

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CAPITOL RECORDS, LLC,

12-CV-00095 (RJS)

Plaintiff,

v.

REDIGI INC., JOHN OSSENMACHER, and
LARRY RUDOLPH a/k/a LAWRENCE S.
ROGEL,

Defendants.

**INDIVIDUAL DEFENDANTS'
ANSWER TO FIRST AMENDED COMPLAINT**

Mr. John Ossenmacher and Prof. Larry Rudolph (the “Individual Defendants”), by their attorneys HAUSFELD LLP, for its Answer to the First Amended Complaint (“Complaint”) of Plaintiff Capitol Records, LLC (“Plaintiff”) upon knowledge as to themselves and their own actions and upon information and belief as to all other matters alleged below answers as follows.

1. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. Individual Defendants deny the truth of the allegations contained in paragraph 2 of the Complaint, except admit that ReDigi owns and operates the “ReDigi” music service which is the first online marketplace for used digital music files and that one of the functionalities of ReDigi 1.0 was that users could upload sound recordings by migrating them to their ReDigi Cloud Locker and offer them for sale.

3. Individual Defendants deny the truth of the allegations contained in paragraph 3 of the Complaint, except admit that ReDigi has compared its services to among other things a used record store.

4. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

5. Individual Defendants deny the truth of the allegations contained in paragraph 5 of the Complaint.

6. Individual Defendants deny the truth of the allegations contained in paragraph 6 of the Complaint.

7. Individual Defendants deny the truth of the allegations contained in paragraph 7 of the Complaint.

JURISDICTION AND VENUE

8. Paragraph 8 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, except deny the truth of the allegations that either ReDigi or the Individual Defendants transact business in New York State, that either ReDigi or the Individual Defendants committed tortious acts within or outside New York state and that either ReDigi or the Individual Defendants caused injury in New York.

11. Paragraph 11 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

FACTS

12. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, except deny the truth of the allegations that Plaintiff's sound recordings have been illegally reproduced and distributed by or for users of the ReDigi 1.0 service.

18. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, except deny the truth of the allegation that any of the pre-1972 recordings were illegally reproduced and distributed by or for users of ReDigi's 1.0 service.

19. Individual Defendants deny the truth of the allegations contained in paragraph 19

of the Complaint, except admit that ReDigi owns and operates the ReDigi website and service located at www.redigi.com, that the website launched in 2011, and that ReDigi's website contained statements concerning its services and refer the Court to its website as the best evidence of the statements made thereon and the legal import thereof.

20. Individual Defendants deny the truth of the allegations contained in paragraph 20 of the Complaint, except admit that the ReDigi website contained statements concerning ReDigi's ability to facilitate the transfer of a digital music file from one user to another without copying or file sharing and refer the Court to the website as the best evidence of the statements made thereon and the legal import thereof.

21. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, except admit that ReDigi issued a press release prior to its launch and refer the Court to said press release as the best evidence of the statements made therein and the legal import thereof.

22. Individual Defendants deny the truth of the allegations contained in paragraph 22 of the Complaint.

23. Individual Defendants deny the truth of the allegations contained in paragraph 23 of the Complaint, except admit that ReDigi issued a press release prior to its launch and refer the Court to said press release as the best evidence of the statements made therein and the legal import thereof.

24. Individual Defendants deny the truth of the allegations contained in paragraph 24 of the Complaint, except admit that ReDigi's website had a tutorial video and refer the Court to said tutorial video as the best evidence of the statements made therein and the legal import thereof.

25. Individual Defendants deny the truth of the allegations contained in paragraph 25

of the Complaint except admit that ReDigi's website had a tutorial video and refer the Court to said tutorial video as the best evidence of the statements made therein and the legal import thereof.

26. Individual Defendants deny the truth of the allegations contained in paragraph 26 of the Complaint, except admit that ReDigi users could earn "ReDigi coupons" and credits which could be applied to the purchase of music files and that ReDigi's website had a tutorial video and refer the Court to said tutorial video as the best evidence of the statements made therein and the legal import thereof.

27. Individual Defendants deny the truth of the allegations contained in paragraph 27 of the Complaint, except admit that the ReDigi website offered contests and refer the Court to the website as the best evidence of the statements made thereon and the legal import thereof.

28. Individual Defendants deny the truth of the allegations contained in paragraph 28 of the Complaint, except admit that ReDigi was mentioned in a New York Times article dated November 14, 2011, and that ReDigi earns a transaction fee from the sale of music by one user to another through the ReDigi website.

29. Individual Defendants deny the truth of the allegations contained in paragraph 29 of the Complaint.

30. Individual Defendants deny the truth of the allegations contained in paragraph 30 of the Complaint.

31. Individual Defendants deny the truth of the allegations contained in paragraph 31 of the Complaint, except admit that ReDigi's proprietary "Music Manager" software including its "Verification Engine" analyzed each file that users wished to upload through ReDigi 1.0 to ensure that the track was legally downloaded by the user in the first instance and as such would have been eligible for sale if a user chose to offer such track for sale.

32. Paragraph 32 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 32.

33. Paragraph 33 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the truth of the allegations contained in paragraph 33 of the Complaint, except admit that ReDigi's website made statements concerning the verification process, rules concerning upload of music files to the user's ReDigi Cloud Locker, and the requirements that a user may not possess copies of a file offered for sale of any device and refer the Court to the website as the best evidence of the statements made thereon and the legal import thereof.

34. Paragraph 34 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 34 except admit that the First Sale Doctrine, codified at 17 U.S.C. § 109, is a defense to this action and refer the Court to ReDigi's website as the best evidence of the statements made thereon and the legal import thereof.

35. Paragraph 35 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 35 and otherwise refer the Court to the Copyright Act for the definitions of "copy" and "phonorecord" as the best evidence of those definitions and the legal import thereof.

36. Paragraph 36 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 36.

37. Paragraph 37 of the Complaint states legal conclusions to which no answer is

required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 37.

38. Individual Defendants deny the truth of the allegations contained in paragraph 38 of the Complaint.

39. Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint, except admit that RIAA sent ReDigi a letter in November 2011 and respectfully refer the Court to said letter as the best evidence of the contents therein and the legal import thereof.

40. Individual Defendants deny the truth of the allegations contained in paragraph 40 of the Complaint, except admit that the Court issued a summary judgment ruling in this case on March 30, 2013 and that shortly thereafter, ReDigi disabled certain parts of its 1.0 technology and refer the Court to such ruling as the best evidence of the contents of the ruling and the legal import thereof.

41. Paragraph 41 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 41.

FIRST CAUSE OF ACTION
(Copyright Infringement – 17 U.S.C. §§ 101, *et seq.*)

42. Individual Defendants repeat and reallege each and every answer in the foregoing paragraphs as though fully set forth herein.

43. Paragraph 43 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 43.

44. Paragraph 44 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the

allegations in paragraph 44.

45. Paragraph 45 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 45.

46. Paragraph 46 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 46.

47. Paragraph 47 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 47.

48. Paragraph 48 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 48.

SECOND CAUSE OF ACTION
(Inducement of Copyright Infringement)

49. Individual Defendants repeat and reallege each and every answer in the foregoing paragraphs as though fully set forth herein.

50. Paragraph 50 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 51.

52. Paragraph 52 of the Complaint states legal conclusions to which no answer is

required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 52.

53. Paragraph 53 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 53.

54. Paragraph 54 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 54.

55. Paragraph 55 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 55.

56. Paragraph 56 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 56.

57. Paragraph 57 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 57.

58. Paragraph 58 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 58.

THIRD CAUSE OF ACTION
(Contributory Copyright Infringement)

59. Individual Defendants repeat and reallege each and every answer in the foregoing paragraphs as though fully set forth herein.

60. Paragraph 60 of the Complaint states legal conclusions to which no answer is

required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

61. Paragraph 61 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 61.

62. Paragraph 62 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 62.

63. Paragraph 63 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 63.

64. Paragraph 64 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 64.

65. Paragraph 65 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 65.

66. Paragraph 66 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 66.

67. Paragraph 67 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 67.

68. Paragraph 68 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 68.

FOURTH CAUSE OF ACTION
(Vicarious Copyright Infringement)

69. Individual Defendants repeat and reallege each and every answer in the foregoing paragraphs as though fully set forth herein.

70. Paragraph 70 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint.

71. Paragraph 71 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 71, except admit that the ReDigi website has a termination policy for users who violate its Terms of Service and refer the Court to such policy as the best evidence of the contents therein and the legal import thereof.

72. Paragraph 72 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 72.

73. Paragraph 73 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 73, except admit that ReDigi earns a transaction fee from the sale of music by one user to another through the ReDigi website.

74. Paragraph 74 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the

allegations in paragraph 74.

75. Paragraph 75 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 75.

76. Paragraph 76 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 76.

77. Paragraph 77 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 77.

78. Paragraph 78 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 78.

79. Paragraph 79 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 79.

FIFTH CAUSE OF ACTION
(Common Law Copyright Infringement)

80. Individual Defendants repeat and reallege each and every answer in the foregoing paragraphs as though fully set forth herein.

81. Paragraph 81 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 81.

82. Paragraph 82 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the

allegations in paragraph 82 except deny knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's actions.

83. Paragraph 83 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 83.

84. Paragraph 84 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 84.

85. Paragraph 85 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 85.

86. Paragraph 86 of the Complaint states legal conclusions to which no answer is required, and to the extent that an answer may be required, Individual Defendants deny the allegations in paragraph 86.

JURY DEMAND

Individual Defendants hereby demand a trial by jury on all issues triable of right by a jury.

AFFIRMATIVE DEFENSES

Individual Defendants set forth their separate and distinct affirmative defenses to the claims set forth in Plaintiff's Complaint. By listing any matter as an affirmative defense, Individual Defendants do not assume the burden of proving any matter upon which Plaintiff bears the burden of proof under applicable law.

FIRST AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's Complaint fails to state a claim

upon which relief can be granted as to each and every alleged cause of action therein.

SECOND AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the doctrine of fair use.

THIRD AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because Plaintiff has failed to mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's damages, if any, are limited by ReDigi and the Individual Defendants' innocent intent.

FIFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the fact that neither ReDigi nor the Individual Defendants engaged in volitional conduct, which is a required element of direct infringement.

NINTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the fact that Plaintiff does not own a valid copyright in one or more of the works it seeks to recover damages upon.

TENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's damages, if any, are limited on the grounds that a statutory damages award would be wholly disproportionate to any alleged amount of actual harm to Plaintiff, and as such, would be punitive and unconstitutional.

ELEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the first sale doctrine codified at 17 U.S.C. § 109.

TWELFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the common law doctrine of exhaustion and/or principles of exhaustion.

THIRTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, to the extent Plaintiff seeks attorneys' fees or statutory damages in this action, such remedies are not available pursuant to, *inter alia*, 17 U.S.C. § 412.

FOURTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the Court's lack of personal jurisdiction over ReDigi and/or the Individual Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part based upon the doctrine of substantial-non-infringing use.

SIXTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part as ReDigi's music storage service and used music marketplace do not infringe on copyright based on the essential step defense of 17 U.S.C. § 117.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part as tracks merely offered for sale through the ReDigi marketplace are not "distributions" within the meaning of 17 U.S.C. § 106(3).

EIGHTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part on the grounds that neither ReDigi nor the Individual Defendants did not intentionally induce or encourage direct infringement, which is a required element of contributory infringement.

NINETEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims, including but not limited to its claims of vicarious, contributory, and inducement of copyright infringement, are barred in whole or in part by ReDigi and the Individual Defendants' innocent intent.

TWENTIETH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because ReDigi is protected by one or more of the DMCA Safe Harbors in 17 U.S.C. § 512.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because uploads to ReDigi's Cloud Locker and/or downloads to a user's personal computer are protected by the doctrine of fair use and/or are uses permitted by license and/or iTunes Terms

of Service.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, the Complaint, and each and every alleged cause of action therein are barred, in whole or in part, by the equitable doctrine of laches.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because Plaintiff consented or acquiesced to the conduct about which it now complains.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for intentional inducement is barred in whole because inducement to infringe is not a distinct cause of action in the Second Circuit but instead a theory of contributory infringement.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for intentional inducement is barred in whole or in part because Individual Defendants neither encouraged copyright infringement nor intended to encourage copyright infringement.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for contributory infringement barred in whole or in part because Individual Defendants lacked actual knowledge of direct infringement.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for contributory infringement barred in whole or in part because Individual Defendants did not derive a substantial benefit from the allegedly infringing actions of the alleged primary infringers.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for contributory infringement barred in whole or in part because Individual Defendants did not act with scienter.

TWENTY-NINTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for vicarious infringement barred in whole or in part because Individual Defendants did not exercise the requisite level of control over the allegedly infringing conduct.

THIRTIETH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claim for vicarious infringement barred in whole or in part because Individual Defendants did not have an obvious and direct infringement in the allegedly infringing conduct.

THIRTY-FIRST AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because Plaintiff's lack ownership of some or all of the allegedly infringed works.

THIRTY-SECOND AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because some or all of the allegedly infringed works have not been registered in accordance with the Copyright Act.

THIRTY-THIRD AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims for statutory a common law infringement are barred in whole or in part because Individual Defendants did not engage in any conduct that directly infringed on Plaintiff's allegedly copyrighted works.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in

part because there was no conduct that directly infringed on Plaintiff's allegedly copyrighted works.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part due to an express or an implied license.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part because Plaintiff's requested relief would constitute a prior restraint in violation of the First Amendment of the United States Constitution.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Plaintiff's claims are barred in whole or in part by the doctrine of copyright misuse.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Individual Defendants state that they do not presently know all facts concerning the Plaintiff's conduct and its claims sufficient to state all affirmative defenses at this time. Individual Defendants will seek leave of this Court to amend this Answer should it later discover facts demonstrating the existence of additional affirmative defenses.

WHEREFORE, Individual Defendants demand judgment as follows:

- A. That Plaintiff takes nothing by this action;
- B. That Plaintiff's Complaint be dismissed in its entirety with prejudice and that judgment be entered against Plaintiff and in favor of the Individual Defendants on each cause of action;
- C. That Individual Defendants be awarded costs, including reasonable attorneys'

fees, from Plaintiff pursuant to 17 U.S.C. § 505; and

D. That this Court award Individual Defendants such other and further relief as the Court deems just and proper.

Dated: September 16, 2014

/s/ Seth R. Gassman

Seth R. Gassman (SG-8116)
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