

THE HONORABLE KAREN L. STROMBOM

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEN ARONSON,

Plaintiff,

v.

DOG EAT DOG FILMS, INC.,

Defendant.

NO. 3:10-CV-05293-KLS

DECLARATION OF THOMAS B.  
VERTETIS IN SUPPORT OF  
PLAINTIFF'S MOTION FOR LEAVE TO  
AMEND COMPLAINT

I, Thomas B. Vertetis, declare and state as follows:

1. I am a partner with Pfau Cochran Vertetis Kosnoff PLLC, I am over the age of 18, I am one of the attorneys for the Plaintiffs in this case, I am competent to testify to the facts of this case, and I make the following declaration based upon my own personal knowledge.

2. Attached as **Exhibit A** is a true and correct copy of Plaintiff's Amended Complaint.

3. Attached as **Exhibit B** is a true and correct copy of the Defendant's Answer and Affirmative and Other Defenses.

DECL OF TBV ISO PLFF'S OPP TO SPECIAL MOT - 1 of 2  
NO. 3:10-CV-05293-KLS

PFAU COCHRAN VERTETIS KOSNOFF PLLC  
911 PACIFIC AVE., SUITE 200  
TACOMA, WA 98402  
PHONE: (206) 462-4334  
FACSIMILE: (206) 623-3624

1                    4.        Attached as **Exhibit C** is a true and correct copy of the Plaintiff's Complaint.  
2

3                    Dated this 12<sup>th</sup> day of October 2010 in Tacoma, Washington.  
4

5                    PFAU COCHRAN VERTETIS KOSNOFF PLLC

6                    By  \_\_\_\_\_

7                    Thomas B. Vertetis, WSBA No. 29805

8                    thomas@pcvklaw.com

9                    Attorneys for Plaintiff  
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# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEN ARONSON,

Plaintiff,

vs.

DOG EAT DOG FILMS, INC., and  
GOLDFLAT PRODUCTIONS, LLC.,

Defendants.

NO. 3:10 CV-5293-KLS

**AMENDED COMPLAINT**

**[JURY DEMANDED]**

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

-- Michael Moore, 2007

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

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

**I. INTRODUCTION AND REQUEST FOR RELIEF**

1.1 This is an action by Ken Aronson, an individual, ("Plaintiff), by and through his attorneys Thomas B. Vertetis and Pfau Cochran Vertetis Kosnoff, LLC, and, to recover

1 damages arising from infringement of his copyrights by Dog Eat Dog Production, Inc. and  
2 Goldflat Productions, Inc. (Defendants). Specifically, Defendants distributed and continues to  
3 distribute, portions of Plaintiff's home video which is protected by common law copyright  
4 and is subject to a pending Federal Copyright application. In addition, Defendants  
5 distributed, and continues to distribute, a copyrighted song "Oh England," co-authored by  
6 Plaintiff. Both infringements are willful and warrant monetary damages pursuant to 17  
7 U.S.C. §504.  
8

## 9 II. THE PARTIES

10 2.1 Ken Aronson is a private individual with a residence in Hoquiam, Washington.

11 2.2 Upon information and belief, Dog Eat Dog Productions, Inc., (Defendant) is a  
12 Delaware corporation with its principle place of business at New York, New York. Upon  
13 information and belief, Defendant is engaged in the business of producing, advertising,  
14 marketing, and distributing documentary films created by Michael Moore. Upon information  
15 and belief, Defendant regularly transacts substantial business in this district, including  
16 distributing Michael Moore documentaries to movie theaters and as DVD rentals.  
17

18 2.3 Upon information and belief, Goldflat Productions, Inc., (Defendant) is a limited  
19 liability company with its principal place of business at New York, New York. Upon  
20 information and belief, Defendant is engaged in the business of producing, advertising,  
21 marketing, and distributing documentary films created by Michael Moore, including *Sicko*.  
22 Upon information and belief, Defendant regularly transacts substantial business in this  
23 district, including distributing Michael Moore documentaries to movie theaters and as DVD  
24 rentals.  
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### III. JURISDICTION AND VENUE

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

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

### IV. FACTS

10 4.1 Plaintiff Ken Aronson, and an individual named Eric Turnbow, traveled together to  
11 London, England approximately ten years ago. Plaintiff brought with him a video camera  
12 and recorded portions of his trip.

13 4.2 Plaintiff recorded a video of a live performance of the copyrighted song, "Oh  
14 England," part of a compilation called "I'm Alive," which is copyrighted under the name Eric  
15 Turnbow. This compilation has been mass produced as a CD which lists Aronson as a co-  
16 author of "Oh England." The video recording includes Plaintiff's likeness.

17 4.3 Plaintiff also recorded a scene in which Eric Turnbow attempted to walk across Abby  
18 Road on his hands, fell, injured his shoulder, received medical treatment at a local English  
19 hospital, and was discharged. The video includes audio commentary by Plaintiff.

20 4.4 Upon returning to the United States, Turnbow offered to make a VHS copy of the  
21 video footage for Plaintiff. The camera created a "Beta" tape, and Turnbow had the  
22 appropriate conversion equipment. Turnbow kept a VHS copy for himself, unbeknownst to  
23 Plaintiff.  
24  
25

1 4.5 Turnbow states that the video itself was Aronson's, as was the video camera used to  
2 create the tape. Plaintiff is the sole videographer of this recording.

3 4.6 Around February of 2006, Michael Moore sent out to his fans, Turnbow included, a  
4 request for health care stories in preparation for his documentary film, *Sicko*. Turnbow  
5 reported having had a medical problem years before in the United States where he found his  
6 health care treatment inadequate. He contrasted that with the care he received in England ten  
7 years earlier. Turnbow heard back from Moore's assistant Christine Fall and was told that  
8 though they received 25,000 submissions, Turnbow's intrigued them.

9 4.7 Turnbow submitted to defendants the VHS tape Aronson had recorded, along with the  
10 CD "I'm Alive" which included a jacket noting Ken Aronson as co-author of the song "Oh  
11 England." Turnbow reports he was sent, and signed, a release permitting Moore to use his  
12 materials. Turnbow further reports that he mentioned Ken Aronson, by name, as the  
13 individual in the video who accompanied him to England.

14 4.8 Plaintiff was not contacted by any agent of Michael Moore, nor did he give his  
15 permission to anyone to use his video tape, or the song "Oh England." Defendants were or  
16 should have been aware that Ken Aronson was co-author of "Oh England." Defendant had in  
17 its possession a CD jacket identifying Plaintiff as co-author. Defendant was or should have  
18 been aware that Ken Aronson was the sole videographer of the footage used in the *Sicko* film.  
19 Turnbow identified Aronson to defendants' agents, and the footage clearly demonstrates that  
20 Turnbow was not the videographer. His friend, identified to Defendants as Aronson, clearly  
21 was. Despite reasonable notice of Aronson's copyrights, consent was not obtained before  
22 distribution.  
23  
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1 4.9 Defendants Dog Eat Dog Films, Inc. and Goldflat Productions, LLC released the  
2 documentary movie *Sicko* on or about June 22, 2007, in the United States and generated  
3 substantial profits as a result of this film, and profits are on-going. The movie was nominated  
4 in 2008 for an Academy Award in the “Best Documentary” category. To date, the movie has  
5 grossed revenue in excess of \$50 million dollars.  
6

7 **V. CAUSES OF ACTION**

8 **COUNT I**

9 **Copyright Infringement**

10 5.1 Plaintiff is, and at relevant times has been, a copyright owner under United States  
11 copyright law of the video production described above. (Exhibit “A” attached – Certificate of  
12 Registration).

13 5.2 Defendants’ distribution of its infringing film, *Sicko*, without authorization by Plaintiff  
14 infringes Plaintiff’s exclusive copyright in his video pursuant to 17 U.S.C. §501.

15 5.3 Plaintiff is entitled to recover from Defendants the amount of his actual damages  
16 incurred as a result of the infringement, in such amount as is shown by appropriate evidence  
17 upon the trial of this case. 17 U.S.C. §504.  
18

19 **COUNT II**

20 **Copyright Infringement**

21 5.4 Plaintiff is, and at relevant times has been, a joint copyright owner under United States  
22 copyright law of the “Oh England” song described above.

23 5.5 Defendants’ distribution of its infringing film, *Sicko*, without authorization by  
24 Plaintiff infringes Plaintiff’s exclusive copyright in his song pursuant to 17 U.S.C. §501.  
25



1 5.6 Plaintiff is entitled to recover from Defendants the amount of his actual damages  
2 incurred as a result of the infringement, in such amount as is shown by appropriate evidence  
3 upon the trial of this case. 17 U.S.C. §504.

4 5.7 Plaintiff is also entitled to recover his attorneys' fees and costs of suit. 17 U.S.C. §505.

5  
6 **COUNT III**

7 **Invasion of Privacy**

8 5.8 Defendants' unauthorized distribution of Plaintiff's home video gave publicity to a  
9 matter concerning Plaintiff's private life in violation of Plaintiff's right to privacy.

10 5.9 As a result of the publication, Mr. Aronson suffered negative public comment from  
11 community members and suffered negative impact to his business expectancy.

12 5.10 Plaintiff is entitled to damages in an amount to be specified at trial.

13 **COUNT IV**

14 **Misappropriation of Likeness**

15 5.11 Defendants' unauthorized distribution of Plaintiff's home video to the public exposed  
16 Plaintiff's likeness without his consent and for pecuniary gain.

17 5.12 As a result of Defendants' misappropriation of Plaintiff's likeness, Plaintiff is entitled  
18 to the commercial value to Defendants of Plaintiff's likeness, which equates to the revenues  
19 thus far earned, and to be earned in the future; with movie theater revenues, royalties, video  
20 sales and other revenues.  
21

22 **VI. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as  
24 follows:

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

3 (2) That the Court order Defendants to disgorge to Plaintiff all profits derived by  
4 Defendants from its unlawful acts;

5 (3) That the Court order Defendants to pay Plaintiff's litigation expenses, including  
6 reasonable attorney's fees and costs of this action; and  
7

8 (4) That the Court grants Plaintiff any such further relief as the Court may deem just  
9 and proper.

10 **VII. JURY DEMAND**

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

13 Dated this 12<sup>th</sup> day of October, 2010.

14 PFAU COCHRAN VERTETIS KOSNOFF, PLLC

15  
16  
17 By 

18 Thomas B. Vertetis, WSBA No. 29805  
19 tom@pcvklaw.com  
20 Attorney for Plaintiff  
21 911 Pacific Avenue, Suite 200  
22 Tacoma, WA 98402  
23 Phone: 253.777.0799  
24 FAX: 253.627.0654

# **EXHIBIT B**

The Honorable Karen Strombom

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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.

1 **II. THE PARTIES**

2 2.1 In answer to Paragraph 2.1, Defendant lacks sufficient information to form a belief  
3 as to the truth of the allegations in Paragraph 2.1 and therefore denies them.

4 2.2 In answer to Paragraph 2.2, Defendant admits its principle (and principal) place of  
5 business is in New York, New York. Defendant also admits it produces documentary  
6 films by Michael Moore that are distributed in the State of Washington. Paragraph 2.2  
7 states legal conclusions to which no response is required. Insofar as the allegations in  
8 Paragraph 2.2 require a response, Defendant lacks sufficient information to form a belief as  
9 to the truth of the allegations and therefore denies them.

10 **III. JURISDICTION AND VENUE**

11 3.1 In answer to Paragraph 3.1, Paragraph 3.1 states legal conclusions to which no  
12 response is required. Insofar as the allegations in Paragraph 3.1 require a response,  
13 Defendant lacks sufficient information to form a belief as to the truth of the allegations and  
14 therefore denies them.

15 3.2 In answer to Paragraph 3.2, Defendant admits that venue is proper.

16 **IV. FACTS**

17 4.1 In answer to Paragraph 4.1, Defendant lacks sufficient information to form a belief  
18 as to the truth of the allegations in Paragraph 4.1 and therefore denies them.

19 4.2 In answer to Paragraph 4.2, Defendant admits that a CD entitled "I'm Alive" is  
20 copyrighted under the name of Eric Turnbow. A copy of Mr. Turnbow's copyright  
21 registration to "I'm Alive" as available from the website of the Library of Congress is  
22 attached hereto as Exhibit A. Defendant lacks sufficient information to form a belief as to  
23 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.

22  
23 **ANSWER AND AFFIRMATIVE AND OTHER DEFENSES**

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1 **VI. AFFIRMATIVE AND OTHER DEFENSES**

2 6.1 **Failure to State a Claim.** The Complaint fails to state a claim against Defendant  
3 upon which relief can be granted.

4 6.2 **License.** Defendant's use of the material to which Plaintiff allegedly owns the  
5 copyright was non-infringing as it occurred under license from a co-owner of the  
6 underlying work, Mr. Turnbow.

7 6.3 **First Amendment.** The Complaint, and each cause of action therein, is barred by  
8 the First Amendment to the United States Constitution.

9 6.4 **Fair Use.** Defendant's use of material to which Plaintiff allegedly owns the  
10 copyright was a nonactionable use protected by the fair use doctrine, codified at 17 U.S.C.  
11 § 107.

12 6.5 **Preemption.** Plaintiff's state law claims for misappropriation of likeness and  
13 invasion of privacy are preempted by 17 U.S.C. § 301.

14 6.6 **Failure to Comply with Prerequisites to Maintain a Copyright Infringement**  
15 **Claim.** Plaintiff failed to register or preregister the work at issue before instituting an  
16 action for infringement, as 17 U.S.C. § 411 requires.

17 6.7 **Failure to Comply with Prerequisites for Statutory Damages and Attorneys'**  
18 **Fees.** Plaintiff's claim for statutory damages and/or attorneys' fees is barred by his failure  
19 to comply with 17 U.S.C. §§ 411 and/or 412.

20 6.8 **Lack of Copyright Notice.** Defendant is informed, and believes, and on that basis  
21 alleges that Plaintiff's claims for copyright infringement are barred because the work in  
22 question did not provide adequate notice of Plaintiff's claimed rights.

23 ANSWER AND AFFIRMATIVE AND OTHER DEFENSES

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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**

(3:10-CV-05293-KLS) - 7

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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  
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ANSWER AND AFFIRMATIVE AND OTHER DEFENSES

(3:10-CV-05293-KLS) - 8

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**CERTIFICATE OF SERVICE**

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

**Attorneys for Plaintiff:**  
Thomas Brian Vertetis  
Brian D. Doran  
Pfau Cochran Vertetis Kosnoff PLLC  
911 Pacific Avenue  
Suite 200  
Tacoma, WA 98402

U.S. Mail  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 CM/ECF Notification via email  
service to: [tom@pcvklaw.com](mailto:tom@pcvklaw.com) and  
[bryan@pcvklaw.com](mailto:bryan@pcvklaw.com)

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

/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)

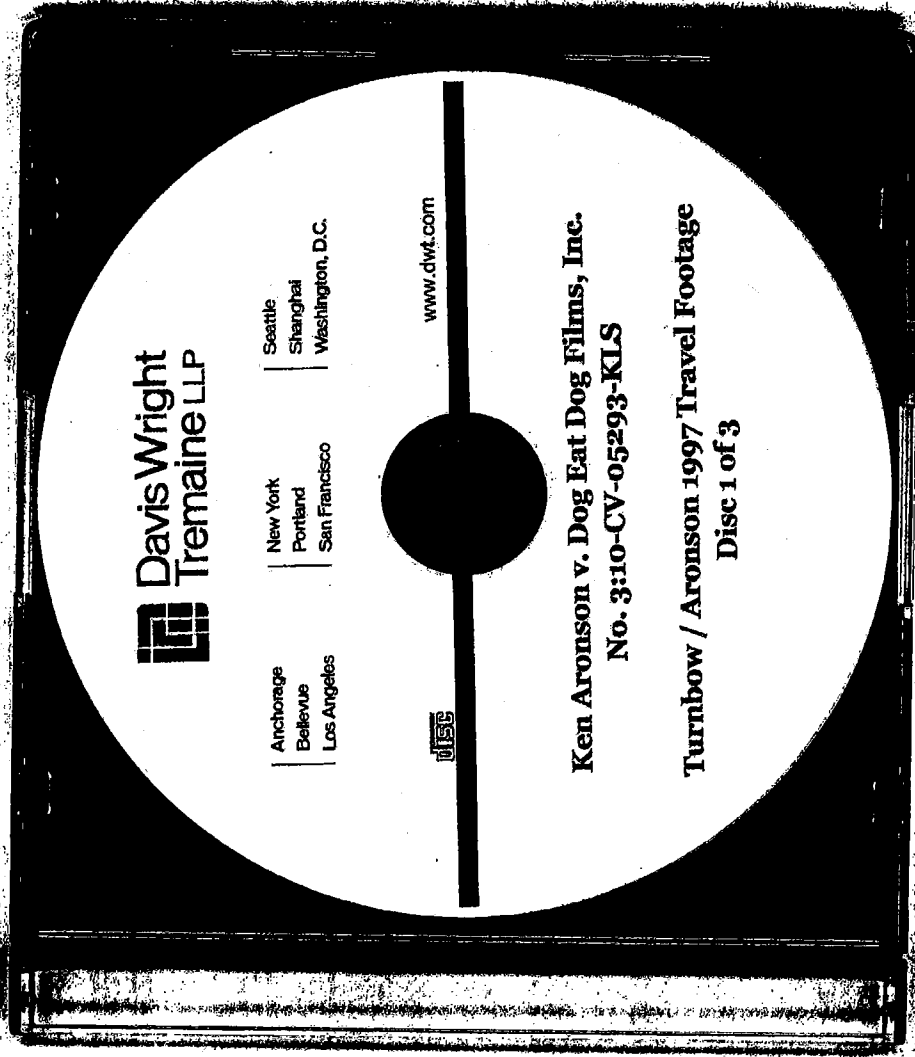
Date of Creation: 1998

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.

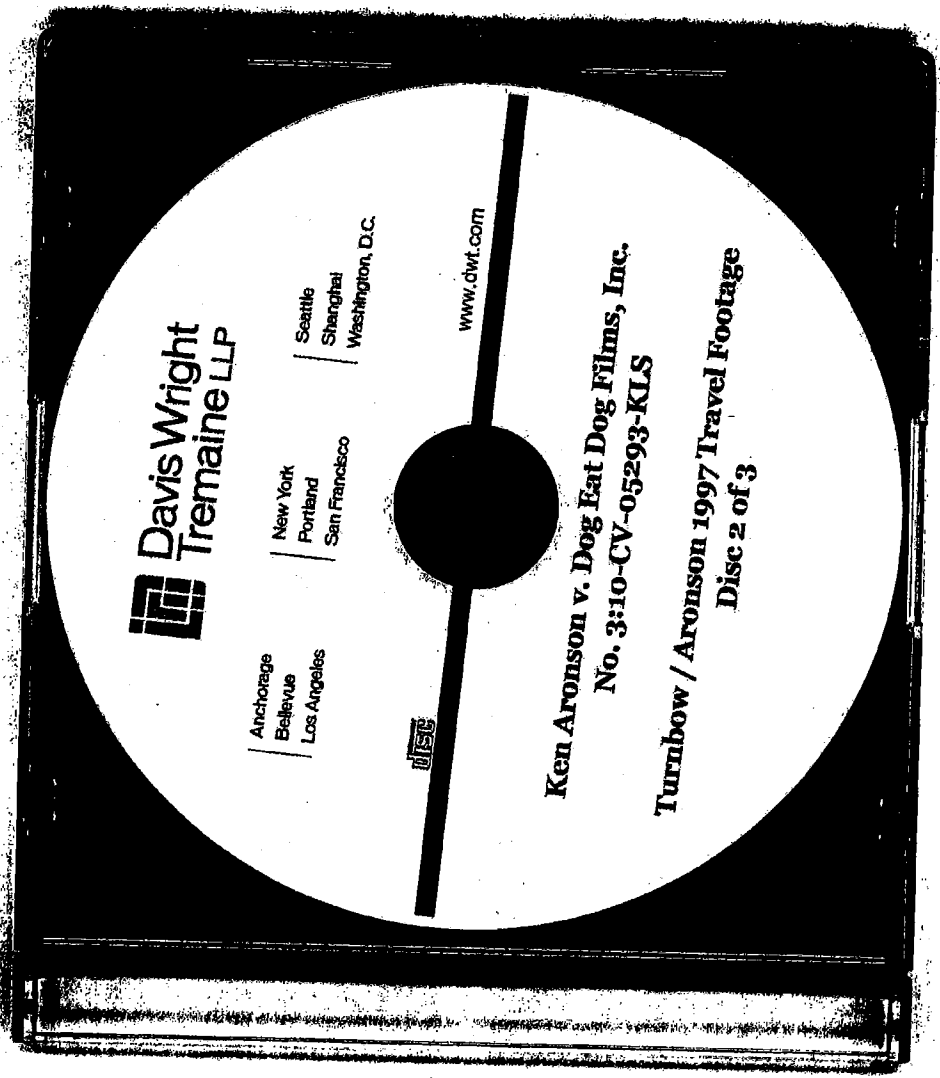


[www.dwt.com](http://www.dwt.com)

**Ken Aronson v. Dog Eat Dog Films, Inc.  
No. 3:10-CV-05293-KLS**

**Turnbow / Aronson 1997 Travel Footage  
Disc 1 of 3**





 **Davis Wright  
Tremaine LLP**

Anchorage  
Bellevue  
Los Angeles

New York  
Portland  
San Francisco

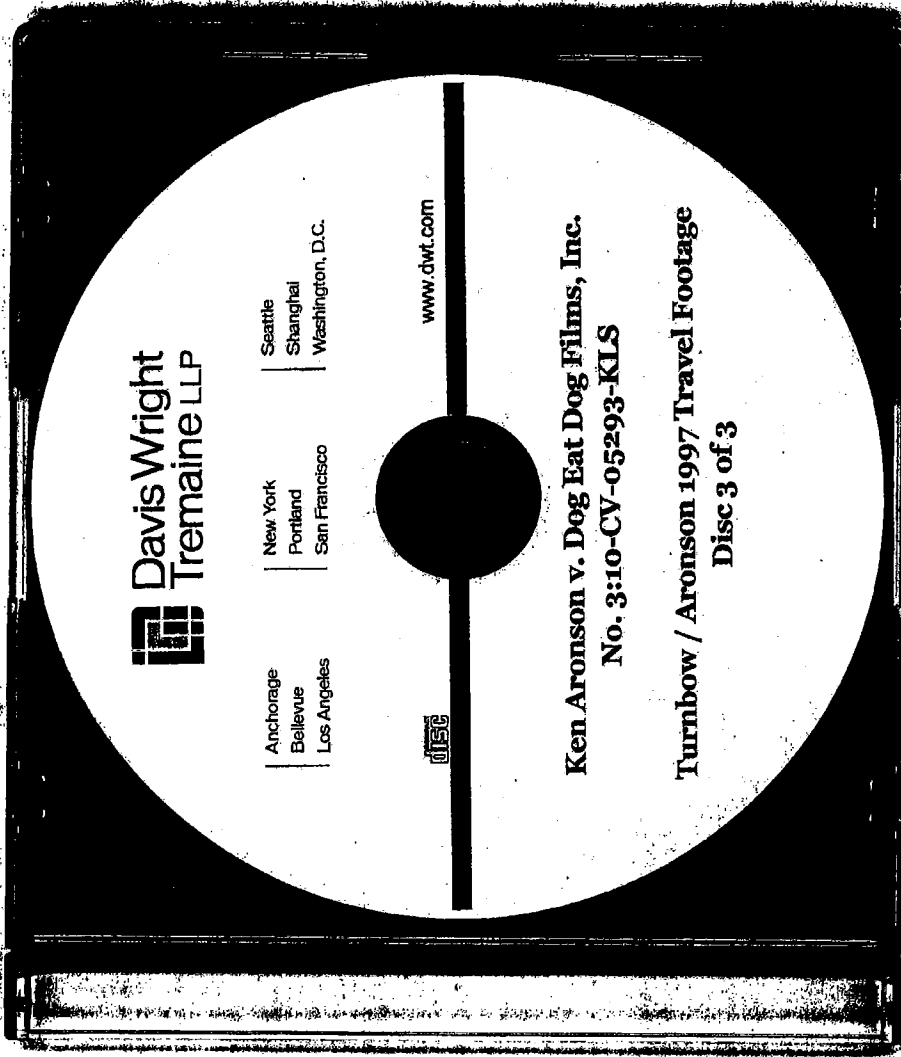
Seattle  
Shanghai  
Washington, D.C.

DVD

www.dwt.com

**Ken Aronson v. Dog Eat Dog Films, Inc.  
No. 3:10-CV-05293-KLS**

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



 **Davis Wright  
Tremaine LLP**

Anchorage  
Bellevue  
Los Angeles

New York  
Portland  
San Francisco

Seattle  
Shanghai  
Washington, D.C.



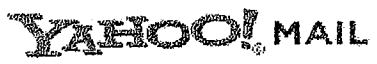
[www.dwt.com](http://www.dwt.com)

**Ken Aronson v. Deg Eat Dog Films, Inc.  
No. 3:10-CV-05293-KLS**

**Turnbow / Aronson 1997 Travel Footage  
Disc 3 of 3**

# **EXHIBIT C**

So 30/11  
So 30/23  
So 30/24



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**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**

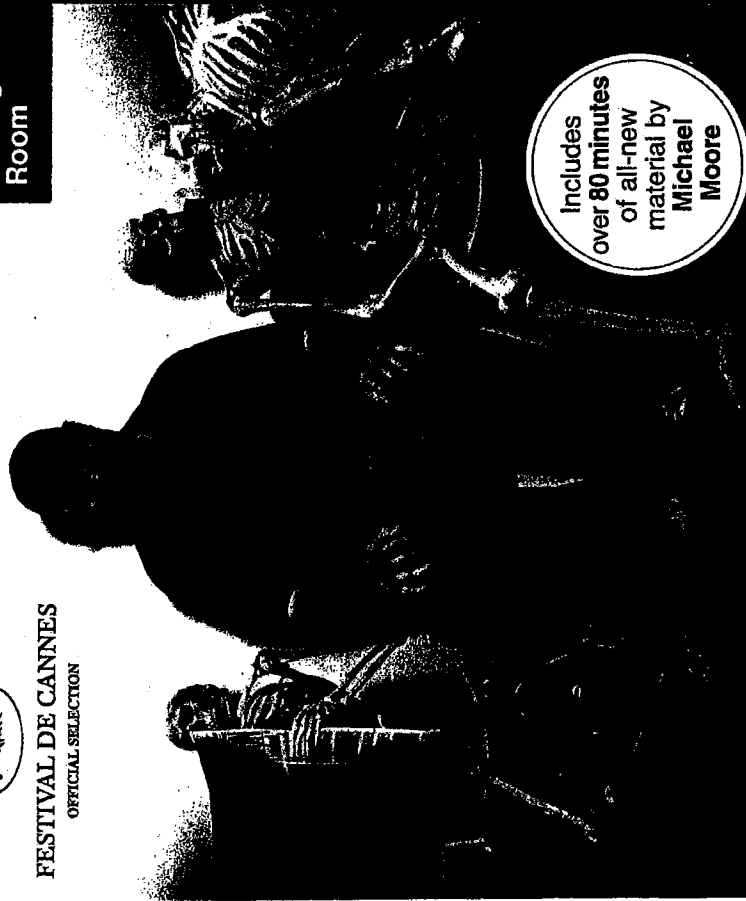
THE A L E D

# A FILM BY MICHAEL MOORE SICKO



FESTIVAL DE CANNES  
OFFICIAL SELECTION

Waiting  
Room



Includes  
over 80 minutes  
of all-new  
material by  
Michael  
Moore

**"You'll laugh till it hurts.  
One of the year's best."**

- Peter Travers, ROLLING STONE

**"Michael Moore's funniest  
movie to date."**

- A.O. Scott, THE NEW YORK TIMES

Academy Award®-winning filmmaker Michael Moore (*Fahrenheit 9/11*) returns with this hilariously scathing indictment of America's failing health system. Combining powerful personal testimonies with shocking statistics, Moore pulls the curtain back on the greedy HMOs, drug companies and congressmen who keep us ill. Traveling to Canada, England, France and Cuba - where free universal health care is the norm - he forces the question: Why can't this happen in the U.S.? Timely and touching, *Sicko* is the most broadly appealing of Mr. Moore's movies. It is also the funniest! **Michael Moore (CHICAGO TRIBUNE)**



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PURCHASE  
80750A

PROOF OF  
PURCHASE  
80750B

ISBN 1-594-44902-3



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## SPECIAL FEATURES

**EXCLUSIVE BONUS MATERIAL  
WRITTEN AND DIRECTED  
BY MICHAEL MOORE**

- ✓ Sicko Goes To Washington
- ✓ This Country Beats France
- ✓ Uniquely American
- ✓ What if You Worked For G.E. In France?
- ✓ Sister Mary Fidel
- ✓ Who Would Jesus Deny?
- ✓ More With Mike & Tony Benn
- ✓ A Different Kind Of Hollywood Premiere
- ✓ Alone Without You Music Video
- ✓ Performed By The Night Marchman
- ✓ Interview: Seller
- ✓ Theatrical Trailer

THE WEAVER COMPANY PRESENTS A DVD FILM PRODUCTION BY MICHAEL MOORE SICKO...  
THE WEAVER COMPANY PRESENTS A DVD FILM PRODUCTION BY MICHAEL MOORE SICKO...  
THE WEAVER COMPANY PRESENTS A DVD FILM PRODUCTION BY MICHAEL MOORE SICKO...

sicko-themovie.com

michaelmoore.com

80750WRP1



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PG-13 PARENTS STRONGLY CAUTIONED  
Some Material May Be Inappropriate  
for Children Under 13  
Parents Must Decide if Action is Warranted

DO NOT  
REPLACE

# **EXHIBIT C**

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

KEN ARONSON,

Plaintiff,

vs.

DOG EAT DOG FILMS, INC.,

Defendant.

NO. 3:10 CV-5293 KLS

**COMPLAINT**

**[JURY DEMANDED]**

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

-- Michael Moore, 2007

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

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

**I. INTRODUCTION AND REQUEST FOR RELIEF**

1.1 This is an action by Ken Aronson, an individual, ("Plaintiff), by and through his attorneys Pfau Cochran Vertetis Kosnoff, LLC, and Thomas B. Vertetis and Bryan D. Doran, 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.  
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#### 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

### COUNT I

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

19 5.7 Plaintiff is also entitled to recover his attorneys' fees and costs of suit. 17 U.S.C. §505.

20 **COUNT III**

21 **Invasion of Privacy**

22 5.8 Defendant's unauthorized distribution of Plaintiff's home video gave publicity to a  
23 matter concerning Plaintiff's private life in violation of Plaintiff's right to privacy.  
24

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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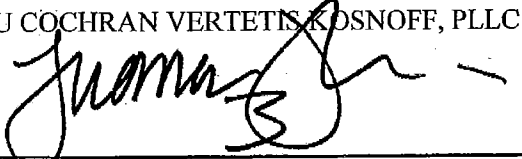
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**VII. JURY DEMAND**

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