

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ANNE PEARSE-HOCKER,

Plaintiff,

vs.

FIRELIGHT MEDIA, INC.,

Defendant.

Case No. 1:10-CV-458 (CMH/TRJ)

DEFENDANT'S ANSWER

Defendant Firelight Media, Inc. (“Firelight” or “Defendant”), by and through its undersigned counsel, hereby answers the Complaint and Jury Demand (“Complaint”) of Plaintiff Anne Pearse-Hocker (“Pearse” or “Plaintiff”) as follows, using the same headings and paragraph numbering employed by Plaintiff:

NATURE OF THE ACTION

1. Defendant admits that Plaintiff purports to bring an action for injunctive relief and damages against Firelight for copyright infringement and contributory copyright infringement. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegation that Pearse is the lawful copyright holder of the referenced photographs, and therefore denies it. Defendant denies the remainder of the allegations contained in Paragraph 1 of the Complaint.

THE PARTIES

2. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and therefore denies them.

3. Defendant denies that it produces films for financial gain and profit. Defendant admits the remainder of the allegations contained in Paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. The allegations contained in Paragraph 4 of the Complaint are conclusions of law such that no response is required. To the extent that a response is deemed to be required, Defendant admits that the Court has subject matter jurisdiction over this action, but denies the specific allegations contained in Paragraph 4 of the Complaint.

5. The allegations contained in Paragraph 5 of the Complaint are conclusions of law such that no response is required. To the extent that a response is deemed to be required, Defendant admits that the Court has personal jurisdiction over Firelight, but denies the specific allegations contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint are conclusions of law such that no response is required. To the extent that a response is deemed to be required, Defendant admits the allegations contained in Paragraph 6 of the Complaint.

FACTUAL ALLEGATIONS

7. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint, and therefore denies them.

8. Defendant admits the allegations contained in Paragraph 8 of the Complaint.

9. Defendant admits the allegations contained in Paragraph 9 of the Complaint.

10. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and therefore denies them.

11. Defendants admit that during the siege, one U.S. Marshal was shot and partially paralyzed and two Native Americans were shot and killed. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 11 of the Complaint, and therefore denies them.

12. Defendants admit that a Copyright Registration is attached to the Complaint as Exhibit A. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 12 of the Complaint, and therefore denies them.

13. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies them.

14. Defendant admits that a Deed of Gift is attached to the Complaint as Exhibit B. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 14 of the Complaint, and therefore denies them.

15. Defendants admits that the Deed of Gift includes the language reproduced in Paragraph 15 of the Complaint. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 15 of the Complaint, and therefore denies them.

16. Defendant admits the allegations contained in Paragraph 16 of the Complaint.

17. Defendant admits that the image numbered N44926 shows the scene immediately after Frank Clearwater, one of the two Native Americans who was shot and killed during the stand-off, was struck in the head by a bullet. Defendant further admits that the image numbered

N45215 shows other Native Americans transporting Mr. Clearwater from the church where he was struck to seek medical aid before he died from his injuries. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 17 of the Complaint, and therefore denies them.

18. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint, and therefore denies them.

19. Defendant denies that Julianna Brannum requested use of the image numbered N4462, identified in the Complaint as one of the “Distributed Photographs.” Defendant further denies that the document attached to the Complaint as Exhibit C is the original Use Request sent by Ms. Brannum. Defendant admits the remainder of the allegations contained in Paragraph 19 of the Complaint.

20. Defendant admits the allegations contained in Paragraph 20 of the Complaint.

21. Defendant admits the allegations contained in Paragraph 21 of the Complaint.

22. Defendant denies that Firelight requested use of the image numbered N4462, identified in the Complaint as one of the “Distributed Photographs.” Defendant admits the remainder of the allegations contained in Paragraph 22 of the Complaint.

23. Defendant denies that Firelight incorporated the image numbered N4462, identified in the Complaint as one of the “Distributed Photographs,” in its documentary film “We Shall Remain: Wounded Knee.” Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 23, and therefore denies them.

24. Defendant admits the allegations contained in Paragraph 24 of the Complaint.

25. Defendant admits that the photograph numbered N44622 is shown at approximately minute 63 of the film for a duration of approximately seven seconds, that the photograph numbered N44926 is shown at approximately minute 64 of the film for a duration of approximately 16 seconds, and that the photograph numbered N45215 is shown at approximately minute 65 of the film for a duration of approximately 7 seconds. Defendants deny the remainder of the allegations contained in Paragraph 25 of the Complaint.

26. Defendant admits that Pearse's name is not included in the credits roll at the end of the film. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 26 of the Complaint, and therefore denies them.

27. Defendant admits that DVDs of the program series "We Shall Remain," which includes the film, have been made available for purchase through PBS' website and for viewing online. Defendant also admits that the film was screened at the Sundance Film Festival in Utah in January 2009. Defendant denies the remainder of the allegations contained in Paragraph 27 of the Complaint.

28. Defendant admits that DVDs of the program series "We Shall Remain," which includes the film, have been made available for purchase through PBS' website and through the websites of third-party vendors including, but not limited to, Amazon.com, Barnes & Noble and Borders. Defendant denies the remainder of the allegations contained in Paragraph 28 of the Complaint.

29. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, and therefore denies them.

30. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint, and therefore denies them.

31. Defendant denies that any actions by Firelight violate Pearse's copyrights. Defendant is without information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 31 of the Complaint, and therefore denies them.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the Complaint.

34. The first sentence of Paragraph 34 of the Complaint contains conclusions of law, such that no response is required. To the extent a response is deemed to be required, Defendant admits the allegations contained in the first sentence of Paragraph 34 of the Complaint. Defendant admits the allegations contained in the second sentence of Paragraph 34 of the Complaint.

COUNT 1

(Copyright Infringement)

35. Defendant incorporates by reference Paragraphs 1-34 above as if fully set forth herein.

36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

37. Defendant denies the allegations contained in Paragraph 37 of the Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.
42. Defendant denies the allegations contained in Paragraph 42 of the Complaint.
43. Defendant denies the allegations contained in Paragraph 43 of the Complaint.
44. Defendant denies the allegations contained in Paragraph 44 of the Complaint.

COUNT II

(Contributory Copyright Infringement)

45. Defendant incorporates by reference Paragraphs 1-44 above as if fully set forth herein.

46. Defendant denies the allegations contained in Paragraph 46 of the Complaint.
47. Defendant denies the allegations contained in Paragraph 47 of the Complaint.
48. Defendant denies the allegations contained in Paragraph 48 of the Complaint.
49. Defendant denies the allegations contained in Paragraph 49 of the Complaint.
50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.
51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.

The Paragraphs of the Complaint labeled A. through F. are demands for relief as to which no response is required. To the extent that a response to such demands is deemed to be required, Defendant denies that Plaintiff is entitled to any such relief.

Defendant denies each and every allegation of the Complaint not specifically admitted herein.

FIRST DEFENSE

The Complaint fails to state a claim against Defendant upon which relief may be granted.

SECOND DEFENSE

The reproduction of Plaintiff's photographs in the documentary "We Shall Remain: Wounded Knee" constitutes fair use.

THIRD DEFENSE

If the evidence so warrants, Defendant will rely upon the doctrines of waiver, estoppel, unclean hands, laches, and/or misuse of copyright.

WHEREFORE, Defendant requests that the Court enter judgment in its favor and against Plaintiff, award it its taxable costs, and, pursuant to 17 U.S.C. § 505, award it its attorney's fees and nontaxable costs, and afford it such other and further relief as the Court may deem just.

Dated: June 22, 2010

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system and thereby cause a Notification of Electronic Filing to be served upon the following filing user of record:

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