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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **IN AND FOR THE STATE OF WASHINGTON**  
10 **WESTERN DISTRICT AT TACOMA**

11 KEN ARONSON,

12 Plaintiff,

13 NO.

14 vs.

15 DOG EAT DOG FILMS, INC.,

16 Defendant.

17 **COMPLAINT**

18 **[JURY DEMANDED]**

19 *"I'm not a big supporter of copyright laws in this country."*

20 -- Michael Moore, 2007

21 *"You are the one that provided some much needed comic relief in the middle of our little picture."*

22 -- Anne Moore, *Sicko* Producer, 2007, to Eric Turnbow regarding Ken Aronson's home video

23 **I. INTRODUCTION AND REQUEST FOR RELIEF**

24 1.1 This is an action by Ken Aronson, an individual, ("Plaintiff), by and through his  
25 attorneys Pfau Cochran Vertetis Kosnoff, LLC, and Thomas B. Vertetis and Bryan D. Doran,  
26 to recover damages arising from infringement of his copyrights by Dog Eat Dog Production,  
COMPLAINT 1 of 7

PFAU COCHRAN VERTETIS KOSNOFF, PLLC  
911 PACIFIC AVENUE, SUITE 200  
TACOMA, WA 98402  
PHONE: 253-777-0799; FAX: 253-627-0654

1 Inc. (Defendant). Specifically, Defendant distributed and continues to distribute, portions of  
2 Plaintiff's home video which is protected by common law copyright and is subject to a  
3 pending Federal Copyright application. In addition, Defendant distributed, and continues to  
4 distribute, a copyrighted song "Oh England," co-authored by Plaintiff. Both infringements  
5 are willful and warrant monetary damages pursuant to 17 U.S.C. §504.  
6

## 7 **II. THE PARTIES**

8 2.1 Ken Aronson is a private individual with a residence in Hoquiam, Washington.

9 2.2 Upon information and belief, Dog Eat Dog Productions, Inc., (Defendant) is a  
10 Delaware corporation with its principle place of business at New York, New York. Upon  
11 information and belief, Defendant is engaged in the business of producing, advertising,  
12 marketing, and distributing documentary films created by Michael Moore. Upon information  
13 and belief, Defendant regularly transacts substantial business in this district, including  
14 distributing Michael Moore documentaries to movie theaters and as DVD rentals.  
15

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

17 3.1 This Court has subject matter jurisdiction over Plaintiff's claims for copyright  
18 infringement pursuant to 17 U.S.C. §501 and 28 U.S.C. §§1331 and 1338(a).

19 3.2 Venue in this district is proper under 28 USC §§1391 and 1400 because a substantial  
20 part of the events giving rise to the claims asserted herein arise in this district, and  
21 Defendants, upon information and belief, are and at all times were doing business in this  
22 district.  
23

24 ///

25 ///

#### IV. FACTS

4.1 Plaintiff Ken Aronson, and an individual named Eric Turnbow, traveled together to London, England approximately ten years ago. Plaintiff brought with him a video camera and recorded portions of his trip.

4.2 Plaintiff recorded a video of a live performance of the copyrighted song, "Oh England," part of a compilation called "I'm Alive," which is copyrighted under the name Eric Turnbow. This compilation has been mass produced as a CD which lists Aronson as a co-author of "Oh England." The video recording includes Plaintiff's likeness.

4.3 Plaintiff also recorded a scene in which Eric Turnbow attempted to walk across Abby Road on his hands, fell, injured his shoulder, received medical treatment at a local English hospital, and was discharged. The video includes audio commentary by Plaintiff.

4.4 Upon returning to the United States, Turnbow offered to make a VHS copy of the video footage for Plaintiff. The camera created a "Beta" tape, and Turnbow had the appropriate conversion equipment. Turnbow kept a VHS copy for himself, unbeknownst to Plaintiff.

4.5 Turnbow states that the video itself was Aronson's, as was the video camera used to create the tape. Plaintiff is the sole videographer of this recording.

4.6 Around February of 2006, Michael Moore sent out to his fans, Turnbow included, a request for health care stories in preparation for his documentary film, *Sicko*. Turnbow reported having had a medical problem years before in the United States where he found his health care treatment inadequate. He contrasted that with the care he received in England ten years earlier. Turnbow heard back from Moore's assistant Christine Fall and was told that though they received 25,000 submissions, Turnbow's intrigued them.

1 4.7 Turnbow submitted to Dog Eat Dog Films the VHS tape Aronson had recorded, along  
2 with the CD "I'm Alive" which included a jacket noting Ken Aronson as co-author of the  
3 song "Oh England." Turnbow reports he was sent, and signed, a release permitting Moore to  
4 use his materials. Turnbow further reports that he mentioned Ken Aronson, by name, as the  
5 individual in the video who accompanied him to England.  
6

7 4.8 Plaintiff was not contacted by any agent of Michael Moore, nor did he give his  
8 permission to anyone to use his video tape, or the song "Oh England." Defendant was or  
9 should have been aware that Ken Aronson was co-author of "Oh England." Defendant had in  
10 its possession a CD jacket identifying Plaintiff as co-author. Defendant was or should have  
11 been aware that Ken Aronson was the sole videographer of the footage used in the *Sicko* film.  
12 Turnbow identified Aronson to Dog Eat Dog agents, and the footage clearly demonstrates that  
13 Turnbow was not the videographer. His friend, identified to Dog Eat Dog as Aronson, clearly  
14 was. Despite reasonable notice of Aronson's copyrights, consent was not obtained before  
15 distribution.  
16

17 4.9 Defendant Dog Eat Dog Films, Inc. released the documentary movie *Sicko* on or about  
18 June 22, 2007, in the United States and generated substantial profits as a result of this film,  
19 and profits are on-going. The movie was nominated in 2008 for an Academy Award in the  
20 "Best Documentary" category. To date, the movie has grossed revenue in excess of \$50  
21 million dollars.

## 22 V. CAUSES OF ACTION

### 23 COUNT I

#### 24 Copyright Infringement

1 5.1 Plaintiff is, and at relevant times has been, a copyright owner under United States  
2 copyright law of the video production described above. (Exhibit "A" attached – Certificate of  
3 Registration).

4 5.2 Defendant's distribution of its infringing film, *Sicko*, without authorization by Plaintiff  
5 infringes Plaintiff's exclusive copyright in his video pursuant to 17 U.S.C. §501.  
6

7 5.3 Plaintiff is entitled to recover from Defendant the amount of his actual damages  
8 incurred as a result of the infringement, in such amount as is shown by appropriate evidence  
9 upon the trial of this case. 17 U.S.C. §504.

10 **COUNT II**

11 **Copyright Infringement**

12 5.4 Plaintiff is, and at relevant times has been, a joint copyright owner under United States  
13 copyright law of the "Oh England" song described above.

14 5.5 Defendant's distribution of its infringing film, *Sicko*, without authorization by Plaintiff  
15 infringes Plaintiff's exclusive copyright in his song pursuant to 17 U.S.C. §501.  
16

17 5.6 Plaintiff is entitled to recover from Defendant the amount of his actual damages  
18 incurred as a result of the infringement, in such amount as is shown by appropriate evidence  
19 upon the trial of this case. 17 U.S.C. §504.

20 5.7 Plaintiff is also entitled to recover his attorneys' fees and costs of suit. 17 U.S.C. §505.

21 **COUNT III**

22 **Invasion of Privacy**

23 5.8 Defendant's unauthorized distribution of Plaintiff's home video gave publicity to a  
24 matter concerning Plaintiff's private life in violation of Plaintiff's right to privacy.  
25

1 5.9 As a result of the publication, Mr. Aronson suffered negative public comment from  
2 community members and suffered negative impact to his business expectancy.

3 5.10 Plaintiff is entitled to damages in an amount to be specified at trial.

4 **COUNT IV**

5 **Misappropriation of Likeness**

6 5.11 Defendant's unauthorized distribution of Plaintiff's home video to the public exposed  
7 Plaintiff's likeness without his consent and for pecuniary gain.

8 5.12 As a result of Defendants' misappropriation of Plaintiff's likeness, Plaintiff is entitled  
9 to the commercial value to Defendant of Plaintiff's likeness, which equates to the revenues  
10 thus far earned, and to be earned in the future; with movie theater revenues, royalties, video  
11 sales and other revenues.  
12

13 **VI. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully requests judgment against the Defendant as  
15 follows:

16 (1) That the Court order Defendant to pay Plaintiff's actual and consequential  
17 damages incurred, in an amount to be determined at trial;

18 (2) That the Court order Defendant to disgorge to Plaintiff all profits derived by  
19 Defendant from its unlawful acts;

20 (3) That the Court order Defendant to pay Plaintiff's litigation expenses, including  
21 reasonable attorney's fees and costs of this action; and

22 (4) That the Court grants Plaintiff any such further relief as the Court may deem just  
23 and proper.  
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**VII. JURY DEMAND**

Plaintiff demands a trial by jury and requests that this matter be heard by a jury of twelve persons.

Dated this 24th day of March, 2010.

PFAU COCHRAN VERTETIS KOSNOFF, PLLC

By



Thomas B. Vertetis, WSBA No. 29805

tom@pcvklaw.com

Bryan D. Doran, WSBA No. 38480

bryan@pcvklaw.com

Attorneys for Plaintiff

911 Pacific Avenue, Suite 200

Tacoma, WA 98402

Phone: 253.777.0799

FAX: 253.627.0654

**EXHIBIT "A"**



# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

Registration Number  
**PAu 3-431-825**

Effective date of  
registration:  
April 25, 2008

Title \_\_\_\_\_

**Title of Work:** Oh England

**Nature of Work:** Audiovisual work

Completion/ Publication \_\_\_\_\_

**Year of Completion:** 1997

Author \_\_\_\_\_

☒ **Author:** Ken Aaronson

**Author Created:** Cinematography

**Work made for hire:** No

**Citizen of:** United States

**Year Born:** 1959

**Anonymous:** No

**Pseudonymous:** No

Copyright claimant \_\_\_\_\_

**Copyright Claimant:** Ken Aaronson

3120 Aberdeen Ave., Hoquiam, WA, 98550

Limitation of copyright claim \_\_\_\_\_

**Previously registered:** No

Certification \_\_\_\_\_

**Name:** Bryan D. Doran

**Date:** March 20, 2008

**Signature:** Bryan D. Doran