

Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RIDING FILMS, INC.
Plaintiff
v.
JOHN DOES 1- 65
Defendants.

Case No. 2:13-CV-00287

ANSWER AND
COUNTERCLAIM

Jury Demanded

Defendant **Max Pham** (“Ms. Pham”) hereby responds to Plaintiff Riding Films, Inc.'s Complaint. Defendant Ms. Pham is identified in Plaintiff's Complaint by I.P. Address **24.16.124.144**. In answer to the complaint, Ms. Pham states as follows:

Jurisdiction And Venue

1. Admitted that this is an action which purports to recite a claim for copyright infringement and contributory copyright infringement. Denied that the action has merit.
2. Admitted.
3. Defendant admits only that this Court has personal jurisdiction. All other allegations are denied.

JOINDER

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2 4. Defendant denies any involvement in any act related to, or even any
3 knowledge of, the “Motion Picture.” Defendant is without knowledge or
4 information sufficient to form a belief as to the truth of the remaining allegations
5 of this paragraph and therefore denies those allegations.

6 5. Defendant denies any involvement in any “swarm.” Defendant is
7 without knowledge or information sufficient to form a belief as to the truth of
8 the remaining allegations of Paragraph 5 and therefore denies those allegations.

9 6. Defendant denies any involvement in any “swarm.” Defendant is
10 without knowledge or information sufficient to form a belief as to the truth of
11 the remaining allegations of Paragraph 6 and therefore denies those allegations.

12 7. Defendant denies any involvement in any “swarm.” Defendant is
13 without knowledge or information sufficient to form a belief as to the truth of
14 the remaining allegations of Paragraph 7 and therefore denies those allegations.

15 8. Defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations of Paragraph 8 and therefore denies those
17 allegations.

18 9. Defendant is without knowledge or information sufficient to form a
19 belief as to the truth of the allegations of Paragraph 9 and therefore denies those
20 allegations.

21 10. Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations of Paragraph 10 and therefore denies
23 those allegations.
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1 11. Denied as to Ms. Pham. Defendant is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations
3 of Paragraph 11 and therefore denies those allegations.

4 12. Defendant is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations of Paragraph 12 and therefore denies
6 those allegations.

7 13. Defendant denies any participation in any infringement. Defendant
8 is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations of Paragraph 13 and therefore denies those allegations.

10 14. Defendant denies any participation in any infringement. Defendant
11 is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations of Paragraph 14 and therefore denies those allegations.

13 15. Defendant is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations of Paragraph 15 and therefore denies
15 those allegations.

16 16. Defendant is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations of Paragraph 16 and therefore denies
18 those allegations.

19 17. Defendant is without knowledge or information sufficient to form a
20 belief as to the truth of the allegations of Paragraph 17 and therefore denies
21 those allegations.

22 18. Defendant is without knowledge or information sufficient to form a
23 belief as to the truth of the allegations of Paragraph 18 and therefore denies
24 those allegations.

PARTIES

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2 19. Defendant is without knowledge or information sufficient to form a
3 belief as to the truth of the allegations of Paragraph 19 and therefore denies
4 those allegations.

5 20. Denied that Ms. Pham participated in any swarm. Denied that the
6 National Security Agency developed the “hashing” algorithm; Hans Luhn is
7 generally credited with creating the concept of a hashing algorithm while he was
8 a computer scientist at IBM. Defendant is without knowledge or information
9 sufficient to form a belief as to the truth of the remaining allegations of
10 Paragraph 20 and therefore denies those allegations.

11 21. Denied.

12 22. Denied that Ms. Pham participated in any infringement. Defendant
13 is without knowledge or information sufficient to form a belief as to the truth of
14 the remaining allegations of Paragraph 22 and therefore denies those allegations.

15 23. Defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations of Paragraph 23 and therefore denies
17 those allegations.

18 24. Defendant is without knowledge or information sufficient to form a
19 belief as to the truth of the allegations of Paragraph 24 and therefore denies
20 those allegations.

21 25. Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations of Paragraph 25 and therefore denies
23 those allegations.
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COPYRIGHT INFRINGEMENT AND BITTORRENT

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2 33. Defendant is without knowledge or information sufficient to form a
3 belief as to the truth of the allegations of Paragraph 33 and therefore denies
4 those allegations.

5 34. Defendant is without knowledge or information sufficient to form a
6 belief as to the truth of the allegations of Paragraph 34 and therefore denies
7 those allegations.

8 35. Denied that Ms. Pham visited any such “torrent site.” Defendant is
9 without knowledge or information sufficient to form a belief as to the truth of
10 the allegations of Paragraph 35 and therefore denies those allegations.

11 36. Defendant is without knowledge or information sufficient to form a
12 belief as to the truth of the allegations of Paragraph 36 and therefore denies
13 those allegations.

14 37. Denied that the National Security Agency developed the concept of
15 a hashing algorithm. Denied that a hash value acts as a “roadmap” to anything,
16 least of all IP addresses. Defendant is without knowledge or information
17 sufficient to form a belief as to the truth of the allegations of Paragraph 37 and
18 therefore denies those allegations.

19 38. Defendant is without knowledge or information sufficient to form a
20 belief as to the truth of the allegations of Paragraph 38 and therefore denies
21 those allegations.

22 39. Denied.

23 40. Defendant is without knowledge or information sufficient to form a
24 belief as to the truth of the allegations of Paragraph 40 and therefore denies
25 those allegations.
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1 41. Defendant is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations of Paragraph 41 and therefore denies
3 those allegations. The phrase “in this is Hash” is not understood, and therefore
4 denied.

5 42. Denied that Ms. Pham participated in any swarm. Defendant is
6 without knowledge or information sufficient to form a belief as to the truth of
7 the remaining allegations of Paragraph 42 and therefore denies those allegations.
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9 43. Defendant is without knowledge or information sufficient to form a
10 belief as to the truth of the allegations of Paragraph 43 and therefore denies
11 those allegations.

12 44. Denied that Ms. Pham participated in any infringement. Defendant
13 is without knowledge or information sufficient to form a belief as to the truth of
14 the allegations of Paragraph 44 and therefore denies those allegations.

15 45. Denied that Plaintiff identified Defendant publishing the Motion
16 Picture via BitTorrent or any other method. Defendant is without knowledge or
17 information sufficient to form a belief as to the truth of the remaining allegations
18 of Paragraph 45 and therefore denies those allegations.

19 46. Denied that Plaintiff created the Motion Picture. On information
20 and belief, Plaintiff has never created anything except lawsuits.

21 47. Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations of Paragraph 47 and therefore denies
23 those allegations.
24

25 48. Denied that Ms. Pham distributed the Motion Picture in any way,
26 least of all by BitTorrent. Defendant is without knowledge or information
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1 sufficient to form a belief as to the truth of the remaining allegations of
2 Paragraph 48 and therefore denies those allegations.

3 49. Denied.

4 **Defendants Are Members Of BitTorrent Swarm**

5 50. Denied.

6 51. Denied.

7 52. Denied.

8 53. Denied.

9 54. Denied.

10 **COUNT I**

11 **DIRECT COPYRIGHT INFRINGEMENT**

12 55. Defendant repeats each denial of paragraphs 1-54 above as if set
13 forth fully here.

14 56. Denied that Ms. Pham participated in any infringement. Defendant
15 is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations of Paragraph 56 and therefore denies those allegations.

17 57. Defendant is without knowledge or information sufficient to form a
18 belief as to the truth of the allegations of Paragraph 57 and therefore denies
19 those allegations.

20 58. Denied that Ms. Pham participated in any infringement. Defendant
21 is without knowledge or information sufficient to form a belief as to the truth of
22 the remaining allegations of Paragraph 58 and therefore denies those allegations.
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1 **Prayer For Relief**

2 Defendant denies that Plaintiff is entitled to any of the relief prayed for in
3 the Complaint.

4 **AFFIRMATIVE DEFENSES**

5 Defendant asserts the following affirmative defenses without undertaking
6 or otherwise shifting any applicable burden of proof.

7 **Lack Of Standing**

8 Plaintiff is not the real party in interest in this matter and/or does not have
9 sufficient rights to maintain this action. Plaintiff's rights, if any, in the purported
10 copyright fail to confer proper standing on Plaintiff to maintain this action.

11 **No Infringement**

12 Defendant has not engaged in or contributed to any infringement of the
13 purported copyright.

14 **Abuse Of Process**

15 Plaintiff's claims are an abuse of process and are being pursued for an
16 improper purpose.

17 **Misuse Of Copyright**

18 Plaintiff's claims are barred by the doctrine of misuse of copyright based
19 on Plaintiff's improper conduct and actions in bringing and maintaining this and
20 other actions exactly like it around the country.

21 **Estoppel And Unclean Hands**

22 Plaintiff's claims are barred by the doctrine of estoppel. Even though
23 Defendant had no involvement in any direct or contributory infringement,
24 Plaintiff likely knew the facts of any alleged file-sharing by other defendants or
25 other non-defendants. Plaintiff acted in such manner that other defendants
26 and/or third parties were entitled to, and did, believe that the continued
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1 availability of the copyrighted work on BitTorrent was intended by Plaintiff, and
2 any actions to download were induced by, and done in reliance on, Plaintiff's
3 conduct.

4 **Implied License**

5 Plaintiff's claims are barred by implied license. By making its own
6 copyrighted work available using the BitTorrent protocol to users of that
7 protocol, Plaintiff has conveyed an implied license to the copyrighted work to
8 any users of the BitTorrent protocol.

9 **Inadequacy Of Copyright Assignment**

10 Plaintiff's purported rights in the copyrighted work, if any, fail to include
11 the right to sue for prior infringements.

12 **COUNTERCLAIMS**

13 For its Counterclaims against Plaintiff Riding Films, Inc., Defendant Ms.
14 Pham asserts as follows:

15 **THE PARTIES**

- 16 1. Defendant/Counterclaimant is an individual residing in this District.
- 17 2. Plaintiff/Counterclaim Defendant Riding Films, Inc. is a Canadian
18 Company with a principal place of business in Burnaby, Canada.

19 **JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction over these counterclaims
21 pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202. The counterclaims
22 are so related to the claims asserted by Plaintiff in this action that they form part
23 of the same case or controversy under Article III of the United States
24 Constitution, and arise out of common facts, transactions, or occurrences as
25 provided under Fed. R. Civ. P. 13 and 20.
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1 9. All five of those different plaintiffs have also brought similar
2 actions in other cases around the country. See, e.g., *Kintop Pictures v. Does 1-*
3 *78*, 12-cv-1210 (MDTN); *R&D Film 1 LLC v. Does 1-20*, 12-cv-5817 (NDIL);
4 *Riding Films Inc. v. Does 1-61*, 13-cv-0018 (SDGA); *Zambezia Film Ltd v.*
5 *Does 1-17*, 13-cv-0043 (EDTN); and *Voltage Pictures LLC v. Does 1-24*, 13-cv-
6 0463 (NDOH), as well as countless others.

7 10. In each other district, the actions brought by those other plaintiffs
8 are also brought by the same counsel. See, for example:

9 (a) In the Middle and Eastern Districts of Tennessee, Klint W. Alexander
10 is counsel of record on: *Voltage Pictures LLC v. Does 1-92*, 13-cv-0132; *Kintop*
11 *Pictures v. Does 1-78*, 12-cv-1210; *Riding Films Inc. v. Does 1-92*, 12-cv-1247;
12 *R&D Film 1 LLC v. Does 1-96*, 13-cv-0617; and

13 (b) In the Southern District of Georgia, Nathan C. Belzer is counsel of
14 record on: *Zambezia Film Ltd v. Does 1-33*, 13-cv-0016; *Riding Films Inc. v.*
15 *Does 1-24*, 13-cv-0020; *R&D Film 1 LLC v. Does-1-37*, 12-cv-0283.

16 11. In none of the countless cases across the country brought on behalf
17 of the instant Plaintiff, or any of the other plaintiffs, is any relationship between
18 them ever disclosed to the various courts, despite the nearly-uniform
19 requirement that every entity with a financial stake in the outcome of the
20 litigation must be disclosed. See, L.C.R. 7.1.

21 12. It is inconceivable that multiple completely unrelated entities all
22 happened to stumble upon the exact same set of plaintiff's lawyers in each of
23 countless different districts around the country.
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1 history, Plaintiff has no intention of using this legal process for the purpose
2 which it was intended.

3 21. Specifically, Plaintiff failed to disclose and concealed pertinent and
4 material information that includes but is not limited to the following:

5 (a) Plaintiff instituted this action without any genuine intent to proceed
6 against any defendant herein, but rather as a vehicle to obtain discovery of the
7 identity and contact information of Defendant and others;

8 (b) upon receiving that information, Plaintiff intends to mail letters to
9 each defendant threatening to pursue statutory damages and attorney's fees under
10 the Copyright Act, without disclosing that those remedies are not properly
11 recoverable;

12 (c) Plaintiff intends the current action to hang as a sword over Defendant's
13 head, to extort unwarranted payments to settle claims not supportable as a matter
14 of law.

15 22. Plaintiff is not the real party in interest, and through its conduct has
16 sought to conceal the identity of the real party in interest, thereby committing
17 fraud upon this Court.

18 23. As a direct and proximate result of the Plaintiff's conduct,
19 Defendant has been forced to expend a significant amount of time and money in
20 defending against these frivolous claims, and thereby suffered injuries, damages,
21 or losses in an amount to be determined at trial.

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24 **THIRD COUNTERCLAIM**
25 **Copyright Misuse**

26 24. Defendant incorporates by reference all foregoing allegations made
27 in the affirmative defenses and counterclaims as if fully set forth herein.

1 E. For an award of all damages sustained as a consequence of
2 Plaintiff's Abuse of Process complained of herein;

3 F. For an award of pre- and post-judgment interest; and

4 G. For such other and further relief as the Court deems appropriate.
5

6 **JURY DEMAND**

7 Defendant demands a trial by jury on all issues presented in the
8 Complaint and this Answer and Counterclaim.

9 Dated April 19, 2013

Respectfully submitted,

11 /s/ John Whitaker

12 John Whitaker, WSBA No: 28868

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19 Attorney for Defendant
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CERTIFICATE OF SERVICE

I, Anne K. Smart, hereby certify that on the date indicated below, I caused a true and correct copy of the foregoing to be served on all parties who have appeared in this case:

DATED: April 19, 2013

s/Anne K. Smart
Anne K. Smart
Whitaker Law Group