

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
Case No. 1:12-CV-22768-CIV-SEITZ/SIMONTON**

MALIBU MEDIA, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LEO PELIZZO, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, Leo Pelizzo (“Defendant”), by and through undersigned counsel, hereby answers Plaintiff’s Complaint as follows:

**Introduction**

1. Defendant admits that Plaintiff is seeking relief under the United States Copyright Act, but denies all other allegations contained in paragraph 1 of Plaintiff’s Complaint.

2. Defendant denies that he is a persistent online infringer of Plaintiff’s works or that he has infringed or illegally distributed any of Plaintiff’s works. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 2 of Plaintiff’s Complaint and, therefore, denies same.

3. Defendant admits that Plaintiff appears as the owner of record in the registrations set forth in Exhibit A to Plaintiff’s Complaint.

**Jurisdiction and Venue**

4. Defendant does not contest this Court’s subject matter jurisdiction.

5. Defendant denies that he committed the tortious conduct alleged in this Complaint, resides in this state, and/or has engaged in substantial and not isolated business activity in this state. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 5 of Plaintiff's Complaint and, therefore, denies same.

6. Defendant denies that he resides in this District. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 6 of Plaintiff's Complaint and, therefore, denies same.

#### **Parties**

7. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of Plaintiff's Complaint and, therefore, denies same.

8. Defendant denies that he is a resident of the state of Florida. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 8 of Plaintiff's Complaint and, therefore, denies same.

9. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of Plaintiff's Complaint and, therefore, denies same.

#### **Factual Background**

10. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of Plaintiff's Complaint and, therefore, denies same.

11. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of Plaintiff's Complaint and, therefore, denies same.

12. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of Plaintiff's Complaint and, therefore, denies same.

13. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 of Plaintiff's Complaint and, therefore, denies same.

14. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 of Plaintiff's Complaint and, therefore, denies same.

15. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 of Plaintiff's Complaint and, therefore, denies same.

16. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 of Plaintiff's Complaint and, therefore, denies same.

17. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 17 of Plaintiff's Complaint and, therefore, denies same.

18. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 18 of Plaintiff's Complaint and, therefore, denies same.

19. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 19 of Plaintiff's Complaint and, therefore, denies same.

20. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 of Plaintiff's Complaint and, therefore, denies same.

21. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 of Plaintiff's Complaint and, therefore, denies same.

22. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 22 of Plaintiff's Complaint and, therefore, denies same.

23. Defendant denies that he is the subscriber of the Internet Service being used to distribute Plaintiff's copyrighted movies. Defendant admits that Plaintiff has alleged that Defendant is the infringer. Defendant is without knowledge or information sufficient to form a

belief as to the remaining allegations contained in paragraph 23 of Plaintiff's Complaint and, therefore, denies same.

24. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 24 of Plaintiff's Complaint and, therefore, denies same.

**Miscellaneous**

25. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 25 of Plaintiff's Complaint and, therefore, denies same.

26. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 of Plaintiff's Complaint and, therefore, denies same.

**COUNT 1**

**Direct Infringement Against Defendant**

27. Paragraph 27 of the Plaintiff's Complaint repeats and re-alleges the allegations of paragraphs 1 through 26 of the Complaint, and therefore no response is required. To the extent a response is required, Defendant repeats, re-alleges, and incorporates by reference its responses to Paragraphs 1 through 26 as if fully set forth herein.

28. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 of Plaintiff's Complaint, and therefore denies same

29. Defendant denies the allegations contained in paragraph 29 of Plaintiff's Complaint.

30. Defendant denies that he copied Plaintiff's Works. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 30 of Plaintiff's Complaint and, therefore, denies same.

31. Defendant denies the allegations contained in paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the allegations contained in paragraph 32 of Plaintiff's Complaint.

33. Defendant denies the allegations contained in paragraph 33 of Plaintiff's Complaint.

**PLAINTIFF'S PRAYER FOR RELIEF**

Defendant denies that Plaintiff is entitled to the relief requested.

**GENERAL DENIAL**

Defendant denies all allegations and/or legal conclusions set forth in Plaintiff's Complaint that have not been previously admitted, denied, or explained.

**AFFIRMATIVE DEFENSES**

First Affirmative Defense

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

Second Affirmative Defense

Plaintiff has failed to join an indispensable party.

Third Affirmative Defense

Plaintiff's U.S. Copyright Registrations are invalid and/or unenforceable.

Fourth Affirmative Defense

Plaintiff's claims are barred by the doctrine of unclean hands.

Fifth Affirmative Defense

Plaintiff's alleged Works are not entitled to copyright protection.

Sixth Affirmative Defense

Plaintiff's claims are barred by the doctrine of misuse of copyright.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver, ratification and/or estoppel.

Eighth Affirmative Defense

Plaintiff's claims for statutory damages and attorney's fees are barred pursuant to 17 U.S.C. § 412 for Plaintiffs' failure to register the alleged Works within three months of publication or prior to the alleged infringement.

Ninth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate damages.

Respectfully submitted,

Dated: February 22, 2013  
Miami, Florida

By: s/Francisco J. Ferreiro  
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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

s/ Francisco J. Ferreiro  
Francisco J. Ferreiro  
Florida Bar No. 37,464

**SERVICE LIST**

**Case No. 1:12-CV-22768-CIV-SEITZ/SIMONTON**

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