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The Honorable Karen Strombom

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEN ARONSON,)	
)	
Plaintiff,)	No. 3:10-CV-05293-KLS
)	
v.)	ANSWER AND AFFIRMATIVE
)	AND OTHER DEFENSES
DOG EAT DOG FILMS, INC.,)	
)	
Defendant.)	
)	

Defendant Dog Eat Dog Films, Inc. ("Dog Eat Dog")* answers Plaintiff Ken Aronson's Complaint as follows:

I. ANSWER

1.1 In answer to Paragraph 1.1, Defendant lacks sufficient information to form a belief as to the truth of the allegations in the first, second and third sentences of Paragraph 1.1 and therefore denies them. Defendant denies the remaining allegations generally, and specifically denies that Defendant committed any act of copyright infringement.

* Dog Eat Dog, a loan-out company owned by Michael Moore and his wife Kathleen Glynn, is incorrectly designated as the defendant in this case. The company that produced *Sicko* is Goldflat Productions, LLC (hereinafter "Goldflat" or "Defendant"), owned by Michael Moore.

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II. THE PARTIES

2.1 In answer to Paragraph 2.1, Defendant lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 2.1 and therefore denies them.

2.2 In answer to Paragraph 2.2, Defendant admits its principle (and principal) place of business is in New York, New York. Defendant also admits it produces documentary films by Michael Moore that are distributed in the State of Washington. Paragraph 2.2 states legal conclusions to which no response is required. Insofar as the allegations in Paragraph 2.2 require a response, Defendant lacks sufficient information to form a belief as to the truth of the allegations and therefore denies them.

III. JURISDICTION AND VENUE

3.1 In answer to Paragraph 3.1, Paragraph 3.1 states legal conclusions to which no response is required. Insofar as the allegations in Paragraph 3.1 require a response, Defendant lacks sufficient information to form a belief as to the truth of the allegations and therefore denies them.

3.2 In answer to Paragraph 3.2, Defendant admits that venue is proper.

IV. FACTS

4.1 In answer to Paragraph 4.1, Defendant lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 4.1 and therefore denies them.

4.2 In answer to Paragraph 4.2, Defendant admits that a CD entitled "I'm Alive" is copyrighted under the name of Eric Turnbow. A copy of Mr. Turnbow's copyright registration to "I'm Alive" as available from the website of the Library of Congress is attached hereto as Exhibit A. Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 4.2 and therefore denies them.

ANSWER AND AFFIRMATIVE AND OTHER DEFENSES

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1 4.3 In answer to Paragraph 4.3, Defendant lacks sufficient information to form a belief
2 as to the truth of the allegations in Paragraph 4.3 and therefore denies them.

3 4.4 In answer to Paragraph 4.4, Defendant admits that Mr. Turnbow possessed a VHS
4 copy of their video footage. A copy of Mr. Turnbow's three VHS cassette tapes, as
5 provided by his attorney in *Aronson v. Turnbow*, Thurston County Superior Court Cause
6 No. 08-2-02542-7, and transferred to DVD, is attached hereto as Exhibit B. Defendant
7 lacks sufficient information to form a belief as to the truth of the remaining allegations in
8 Paragraph 4.4 and therefore denies them.

9 4.5 In answer to Paragraph 4.5, Defendant lacks sufficient information to form a belief
10 as to the truth of the allegations in Paragraph 4.5 and therefore denies them.

11 4.6 In answer to Paragraph 4.6, Defendant admits that Michael Moore sought
12 information about health care stories that could be included in the documentary film, *Sicko*,
13 and that an email request for such information was sent to an electronic listserv in 2006.
14 Defendant lacks sufficient information to form a belief as to the truth of the remainder of
15 the allegations in Paragraph 4.6 and therefore denies them.

16 4.7 In answer to Paragraph 4.7, Defendant admits that Mr. Turnbow submitted
17 materials to Defendant and that Mr. Turnbow signed a release and license expressly
18 permitting their use by Defendant. The signed release and license are attached hereto as
19 Exhibit C. Defendant lacks sufficient information to form a belief as to the truth of the
20 remainder of the allegations in Paragraph 4.7 and therefore denies them.

21 4.8 In answer to Paragraph 4.8, Defendant admits that no agent of Michael Moore
22 contacted Plaintiff. Defendant lacks sufficient information to form a belief as to the truth
23 of the remaining allegations in Paragraph 4.8 and therefore denies them.

1 4.9 In answer to Paragraph 4.9, Defendant admits that *Sicko* was nominated for an
2 Academy Award in the “Best Documentary” category. A copy of *Sicko* is attached hereto
3 as Exhibit D. Defendant lacks sufficient information to form a belief as to the truth of the
4 remaining allegations in Paragraph 4.9 and therefore denies them.

5 **V. CAUSES OF ACTION**

6 5.1 In answer to Paragraph 5.1, Paragraph 5.1 states a legal conclusion to which no
7 response is required. Insofar as the allegations in Paragraph 5.1 require a response,
8 Defendant lacks sufficient information to form a belief as to the truth of the allegations and
9 therefore denies them.

10 5.2 In answer to Paragraph 5.2, Paragraph 5.2 states a legal conclusion to which no
11 response is required. Insofar as the allegations in Paragraph 5.2 require a response,
12 Defendant denies them.

13 5.3 In answer to Paragraph 5.3, Paragraph 5.3 states a legal conclusion to which no
14 response is required. Insofar as the allegations in Paragraph 5.3 require a response,
15 Defendant denies them.

16 5.4 In answer to Paragraph 5.4, Paragraph 5.4 states a legal conclusion to which no
17 response is required. Insofar as the allegations in Paragraph 5.4 require a response,
18 Defendant lacks sufficient information to form a belief as to the truth of the allegations and
19 therefore denies them.

20 5.5 In answer to Paragraph 5.5, Paragraph 5.5 states a legal conclusion to which no
21 response is required. Insofar as the allegations in Paragraph 5.5 require a response,
22 Defendant denies them.

23
ANSWER AND AFFIRMATIVE AND OTHER DEFENSES

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1 5.6 Paragraph 5.6 states a legal conclusion to which no response is required. Insofar as
2 the allegations in Paragraph 5.6 require a response, Defendant denies them.

3 5.7 In answer to Paragraph 5.7, Paragraph 5.7 states a legal conclusion to which no
4 response is required. Insofar as the allegations in Paragraph 5.7 require a response,
5 Defendant denies them.

6 5.8 In answer to Paragraph 5.8, Paragraph 5.8 states a legal conclusion to which no
7 response is required. Insofar as the allegations in Paragraph 5.8 require a response,
8 Defendant denies them.

9 5.9 Paragraph 5.9 states a legal conclusion to which no response is required. Insofar as
10 the allegations in Paragraph 5.9 require a response, Defendant lacks sufficient information
11 to form a belief as to the truth of the allegations and therefore denies them.

12 5.10 Paragraph 5.10 states a legal conclusion to which no response is required. Insofar
13 as the allegations in Paragraph 5.10 require a response, Defendant denies them.

14 5.11 Paragraph 5.11 states a legal conclusion to which no response is required. Insofar
15 as the allegations in Paragraph 5.11 require a response, Defendant denies them.

16 5.12 Paragraph 5.12 states a legal conclusion to which no response is required. Insofar
17 as the allegations in Paragraph 5.12 require a response, Defendant denies them.

18 Defendant denies any factual allegations contained in any paragraph of
19 the Complaint except as expressly admitted above. Defendant further denies that Plaintiff
20 is entitled to any of the relief requested in the Prayer for Relief on page 6 of the Complaint
21 or to any other relief.

1 6.9 **No Damages.** Plaintiff did not incur any damage or loss as a result of any act or
2 conduct by Defendant.

3 6.10 **Speculative Damages.** Plaintiff's damages, if any, are vague, uncertain, imaginary,
4 and speculative.

5 6.11 **Anti-SLAPP.** Plaintiff's state law claims are governed by the Washington Act
6 Limiting Strategic Lawsuits Against Public Participation, which requires their prompt
7 dismissal, with reimbursement of Defendant's reasonable attorneys' fees and costs,
8 possible additional sanctions, and a statutory award of \$10,000.

9 6.12 **Statute of Limitations.** Plaintiff's state law claims are barred by their statutes of
10 limitations.

11 6.13 **Laches and/or Estoppel.** Plaintiff's state law claims are barred, in whole or in
12 part, by the doctrines of laches and/or estoppel.

13
14 **VII. PRAYER FOR RELIEF**

15 WHEREFORE, Defendant prays for relief as follows:

16 7.1 That Plaintiff take nothing by reason of the Complaint in this matter, that judgment
17 be rendered in favor of Defendant, and that the Complaint be dismissed, with prejudice;

18 7.2 That Defendant be awarded its costs of suit incurred in defense of this matter,
19 including reasonable attorneys' fees and costs recoverable pursuant to 17 U.S.C. § 505 or
20 any other statute, rule, or other authority;

21 7.3 That Defendant be awarded its reasonable attorneys' fees , costs, additional
22 sanctions, and a statutory award of \$10,000, in accordance with the Washington Act
23 Limiting Strategic Lawsuits Against Public Participation; and

ANSWER AND AFFIRMATIVE AND OTHER DEFENSES

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1 7.4 For such other relief as this Court deems just and proper.
2

3 DATED this 9 day of June, 2010.
4

5 By
6 DAVIS WRIGHT TREMAINE LLP
7 Attorneys for Defendant Dog Eat Dog

8 By /s/ Noelle H. Kvasnosky
9 Bruce E. H. Johnson, WSBA # 7667
10 Noelle Kvasnosky, WSBA # 40023
11 Suite 2200
12 1201 Third Avenue
13 Seattle, Washington 98101-3045
14 Telephone: (206) 757-8069
15 Fax: (206) 757-7069
16 E-mail: brucejohnson@dwt.com
17 noellekvasnosky@dwt.com
18
19
20
21
22
23

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 9th day of June, 2010, I caused to be filed electronically
3 the above and foregoing document with the court, using the CM/ECF system, which will
4 send email notification of such filing to the below addressees, with the physical materials
5 in the accompanying exhibits filed with the Clerk's office by hand delivery. I served a true
6 and correct copy of the following documents by the method indicated below and addressed
7 as follows:

8 **Attorneys for Plaintiff:**

9 Thomas Brian Vertetis
10 Brian D. Doran
11 Pfau Cochran Vertetis Kosnoff PLLC
12 911 Pacific Avenue
13 Suite 200
14 Tacoma, WA 98402

_____ U.S. Mail
15 Hand Delivery
16 _____ Overnight Mail
17 _____ Facsimile
18 CM/ECF Notification via email
19 service to: tom@pcvklaw.com and
20 bryan@pcvklaw.com

21 Declared under penalty of perjury dated at Seattle, Washington this 9th day of June,
22 2010.

23 /s/ Noelle H. Kvasnosky
Noelle H. Kvasnosky

EXHIBIT A

Type of Work: Sound Recording and Music

Registration Number / Date:
SRu000402834 / 1999-03-03

Title: I'm alive.

Description: Compact disc.

Notes: Collection.

Copyright Claimant:
© - on words, music & sound recording; Eric Turnbow,
1961- (E.T. Turnbow)

Date of Creation: 1998

Copyright Note: C.O. correspondence.

Names: Turnbow, Eric, 1961-
Turnbow, E.T.

=====

EXHIBIT B



Davis Wright
Tremaine LLP

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.



www.dwt.com

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Turnbow / Aronson 1997 Travel Footage
Disc 1 of 3



**Davis Wright
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**Turnbow / Aronson 1997 Travel Footage
Disc 2 of 3**



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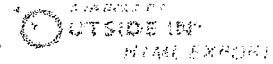
Turnbow / Aronson 1997 Travel Footage
Disc 3 of 3

EXHIBIT C



So 30/11
So 30/11
So 30/11

Print - Close Window



STANDARD MATERIALS RELEASE

Description of Materials:

Owner:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I grant permission to Goldflat Productions, LLC and its successors, assigns and licensees, permission to use the above described materials, in whole or in part, and the footage containing the above described materials in and in connection with a motion picture about healthcare (the "Picture") and in all exhibition, distribution, exploitation, marketing, promotion, soundtrack albums for and advertising thereof, and in connection with any rights associated therewith, in any and all media of any nature whatsoever, whether now known or hereafter devised, throughout the universe in perpetuity (the "Rights").

I expressly release to Goldflat Productions LLC, and its parent, subsidiaries and affiliates, and the employees, officers, directors and agents of each of them, and its successors, assigns and licensees, from any claims, damages, liabilities or expenses I may have arising out of the production, broadcast, exhibition, distribution, exploitation, marketing, promotion, and other uses of the Picture and elements thereof and the footage containing the above described materials.

Your signature indicates that you have the right to enter into this agreement and to grant the rights as stated above.

Signature: Eric Turnbow Date: 10/23/06

Name (print): ERIC TURNBOW

Address: 1713NE TULLIS OLYMPIA WA 98506

Phone #: 360 943-7039

EXHIBIT D

