the deceased girl returned for a reason and perhaps more than one reason. In both works, there is reason to believe that the deceased girl returned as the Reincarnated Child to help capture the murderer, save the missing child, and make amends with or otherwise assist a grieving parent. Upon accomplishing these goals, the soul of the deceased girl can finally rest in peace. And, by using the regressions to confront the awful details of the past life, the Reincarnated Child is now healed and can finally go on with his/her life.

126. Following the conclusion of the investigation, both works contain an optimistic, hopeful epilogue that focuses on the Detective and contains at least a suggestion that, at some point or in some way, he will be reunited with his deceased wife. In both cases, the story concludes immediately after the Detective goes through a rebirth or reawakening. In *Transience*, the Detective himself dies, but is literally reborn as the child of his estranged brother, who had been driving the car in the accident that killed the Detective's wife. There is a sense that a new and better day has dawned and that, despite his death, the Detective has reconnected to the world.

In *Past Life*, there is also a sense that the Detective has been reborn, emerging from the depression brought on by his wife's death, and reconnecting with his deceased wife. It is, literally, the dawn of a new day; hopeful music plays as the Detective and the Psychiatrist sit on the beach; and the Psychiatrist says, "The greater the doubt, the greater the awakening."

127. In the final sequence of each work, a peaceful scene, there is a bright white light, the camera moves toward the light, and it feels as if the viewer is floating over a field of grass toward a tranquil body of water.

Hudgins's Careless, Ill-Conceived Changes to *Transience*

128. In writing and revising *Transience* over the course of several years, Mena went to great lengths to carefully craft a coherent, plausible, and dramatic narrative – a difficult task because of the unusual subject matter. In contrast, just weeks after Perry received copies of *Transience*, Hudgins hastily "created" *Past Life*, converting and condensing Mena's full-length screenplay into a one-hour pilot for a television series. In doing so, Hudgins was exceedingly sloppy and showed little understanding or appreciation of the nuances of the work he pilfered.

129. Before explicitly mentioning reincarnation in *Transience*, Mena effectively set up the premise by methodically providing the reader (and the Detective) with facts and evidence to plausibly support the conclusion that the Reincarnated Child was, in fact, reincarnated. For example, the Detective listens to a recording in which the horrified Child vividly describes a murder she must have witnessed; the Detective then uses the Child's statements to locate the body of a murder victim, Carmen Muñiz; the Detective then learns that Carmen died before the Child was even born; during regressions, the Child inexplicably speaks fluent Spanish (Carmen spoke Spanish); the Child has artistic skills far beyond any child her age (Carmen was a gifted artist); and the Child's regressions began shortly after she moved to the town where Carmen had

lived. In both earlier and later drafts of *Transience*, Mena provided other pertinent clues, such as the Child's complaining that a statue is no longer in front of Carmen's church, a statue that had been removed years before the Child could have been there; and the Child's sudden sprint across a park and into a community center to see what turns out to be a painting that Carmen had made before her death.

130. By contrast, Hudgins in *Past Life* made no effort at all to plausibly set up the notion of reincarnation. Instead, the Reincarnated Child simply blurts out during the first sequence that he just saw the man who killed him in a prior life. In addition, although Hudgins purports to provide "facts and evidence" that ultimately convince the Detective that the Child has been reincarnated, no such plausible evidence is provided until the end of Act II (when the Child returns to his home from the past life), and the "evidence" supposedly establishing that the Child was reincarnated is incoherent and, at times, ridiculous. In *Past Life*, the Child's regressions are triggered by, among other things, shouting, the sight of water, and barking dogs. But nothing happens in the scenes involving these triggers that would lead anyone to conclude that the Child had actually been reincarnated. The *only* supposed evidence of reincarnation referenced in these scenes is that, after a barking dog triggers a regression, the Child, who is a boy, runs into a ladies rest room and twirls his hair in an arguably feminine way. Although this is presented as proof positive that the Child was actually a girl in his past life, there is no reason at all for the viewer to accept that this is so.

131. In addition, the triggers in *Past Life* do not make sense. Whereas in *Transience* the triggers directly relate to Carmen's life – for example, the Child panics when she sees *Carmen's* cross and when she passes the wooded area where Carmen was *actually* killed – the *Past Life* regressions throughout Acts I and II are triggered by *general* stimuli, such as the sound

of a dog barking (not a specific dog); the sight of a tower (not a specific tower); and the sight of water in a pool (not a specific body of water). If these general stimuli trigger regressions, one would expect that the Child would have been having frequent regressions his entire life, yet no explanation is given as to why the regressions have only recently begun. In *Transience*, by contrast, Mena very plausibly explains why Rebecca's regressions have only recently begun: she only recently moved to the town in which Carmen had lived and was murdered.

132. In *Transience*, the Detective performs actual detective work that credibly moves the narrative forward. After the Reincarnated Child provides information about what she saw and heard while the murder was taking place – a burnt-out tree, a train whistle, and a river – the Detective uses this information to find Carmen's skeleton, buried in the woods years ago. In *Past Life*, by contrast, the primary detective work that the Detective performs is nonsense. The Detective hears the Reincarnated Child say that he wanted "to help her," and he sees the Child staring at a radio tower. Based on these facts, the Detective somehow reaches the absurd conclusion that the Child had a sister; that the red and white, metallic tower symbolizes the Washington Monument, a grey obelisk located hundreds of miles from the Child's Connecticut home; and that the Child must be one of the Bell sisters, who were abducted from their home in Washington D.C. fourteen years earlier.

133. In *Transience*, an important and resonant part of the story concerns the Detective's grief over the loss of his wife, who died following a car accident after a night of drinking with the Detective, the Detective's brother, and the wife of the Detective's brother. The Detective's brother was driving the car. Although the Detective refused to communicate with his brother for years after the accident, it is clear that the Detective feels personally responsible for her death because he returned to work to deal with a case and was not there to drive home with

his wife. In *Past Life*, the Detective describes his wife's death in a way that is also supposed to be emotional and moving. He says that he egged his wife on to jump off a cliff into water; that she chose to dive instead of jumping; and that she died when her head struck a rock beneath the surface of the water. The story comes across as absurd, not touching in the slightest.

134. Perhaps the most glaring flaw in *Past Life* is that it seems to provide two inconsistent descriptions of the circumstances surrounding the Reincarnated Child's death in the past life. Both works provide nearly identical, initial descriptions of the murder: the Child frantically flees through the woods, pursued by a murderous assailant; she falls; her pursuer reaches, attacks, and presumably kills her. In *Past Life*, several factors confirm that the Child was murdered in the woods. First, at the end of the initial regression sequence, the Reincarnated Child says that he saw the man who killed him; in context, the viewer has every reason to believe that the preceding sequence, which took place in the woods, depicted the murder itself. Second, the victim was a young girl, and she is shown being struck in the head with a bat by a powerful man; it seems inconceivable that she could have lived through such a blow. Third, no indication is given in *Past Life* to suggest that she survived this vicious blow. Nevertheless, we learn later on in *Past Life* that the Reincarnated Child actually died in the past life after being thrown off of a boat, with her hands outstretched in desperation as she sunk into the ocean. This sequence flatly contradicts the earlier scenes depicting a violent beating and murder in the woods.

135. These and many other flaws in *Past Life* are attributable, in part, to the speed and carelessness with which Hudgins copied *Transience* and provide further evidence of copying. Under the Copyright Act, undue speed in the creation of a work can constitute evidence that a defendant copied another's work. Rather than putting in the time and effort necessary to independently create a quality work of his own, Hudgins instead rushed to beat Mena to market

and hurriedly transformed *Transience* into the pilot for *Past Life*. Because Mena's unique and distinctive story has now been viewed in modified form by millions of viewers, upon *Past Life's* airing it became likely that Mena would never be able to obtain the financing necessary to produce *Transience* even if *Past Life* had been well executed. The story has already been told.

136. But *Past Life* was not well executed. Although the storyline – Mena's storyline – was unique and compelling, Hudgins transformed *Transience* into a series that was nearly universally panned and was quickly cancelled. Hudgins created a far inferior derivative work, which has greatly diminished *Transience's* value. Thus, whatever remote possibility might otherwise have existed for Mena to produce *Transience* as a feature film following *Past Life's* premiere was effectively destroyed when *Past Life* was cancelled. As a result, years of hard work and dedication have gone to waste.

FIRST CLAIM FOR RELIEF
**(Copyright Infringement Against Fox, Hudgins, HPI, Pitt,
LPP, Warner Brothers, Bonanza, Luse, Swanson, and Sarafian)**

137. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 136 above as if fully set forth herein.

138. *Transience* is an original work of authorship and copyrightable subject matter under the laws of the United States.

139. At all times relevant hereto, Plaintiff has been and still is the owner of all copyright rights in and to *Transience*, and has never assigned, licensed or otherwise transferred his copyright rights to any of the Defendants or dedicated them to the public.

140. Defendant Hudgins had access to, and copied from, *Transience* when he wrote the Infringing Work.

141. The Infringing Work is substantially similar to protectible expression contained in *Transience*.

142. The Infringing Work is an unauthorized and unlawful derivative work

143. Upon information and belief, each of the Defendants has written, produced, directed, distributed, broadcast, and/or otherwise prepared or exploited the Infringing Work.

144. Hudgins and, upon information and belief, other Defendants, willfully and intentionally copied *Transience* in connection with the creation of the Infringing Work.

145. Plaintiff never authorized, licensed, permitted or ratified Defendants' conduct alleged above.

146. By reason of the foregoing, Defendants have infringed Plaintiff's copyright in and to *Transience* in violation of the Copyright Act.

SECOND CLAIM FOR RELIEF
(Contributory Copyright Infringement Against Perry, Practical Pictures and Koffeman)

147. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 146 as if fully set forth herein.

148. Upon information and belief, Defendants Perry, Practical Pictures, and Koffeman provided one or more versions of *Transience* to Defendant Hudgins, either directly or indirectly, with the intent and/or knowledge that it would result in the infringement of Plaintiff's copyright in *Transience*.

149. Upon information and belief, Perry, Practical Pictures, and Koffeman had actual and/or constructive knowledge of the infringement of Plaintiff's copyright in *Transience* for more than a year before *Past Life* premiered on Fox Television.

150. Upon information and belief, Perry, Practical Pictures, and Koffeman withheld from Plaintiff their knowledge of the infringement of Plaintiff's copyright in *Transience*, and feigned an ongoing interest in producing *Transience* as a feature film, in order to ensure that Defendants were able to produce and broadcast the Infringing Work before *Transience* was produced.

151. Upon information and belief, Perry's, Practical Pictures' and Koffeman's willful and intentional conduct induced, caused, and/or materially contributed to the infringement of Plaintiff's copyright in *Transience*.

152. Plaintiff never authorized, licensed, permitted or ratified Perry's, Practical Pictures', or Koffeman's conduct alleged above.

153. By reason of the foregoing, Perry, Practical Pictures, and Koffeman are liable for contributory infringement of Plaintiff's copyright in and to *Transience* in violation of the Copyright Act.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff Stevan Mena demands the following relief:

(a) An order declaring that Defendants Fox, Hudgins, HPI, Pitt, LPP, Warner Brothers, Bonanza, Luse, Swanson, and Sarafian are liable for infringement of Mena's copyright in and to *Transience*;

(b) An order declaring that Defendants Perry, Practical Pictures, and Koffeman are liable for contributory infringement of Plaintiff's copyright in and to *Transience*;

(c) An order declaring that Defendants willfully infringed Plaintiff's copyright in and to *Transience*;

(d) Under 17 U.S.C. § 504, monetary damages for copyright infringement, including: (i) actual damages arising from Plaintiff's being deprived of the ability to produce and direct the motion picture *Transience*, or otherwise exploit the screenplay of *Transience*; and (ii) disgorgement of all of Defendants' profits that are attributable or reasonably related to their infringement of Plaintiff's copyright in and to *Transience*, including, but not limited to: profits from each and every episode of *Past Life*; and profits Defendant Hudgins has earned from a television development deal that he entered into following the cancellation of *Past Life*;

(e) Under 17 U.S.C. § 505, an award of attorneys' fees, interest and costs; and

(f) Such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 5, 2011

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