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Attorneys for Defendant GAN SOUTHGATE

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

MALIBU MEDIA, LLC, a California  
corporation,

Plaintiff,

vs.

GAN SOUTHGATE,

Defendant.

Case No.: 3:12-cv-00369-DMS-WMC

**DEFENDANTS' ANSWER TO FIRST  
AMENDED COMPLAINT**

**FILED CONCURRENTLY WITH  
DEFENDANT'S COUNTERCLAIM**

**DEFENDANT'S ANSWER**

Defendant, GAN SOUTHGATE, by way of Answer to the First Amended Complaint  
of Malibu Media, LLC (the "MALIBU"), says:

///

///

**INTRODUCTION**<sup>1</sup>

1  
2 1. Defendant denies that MALIBU has any cause(s) of action against Defendant  
3 under the United States Copyright Act of 1976 or under any other legislation or at common  
4 law.  
5

6 2. Denied in its entirety.

**JURISDICTION AND VENUE**

7  
8 3. Defendant denies that MALIBU has any cause of action against him;  
9 however, she admits that this court has subject matter jurisdiction over matters involving  
10 federal questions and copyrights.  
11

12 4. Defendant denies the allegations of this paragraph. Even if the IP address in  
13 question (72.220.164.235) was associated with the high-speed internet router located in  
14 Defendant's home on or about December 13, 2011, that fact would not give rise to  
15 jurisdiction over the Defendant's person. An IP address is not a person but a designation  
16 assigned to a piece of technology, which can be accessed by multiple individuals; in  
17 addition, in a process commonly known as "spoofing" an IP address can be stolen or  
18 misused as follows: other devices can be configured with the same IP address or an  
19 individual can utilize technology to make his or her own IP address to appear to be another  
20 IP address.  
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23 5. Defendant denies the allegations of this paragraph, except to admit that she  
24 is a resident of the City of San Diego, County of San Diego, and State of California.  
25 MALIBU has failed to plead facts from which a reasonable trier of fact could conclude that  
26 this Court has personal jurisdiction over Defendant, or that venue is properly laid in this  
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<sup>1</sup> The headings of the Complaint are used in this Answer solely for the convenience of the Court. Defendant does not admit any of MALIBU's allegations by such use.

1 district. Defendant has no personal knowledge as to relevant information regarding any  
2 other doe defendants in this matter.

3  
4 **PARTIES & FACTUAL BACKGROUND**

5 6. Defendant has no personal knowledge of these facts and can neither confirm  
6 nor deny and leaves MALIBU to its proofs.

7 7. Defendant admits that she is a resident of the state of California. Defendant  
8 has no knowledge as to the IP address provided by Cox Communications.

9  
10 8. Defendant has no personal knowledge of these facts and can neither confirm  
11 nor deny and leaves MALIBU to its proofs.

12 9. Defendant has no personal knowledge of these facts and can neither confirm  
13 nor deny and leaves MALIBU to its proofs.

14  
15 10. Defendant has no personal knowledge of these facts and can neither confirm  
16 nor deny and leaves MALIBU to its proofs.

17 11. Defendant has no personal knowledge of these facts and can neither confirm  
18 nor deny and leaves MALIBU to its proofs.

19  
20 12. Defendant has no personal knowledge of these facts and can neither confirm  
21 nor deny and leaves MALIBU to its proofs.

22 13. Defendant has no personal knowledge of these facts and can neither confirm  
23 nor deny and leaves MALIBU to its proofs.

24 14. Defendant has no personal knowledge of these facts and can neither confirm  
25 nor deny and leaves MALIBU to its proofs.

26  
27 15. Defendant denies the allegations of this paragraph. Even if the IP address in  
28 question (72.220.164.235) was associated with the high-speed internet router located in  
Defendant's home on or about December 13, 2011, that fact would not give rise to

1 jurisdiction over the Defendant's person. An IP address is not a person but a designation  
2 assigned to a piece of technology, which can be accessed by multiple individuals; in  
3 addition, in a process commonly known as "spoofing" an IP address can be stolen or  
4 misused as follows: other devices can be configured with the same IP address or an  
5 individual can utilize technology to make his or her own IP address to appear to be another  
6 IP address.  
7

8           16. Defendant has no personal knowledge of these facts and can neither confirm  
9 nor deny and leaves MALIBU to its proofs.  
10

11           17. Defendant has no personal knowledge of these facts and can neither confirm  
12 nor deny and leaves MALIBU to its proofs.

13           18. Defendant has no personal knowledge of these facts and can neither confirm  
14 nor deny and leaves MALIBU to its proofs.  
15

16           19. Defendant denies the allegations of this paragraph. Even if the IP address in  
17 question (72.220.164.235) was associated with the high-speed internet router located in  
18 Defendant's home on or about December 13, 2011, that fact would not give rise to  
19 jurisdiction over the Defendant's person. An IP address is not a person but a designation  
20 assigned to a piece of technology, which can be accessed by multiple individuals; in  
21 addition, in a process commonly known as "spoofing" an IP address can be stolen or  
22 misused as follows: other devices can be configured with the same IP address or an  
23 individual can utilize technology to make his or her own IP address to appear to be another  
24 IP address.  
25

26           20. Defendant has no personal knowledge of these facts and can neither confirm  
27 nor deny and leaves MALIBU to its proofs. However, even if the IP address in question  
28 (72.220.164.235) was associated with the high-speed internet router located in Defendant's

1 home on or about December 13, 2011, that fact would not give rise to jurisdiction over the  
2 Defendant's person. An IP address is not a person but a designation assigned to a piece  
3 of technology, which can be accessed by multiple individuals; in addition, in a process  
4 commonly known as "spoofing" an IP address can be stolen or misused as follows: other  
5 devices can be configured with the same IP address or an individual can utilize technology  
6 to make his or her own IP address to appear to be another IP address.  
7

8         21. Defendant has no personal knowledge of these facts and can neither confirm  
9 nor deny and leaves MALIBU to its proofs. However, even if the IP address in question  
10 (72.220.164.235) was associated with the high-speed internet router located in Defendant's  
11 home on or about December 13, 2011, that fact would not give rise to jurisdiction over the  
12 Defendant's person. An IP address is not a person but a designation assigned to a piece  
13 of technology, which can be accessed by multiple individuals; in addition, in a process  
14 commonly known as "spoofing" an IP address can be stolen or misused as follows: other  
15 devices can be configured with the same IP address or an individual can utilize technology  
16 to make his or her own IP address to appear to be another IP address.  
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19         22. Defendant has no personal knowledge of these facts and can neither confirm  
20 nor deny and leaves MALIBU to its proofs. However, even if the IP address in question  
21 (72.220.164.235) was associated with the high-speed internet router located in Defendant's  
22 home on or about December 13, 2011, that fact would not give rise to jurisdiction over the  
23 Defendant's person. An IP address is not a person but a designation assigned to a piece  
24 of technology, which can be accessed by multiple individuals; in addition, in a process  
25 commonly known as "spoofing" an IP address can be stolen or misused as follows: other  
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**SECOND AFFIRMATIVE DEFENSE**  
**(Statutory Damages)**

MALIBU's claim for statutory damages under 17 U.S.C. § 504 is barred because MALIBU's copyright registrations were not made within three months after the first publication of the allegedly infringing works, as required by 17 U.S.C. § 412.

**THIRD AFFIRMATIVE DEFENSE**  
**(Unconstitutionally Excessive Damages)**

MALIBU's claims are barred because the damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained in violation of the Due Process clause.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Lack of Originality)**

MALIBU's works lack originality and are thus not protectable by copyright.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Invalidity or Unenforceability of Copyright)**

MALIBU's copyrights are invalid and/or unenforceable.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Fair Use)**

MALIBU's claims are barred by the doctrine of fair use.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Estoppel)**

MALIBU's claims are barred by estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

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

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**NINTH AFFIRMATIVE DEFENSE**  
**(Waiver)**

MALIBU’s claims are barred by waiver.

**TENTH AFFIRMATIVE DEFENSE**  
**(Authorized Use)**

MALIBU authorized, impliedly or explicitly, Defendant’s allegedly infringing use of its works, and MALIBU’s claims are therefore barred by the doctrine of implied license.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(License, Consent and Acquiescence)**

MALIBU’s claims are barred by MALIBU’s license, consent, and acquiescence to the “use” alleged.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate Damages)**

To the extent MALIBU suffered any damages, which Defendant expressly denies; MALIBU has failed to take the steps necessary to mitigate the damages sustained.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Forfeiture or Abandonment)**

MALIBU’s claims are barred to the extent it has forfeited or abandoned its intellectual property.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Misuse of Copyright)**

MALIBU’s claims are barred by the doctrine of misuse of copyright.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Innocent Intent)**

MALIBU’s claims are barred, in whole or in part, because Defendant’s conduct was in good faith and with non-willful intent, at all times.

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**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Injunctive Relief)**

MALIBU is not entitled to injunctive relief because any alleged injury to MALIBU is not immediate or irreparable, and MALIBU has an adequate remedy at law.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(Unknown Defenses)**

Pursuant to FRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant’s Answer, and therefore Defendant reserves the right to amend her answer to allege additional defenses, if subsequent investigation so warrants.

**Prayer For Relief**

Defendant requests judgment in her favor and as follows:

1. MALIBU take nothing;
2. For costs, fees and expenses of suit as allowed by law; and
3. For such relief that the Court deems just and proper.

Respectfully submitted,

**DREHER LAW FIRM**

Dated: August 22, 2012

By:

**/s/ Robert Scott Dreher**  
 Robert Scott Dreher  
 Email: [scott@dreherlawfirm.com](mailto:scott@dreherlawfirm.com)  
 Attorneys for Defendant