

Plaintiff Russell G. Greer comes forward now with his First Amended Complaint against Defendants named above and alleges as follows:

### **INTRODUCTION**

1. In 1996, Congress enacted *U.S.C. 47 § 230*, otherwise known as the *Communications Decency Act (the CDA)*.
2. The *CDA* protects internet service providers (ISPs) from being considered publishers.
3. There are caveats: the *CDA* doesn't protect against copyright infringement. *U.S.C. 47 § 230 (e)(2)*.
4. When the *CDA* was enacted, they passed that law not knowing that sites like Kiwi Farms would operate. Therefore, because of the *CDA*, Plaintiff can only pursue copyright infringement claims against the site owners: Moon and Lolcow LLC.
5. Plaintiff brings this action seeking to put an immediate stop to, and to obtain redress for, Defendants' blatant and purposeful contributory infringement of Plaintiff's copyrights, which are a book entitled, "*Why I Sued Taylor Swift and How I Became Falsely Known as Frivolous, Litigious and Crazy*" and for songs Greer also copyrighted, "*I Don't Get You, Taylor Swift*." All works are copyrighted with the United States Copyright Office.
6. Defendants' conduct has caused enormous and irreparable harm to Plaintiff and has affected the market and Plaintiff's ability to market his copyrighted material.
7. Plaintiff requests statutory damages for all infringements involved in this action, as found in *17 U.S. 504 (C)(1)*, in an amount up to \$30,000, but no less than \$750, for each copyright infringed upon.

8. Plaintiff additionally requests statutory damages for willful copyright infringement, as found in *17 U.S. 504 (C)(2)*, in the amount of \$150,000, for each copyright infringed upon.

### **JURISDICTION AND VENUE**

9. This is a civil action seeking damages for copyright infringement under the *Copyright Act* of the United States, *17 U.S.C. § 101, et seq.*

10. This Court has subject matter jurisdiction over this copyright infringement action pursuant to *28 U.S.C. §§ 1331 and 1338(a)*.

11. Venue is proper in this district pursuant to *28 U.S.C. §§ 1391(b)* and *(c)*, and/or *§ 1400(a)*.

### **PERSONAL JURISDICTION**

12. This Court has personal jurisdiction over Defendants, as Defendants have purposely availed themselves into this Court's jurisdiction, as they have caused, directly and indirectly, for Greer's intellectual property to be copyrighted; to harass Plaintiff by running a site that mocks and harasses people Defendants deem to be weird; posting Greer's letters asking Defendants to stop. **EXHIBIT A.**

### **PARTIES**

13. Plaintiff Russell Greer resides in the State of Nevada, but the infringement of the copyrights occurred while Greer was living in Utah. Greer also has a facial disability and that is in-part why Moon's site stalks Greer.

14. Defendant Joshua Moon resides in Florida, but it has been rumored that he has at one time fled the country. He manages Kiwi Farms, a site founded on exploiting people for amusement purposes. Kiwi Farms was built to exploit and

showcase those Moon and his users have deemed to be eccentric and weird, terming them “Lolcows”. Moon frequently interacts with the site, using the username “Null”. **EXHIBIT B**

15. Classifying Moon’s site as a “forum” is being extremely kind. His users don’t debate and discuss like a traditional forum does. His site goes far beyond that: they stalk and harass. Moon and his site have caused three people to commit suicide. *Woman who set self on fire in Portland park remembered as ‘brilliant and tortured’ artist*. Oregon Live. (2018)

[https://www.oregonlive.com/portland/2018/06/woman\\_who\\_set\\_self\\_on\\_fire\\_in.html](https://www.oregonlive.com/portland/2018/06/woman_who_set_self_on_fire_in.html)) (article says, “Sagal, a transgender woman, *became the target of hate mob Kiwi Farms, an online group New Yorker magazine described as “the web’s biggest community of stalkers”* that “specializes in harassing people they perceive as being mentally ill or sexually deviant in some way.”).

16. Defendant Lolcow LLC owns the site, Kiwi Farms. In his very own words, Moon has described his site as having nothing to do with New Zealand (the land of the Kiwis), saying, “Our name is a pointed jab at some of the mushmouthed autistic people we make fun of.” Found on a thread entitled, “*A Truly American Response to Censorship.*” Ar15.com (March 17<sup>th</sup>, 2019).

[\(https://www.ar15.com/forums/General/A-truly-American-response-to-censorship/5-2203190/\)](https://www.ar15.com/forums/General/A-truly-American-response-to-censorship/5-2203190/).

17. Defendant John Doe #1 is a user on Kiwi Farms, going by the name Moseph.Jartelli.

18. Defendant John Doe #2 is a user on Kiwi Farms, going by the name Russtard.

### **GENERAL ALLEGATIONS**

19. Greer caught Kiwi Farms’ attention after he was on the news for a lawsuit Greer had filed against pop star Taylor Swift in late 2016 as a publicity stunt.

20. Shortly after the event, Greer Googled himself and found that he had been put onto Kiwi Farms. At the time, Greer thought it was just a random, forum site and ignored said site.

21. It wasn't until Greer began receiving harassing messages through phone, email and social

media that he realized how difficult that site was becoming, with links of the site being sent to him. The users on Kiwi Farms began to put Greer on other troll sites, like Encyclopedia Dramatica (which is a libelous and bizarre form of Wikipedia) and twisted Reddit threads. This is a pattern that Kiwi Farms does to all of its victims, which is well-documented.

22. On February of 2017, Greer's employer, a law firm, pulled him into an office and explained that they were being inundated with emails that were saying how "horrible" Greer was. One message falsely claimed Greer was using a work phone to look at pornography. Greer even received links to websites on his work email, which Greer found surprising because he had not disclosed his work email address. This all is linked back to Kiwi Farms.

23. Videos began to pop up on YouTube, warning people that if they didn't date Russell Greer, he would sue you, an obvious reference to the twisted news stories. Greer was able to remove the video, but other videos of him began to pop up.

24. Fake profiles began to pop up on social media of Greer, using his pictures with derogatory names such as "Moebious Shit Lips" and "Rat Face". On Kiwi Farms, there are users who use Greer's pictures for their user profiles, with some of the usernames being "Ugly Troll 4 U", "ZombieFace" and "Russtard", which is a combination of Plaintiff's name and the word "retard".

25. Even walking around downtown in Greer's former city of Salt Lake, people would exclaim that Greer was the guy who sued Taylor Swift. Some people caused scenes in stores or screamed at him from cars.

26. Because of the harassment, Greer has had to change email addresses, phone numbers and delete social media profiles.

27. Realizing that things were getting out of hand, Greer decided that he was going to write a book about the event to explain his side of things and to hopefully clear up the defamation surrounding him. His goal was to get a publisher to pick up the book.

28. No book publishers or agents were interested in his book, so Greer decided to selfpublish the book on Amazon and he would do his own marketing. Greer copyrighted the book with the Copyright Office, as found in *17 USC 408-410*. The book has the registration number of TX0008469519. He received a Certificate of Registration. **EXHIBIT D.** A copyright application was filed before the infringement began.

29. The book was entitled, “*Why I Sued Taylor Swift and How I Became Falsely Known as Frivolous, Litigious and Crazy.*” Numbering at 175 pages, Greer invested nearly a year writing the book and even hired an animator to draw a comic intro. He wanted his story to be as appealing as possible. **EXHIBIT E.**

30. In late October of 2017, Greer was fired from his job and evicted because of the trolls on Kiwi Farms, with his landlord expressing fear that the trolls would ruin the landlord’s business, which was a gym facility. The landlord also didn’t understand the Swift situation. The trolls had already sent pizza delivery guys to the landlord’s house.<sup>1</sup>

31. Kiwi Farms has doxxed Greer’s addresses and contact information and displayed it on that site for people to disparage him. The users on that site have openly called for harassment against Greer. Other users have asked for people to put everything about Greer onto that site, so that they can trash it, copyrighted or not. **EXHIBIT F.**

32. The harassment is linked to Kiwi Farms because Greer’s social media handle is listed at the top of his featured thread on the site. Also, the trolls screenshot everything Greer does and put it on the site, which encourages the users to harass Greer. And because harassers have linked Kiwi Farms to the harassment. **EXHIBIT G.**

### **COPYRIGHT INFRINGEMENT OF GREER’S BOOK**

33. Greer filed an application for copyright on 10/22/2017, before the infringement occurred, and the certificate lists that day as the effective date of registration. **EXHIBIT J.**

34. In November of 2017, Greer published his book. Unsurprisingly, the Kiwi Farms users gave his book bad reviews on various fronts. On Good Reads, a site where readers can review books, the users on Kiwi Farms have left very mean and hate filled messages about Greer and his book. It currently holds a 1.5 star rating out of 5 stars. EXHIBIT K.

35. Greer knows that the reviews are from Kiwi Farms because the comments have included links to Kiwi Farms and other obscure sites, inviting people to go read the book illegally. EXHIBIT L.

36. In January of 2018, Greer was informed that his book had been illegally put onto Kiwi Farms.

37. The following link shows where the book is at on Kiwi Farms, with a heading entitled, “Rusty’s Tale.” (<https://kiwifarms.net/threads/russell-greer-theofficialinstaofrussellgreer.30488/>). The book’s location has since been moved to a different page and is also accessible on the front page about Greer. Exhibit M.

38. Below the title, “Rusty’s Tale”, is a Google Drive link to Greer’s book. (<https://drive.google.com/drive/folders/0B2VdH79IRT1RN1pvdnJ1cTk2cUU>). Somebody created a copy of Greer’s book and put it in a Google Drive file that is accessible on Kiwi Farms.

39. Infuriated and hurt, Greer sent Mr. Moon requests to have his book removed, but Moon refused. The notices weren’t in the form of a DMCA Takedown notice. Rather, they were emails wishing to avoid litigation. Litigation hadn’t really crossed Greer’s mind, based mostly on Moon’s website FAQ, which states that Moon is an “insane person” with “no assets”, and so it made no sense to try suing him and so only email requests were made, not legal requests, like a DMCA notice. EXHIBIT N.

40. In turn, Moon published Plaintiff’s requests onto Kiwi Farms and explained that there was so “much wrong” with Greer’s request for it to even be considered. That is harassment and contributing to the harassment.

41. Greer has tried everything to get the site to stop harassing him, such as getting the police involved because of the site harassment, but the Salt Lake City

police wouldn't pursue a case because they wouldn't allow Greer to file a complaint over email, although Officer Hernandez, an officer Greer spoke with, said to ask Moon once more to remove his stuff. The police only allowed phone complaints, which Greer was not comfortable doing because of his disability and so a complaint was never filed. A year earlier, Greer had filed a police complaint against a specific user, but nothing ever resulted from that. It should be noted that other victims of Kiwi Farms have called the police because of the atrocious behavior coming from the site, so seeking the site harassment to stop is nothing peculiar.

42. Other users on Kiwi Farms have created unauthorized audio recordings of Greer's books and have put them on various sites. One infringer used the hashtag, "Spaz Face" as a direct, discriminatory insult against Greer. Kiwi Farms has links to these audio recordings. EXHIBIT O.

43. The copyright infringement hasn't been your "run-of-the-mill" infringement. They have put a copy of his book on the site for anybody to view and to save onto their devices, via the Google Drive link listed on the site and on the front page, and have thus purposely deprived Greer of making money and have deprived him of having the ability to try to clear his name with a book that was written for the express purpose of doing just that. This has been demonstrated with marketers refusing to market the book because it has bad reviews, not understanding that Kiwi Farms is behind the reviews. EXHIBIT P.

### **COPYRIGHT INFRINGEMENT OF GREER'S SONG**

44. Seeing that his book had hit a snag because of the bad reviews, Greer decided to write a song because he felt he could bring awareness better with a song. He wanted to bring awareness to celebrity misrepresentation and cyber bullying. Of course, that is his opinion he has gathered after doing research and talking with people,

45. Investing his own money writing and producing the song with professionals, Greer finished the song in April of 2019. The song was entitled, "*I Don't Get You*,

*Taylor Swift*” and is registered with the United States Copyright Office with the number SRu001366535. EXHIBIT Q. He filed an application for copyright on 4/12/2019, before the infringement occurred, and the certificate lists that day as the effective date of registration.

46. Greer paid CD Baby, a music distributor that publishes and distributes the music of independent artists, to publish his song and to place it onto major music platforms, like Spotify and Apple Music.

47. CD Baby also has an online store, where they sell the artists’ music in the form of MP3 downloads. Greer was not happy with his song being on the store because he knew a troll would buy it and place it onto the website...and that’s just what happened.

48. On April 15<sup>th</sup>, 2019, Greer was informed that his song had been put onto Kiwi Farms, a routine those users have been diligent about, and an uncomfortable reality Greer has had to cope with.

49. Upon investigating, Greer was horrified to find that the MP3 of his song was indeed on Kiwi Farms. The link can be found here:

<https://kiwifarms.net/threads/russell-greer-theofficialinstaofrussellgreer.30488/page-1448#post-4579377>.

50. The user who posted the song, “Moseph.Jartelli”, wrote, “Enjoy this repetitive turd.”

51. Greer’s frequent harasser, “Russtard”, remarked, “Holy Shit! It is. ***Upload it here so no one else accidentally gives Russell money.***” EXHIBIT R.

52. This comment cements Greer’s claims of the trolls seeking to ruin his life. Not only have they willfully infringed on Greer’s copyright, they have openly conspired to steal Greer’s works and deprive Greer of money.

53. With the truth finally out in the open of the users intent to harm Greer, Plaintiff decided to prepare for legal action by sending Mr. Moon a DMCA Takedown Notice.

54. The infringement of his song was harmful because his song wasn’t on streaming services yet and he hadn’t advertised the CD Baby store location, thus



hundreds, if not thousands, of plays on Greer's song was being had and Greer wasn't being compensated for it.

55. Greer waited an entire month for his song to be out on streaming services.

56. Plaintiff then discovered that CD Baby didn't want to distribute the song, so Greer had his song removed from the CD Baby store. He ended up hiring another distributor to distribute the song onto different streaming services, which they did.

57. However, during that gap of time, from waiting for his song to be officially put online to it finally being put onto streaming services, Mr. Moon's users, with Moon's knowledge, have spread Greer's song across different sites and have even put the song onto a lyric site, where they brag about Greer "accidentally" publishing the song and then they derided it.

### **DIGITAL MILLENNIUM COPYRIGHT ACT**

58. The Digital Millennium Copyright Act was signed into law in 1998 to shield websites from liability arising from copyright infringement claims, with the caveat being that websites follow and honor takedown requests from copyright holders. *THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 U.S.*

*Copyright Office Summary.* (1998). Copyright.gov.

(<https://www.copyright.gov/legislation/dmca.pdf>). Since Defendant manages a website, he is expected to honor all properly formed DMCA requests.

### **GREER'S DMCA NOTICE**

59. *17 U.S. 512(C)* allows for a copyright holder to send notification of infringement to a designated agent of a service provider. Subsection 3 of the statute (*17 USC 512(C)(3)*) lists the elements of a proper DMCA Notice.

60. Greer turned to several sample DMCA Notices to make sure he was doing the format of the Notice correctly and then he drafted his Notice. Exhibit S.

61. On Defendant's website, Mr. Moon has a section about removing copyrighted material, which states: "We do not host well-known copyrighted content."

Moon's site then wrongfully states, "What copyrighted content we do host is usually covered under Fair Use, but if you are the copyright holder of something, email [legal@kiwifarms.net](mailto:legal@kiwifarms.net) with the appropriate documents. I do not respond to emails without sufficient proof of a legal claim."

(<https://kiwifarms.net/help/removing-content/>).

62. Moon's copyright statement is wrong because all copyright, famous or non-famous, is protected by *17 U.S.C 106*, with the copyright holder determining how he or she will distribute his works.

63. Upon reading that, Plaintiff sent his DMCA letter to the designated email address: [legal@kiwifarms.net](mailto:legal@kiwifarms.net).

64. Greer had to send two versions of his DMCA Notice because he initially was unable to locate all of the infringing content because Defendants have over 1,000 threads on him, but his final DMCA Notice (included in Exhibit S) contained the exact links and locations of his copyrighted works, satisfying all of the elements of the federal statute.

65. Mr. Moon published Greer's DMCA request onto Moon's site, in the thread entitled,

"Take that off the God Damn Internet." EXHIBIT T. Along with publishing the DMCA request, Moon also published Greer's private contact information, and as a result, many of Moon's bizarre users began to harass Greer with messages sent to his email, including one with the email address titled, "Hitler Did Nothing Wrong". These users began telling Plaintiff that his song was horrible and that they had distributed the song elsewhere.

66. Mr. Moon then emailed Greer back and derided him for using a template for his DMCA request.

67. Even though the takedown notice was followed from a law website, it still followed the federal statute's guidelines for takedown notices: (i) a physical or electronic signature, (ii) Identification of the copyrighted work claimed to have been infringed, (iii) Identification of the material that is claimed to be infringing

or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material, (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner and (vi) A statement that the information in the notification is accurate. *17 USC 512 (C)(3)*.

<https://www.law.cornell.edu/uscode/text/17/512>)

68. Mr. Moon then went onto explain that he knew who Greer was (from his site) and that

Moon was waiving Safe Harbor protections and would claim “Fair Use” and that he would not be removing Greer’s copyrighted materials.

69. Greer replied that Moon evidently doesn’t know what “fair use” is and Moon replied, “Try me,” which inferred that Moon was daring Plaintiff to sue him.

70. Since that exchange, Mr. Moon’s website has continued harassing Plaintiff and they have continued to exploit Greer’s copyrighted material. They have inundated Greer’s works with hate and have engaged in hate spree to prevent anybody from buying Greer’s song or book. For instance, when Greer was informed by his distributor that his song was available online, it had already received 1 star reviews and Greer had not even advertised its location, thus proving that Moon’s site has notifications every time Greer’s name pops up and they harass him at every chance they get. Greer believes they have Google Alerts turned on for him.

71. The DMCA letters were sent in 2019, but no action was taken against Moon because a lawyer advised that although Greer could prevail in a lawsuit, Moon probably had no assets and so Greer decided not to pursue action.

72. However, since that time, Moon’s site has continuously harassed Greer and have misused his other copyrights, “Yo, Yovanna!” and “Julianne’s Smile”. Both copyrights were filed before their releases, but have not yet appeared on the Library of Congress site. Greer has discovered that they have stolen other works

of his and have put them on the site, namely a screenplay. Greer keeps posting and releasing things not intended for the bashing of Moon and his site, but with the hopes that Greer can break past the trolls. But the trolls have stifled all efforts of Greer trying to become musically successful. It is very scary and very annoying.

73. Because of the harassment and blatant violations of his copyrights, Greer brings forth this lawsuit within the three year statute of limitations. *17 U.S.C. § 507(b)*

### **FAIR USE**

73. Before commencing this action, Greer considered and studied Moon's claims of fair use. As a cursory matter, Moon or Kiwi Farms do not have a prima facie claim for fair use.

74. Fair use is an affirmative defense found in *17 U.S.C. 107* and consists of four factors:

75. 1. The purpose and character of the use (including whether it is transformative, commercial, non-profit, or educational).

76. 2. The nature of the copyrighted work.

77. 3. The amount and substantiality of the portion to be used.

78. 4. The effect upon the potential market for the copyrighted work.

76. All four factors must be weighed together to find fair use and is determined on a case by case basis. *Campbell, Aka Skyywalker, Et Al. v. Acuff-Rose Music, Inc.*, 510 U.S. at 578, 114 S. Ct at 1171 (1994).

77. Pertaining to the purpose and character of the use, although Mr. Moon may be allowing Greer's copyrighted works for criticism and commentary, and as far as Greer knows, non-profit use, Moon's users have stated openly that they seek to deny Greer of money. The first factor disfavors fair use.

78. Pertaining to the nature of the use, Greer's works are creative and for entertainment. Although written about true experiences, they were written in a creative manner. The second factor disfavors fair use.

79. Pertaining to the amount copied, Defendants are allowing the entirety of Greer's copyrighted materials to be infringed and copied from. The third factor disfavors fair use.

80. Lastly, pertaining to the effect on the market, the first factor can be tied in: Moon's users have openly stated that they seek to deprive Plaintiff of money and have been distributing the song to other sites. Moon's users have put his songs onto a lyric site and have added negative commentary about the song and about Greer, thus, dissuading anybody from listening to the song.

81. Defendants' claim of fair use do not survive, even at a prima facie glance.

## **COUNT I**

### **CONTRIBUTORY COPYRIGHT INFRINGEMENT AGAINST JOSHUA MOON AS OWNER/PUBLISHER OF KIWI FARMS**

85. Russell Greer realleges each and every allegation in paragraphs 1 through 85 as if fully set forth herein.

86. "[C]ontributory liability attaches when the defendant causes or materially contributes to another's infringing activities and knows of the infringement." *Diversey v. Schmidly*, 738 F.3d 1196, 1204 (10th Cir. 2013).

87. To establish a claim for contributory copyright infringement, a plaintiff must show that (1) a third party committed direct infringement, (2) the defendant knew of the direct infringement, and (3) the defendant caused or materially contributed to the direct infringement. *Greer v. Moon*, 83 F. 4<sup>th</sup> 1283 (10<sup>th</sup> Cir. 2023).

88. As established in the facts, Kiwi Farms users have uploaded Greer's songs directly to the Kiwi Farms site, so that "*nobody accidentally gives Russell money*." That satisfies the first element of contributory copyright infringement.

89. Turning to the next element, Defendant Joshua Moon, as owner and operator of the site, has actual knowledge of the illegal acts of infringement from, among

other things, written notification from Plaintiff in the form of a proper DMCA take down request.

90. Defendant Joshua Moon has deliberately disregarded Greer's notifications of infringement and has posted the DMCA take down request onto his site, mocking it.

91. In a 2019 email to Greer, Defendant Moon said that he was waiving Safe Harbor protections and that he would not remove Greer's copyrights, which shows knowledge.

92. When threatened with suit, Moon smugly retorted: "Try me."

93. This satisfies the second element of contributory copyright infringement.

94. The last element of contributory infringement: Defendant Joshua Moon has knowingly and willfully materially contributed and substantially induced, and continues to materially contribute and substantially induce, the infringement of Greer's works in the following ways:

### **Reposting Takedown Notices**

95. As the 10<sup>th</sup> Circuit held in the appeal of this case, Mr. Moon not only expressly refused to remove the materials, "he mockingly posted the correspondence to Kiwi Farms. Under the circumstances, this is not the passive behavior of one 'merely permitting' infringing material to remain on his site. Rather, we conclude a reasonable inference from the facts alleged is that the reposting of the takedown notice, combined with the refusal to take down the infringing material, amounted to encouragement of Kiwi Farms users' direct copyright infringement."

### **Kiwi Farm's Reputation Attracts Users of a Mind to Infringe**

96. In Joshua Moon's very own words, Kiwi Farms exploits the disabled and other marginalized people.

97. It should be no surprise then that users who hate disabled people (as evidenced by John Doe #5 choosing the username "Russtard," as a jab at Plaintiff for having a disability) would be inspired by Kiwi Farm's mantra of exploiting

disabled people, to do just that: exploiting a disabled artist's copyrights by posting said material onto the site, hoping to rob a disabled artist of his pay.

98. Moon has even said in the FAQs section of his site that he considers "non-famous" works (i.e. the works of Lolcows) to be "fair use" and so that would inspire direct infringers to infringe.

99. Indeed, the reputation of Kiwi Farms "attracts users of a mind to infringe."  
*MGM v.*

*Grokster*, 545 U.S. 913 (2005) ("The point, of course, would be to attract users of a mind to infringe, just as it would be with their promotional materials developed showing copyrighted songs as examples of the kinds of files available through...").

### **3. Damages**

#### **A. Effect on the Market**

100. The contributory infringement has had damaging effects to the market because Joshua

Moon and his website Kiwi Farms "usurps the market" by offering a "competing substitute." *Andy Warhol Foundation v. Goldsmith*, 11 F. 4<sup>th</sup> 26 (2<sup>nd</sup> Circ. 2021).

101. The market is Greer's self-published book on Amazon and the many streaming services like Spotify, Apple Music, etc.

102. Instead of these critics and haters and ableists on Kiwi Farms paying to stream or buy books or songs of Greer's, to criticize said works, the entirety of the works are on Kiwi Farms for the users to download to their devices, so that "nobody accidentally gives Russell money." 103. Based on the visible number of views on the MP3 files of Greer's, Greer has lost thousands of dollars, if one were to calculate the number of views by MP3 digital download store price. It's unknown how many people have downloaded the book.

104. Simply ignoring the infringement and trying to make money through the streaming platforms is insufficient to turn a profit because Greer's online following isn't large enough.

105. Contrary to Mr. Moon, non-famous artists need all of their monies earned.

106. There's nothing *fair* about robbing a person of their money.

#### **B. Effect on Greer's Ability to Market His Works**

107. Not only has the infringement affected the market, it's also affected Greer's ability to market his intellectual property because Mr. Moon has built a website that monitors Greer (and other lolcows) and by default, Greer's copyrights.

108. The owner of a copyright enjoys a "bundle of exclusive" rights under Section 106 of the Copyright Act, including the right to distribute a work. *Harper Row Publishers v. Nation Enters.*, 471 U.S. 539 (1985).

109. Greer has been unable to distribute (i.e. market) his copyrights because Moon's site and some of his users' sites have more following than Greer does and so their sites with links to infringing materials are more visible to the public than Greer's personal website or the streaming sites that contain his works.

110. Often times, the sites of Moon's users are critical and negative of Greer and so it deters interested people from following Greer and streaming his works.

111. Every time Greer gains followers or fans or does his own PR, Moon's site somehow always sees this and they feel the need to stomp out Greer's marketing efforts and thus this kills the marketability of Greer's works and in turn, his ability to make money off of his copyrights. *American Geophysical Union v. Texaco Inc.*, 60 F. 3d 913 (2<sup>nd</sup> Cir. 1994) (analyzing the effects of the marketability of a copyright is a useful means to gauge the impact of copyright infringement).

#### **4. Monetary Statutory Damages Sought**

112. Plaintiff has sustained, and will continue to sustain, substantial injuries, loss, and damage to his exclusive rights in his copyrights as a result of Moon's wrongful conduct in an amount to be determined to be no less than \$750, but not greater than \$30,000, under *17 U.S. 504 (C)(1)*, for each infringed copyright,



113. Because Plaintiff can also prove willful infringement, he also seeks One Hundred and Fifty Thousand Dollars (\$150,000), per copyright infringed, under *17 U.S. 504 (C)(2)*.

## **COUNT II**

### **CONTRIBUTORY COPYRIGHT INFRINGEMENT AGAINST LOLCOW LLC AS OWNER/PUBLISHER OF KIWI FARMS**

114. Russell Greer realleges each and every allegation in paragraphs 1 through 113 as if fully set forth herein.
115. This claim essentially mirrors Count I, but is against Lolcow LLC.
116. Lolcow LLC is owner/publisher of the Kiwi Farms site.
117. Direct infringements have occurred on the Kiwi Farms site.
118. Lolcow LLC's manager/CEO Joshua Moon has been made aware of the infringements.
119. Moon chose to not remove the copyrights, but instead published the notices, materially contributing to the infringement.
120. Lolcow LLC has also helped foster the reputation of Kiwi Farms by maintaining its attractiveness to infringers.
121. Greer has suffered market and marketability harm as a result of the infringement.
122. Greer seeks statutory damages identical to those sought in Count 1.

## **COUNT III**

### **DIRECT COPYRIGHT INFRINGEMENT AGAINST JOHN DOE #1 (MOSEPH JARTELLI)**

123. Russell Greer realleges each and every allegation in paragraphs 1 through 122 as if fully set forth herein.

124. To establish a claim for copyright infringement, a plaintiff must show “ownership of a valid copyright” and “copying of constituent elements of the work that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991).

125. As established, Greer has registered his song with the United States Copyright Office. 126. Moseph Jartelli published the MP3 in its entirety onto Kiwi Farms, telling users to “enjoy this repetitive turd” and allowing for anyone to download the MP3.

127. 366 people in April 2019 viewed and downloaded the illegally uploaded MP3. That number has since grown.

128. As a result, Greer has lost profit due to the illegally uploaded MP3.

129. Each and every dime and dollar is important for small artists.

130. Greer seeks statutory damages of \$30,000, per *17 U.S. 504 (C)(1)*.

131. Because Plaintiff can also prove willful infringement, he also seeks One Hundred and

Fifty Thousand Dollars (\$150,000), under *17 U.S. 504 (C)(2)*.

#### **COUNT IV**

#### **STATE LAW CIVIL-CONSPIRACY CLAIM AGAINST JOHN DOE #2**

#### **(RUSSTARD)**

132. Russell Greer realleges each and every allegation in paragraphs 1 through 131 as if fully set forth herein.

133. The elements of a claim for civil conspiracy under Utah law are “(1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful,

overt acts, and (5) damages as a proximate result thereof.” *Pohl, Inc. of America v. Webelhuth*, 201 P.3d 944, 954-55 (Utah 2008).

134. On April 15<sup>th</sup>, 2019, the user crudely named, “Russtard” instructed fellow Kiwi Farms users to upload Greer’s song, “*I Don’t Get You*,” so that “no one accidentally gives Russell money.”

135. Fellow Kiwi Farms user Moseph Jartelli took up Russtard’s urging of depriving Greer of money by in fact uploading Greer’s copyrighted song and wrote, with a hint of evil delight,  
“Enjoy this repetitive turd.”

136 The plainly clear scheme, that was being publicly conspired to on the forum to be accomplished, was uploading Greer’s song and depriving him of money.

137. The users on Kiwi Farms in general, and the aforementioned two users in particular, share the same goal of tormenting their Lolcow targets.

138. John Doe #5’s mindset is quite clear, with the username he or she has chosen, because John Doe #5 clearly has contempt for Plaintiff..

139. In carrying out the conspiracy, Russtard and Moseph Jartelli sought to, and indeed did so, commit direct copyright infringement, *violating 17 U.S.C. § 501*, by uploading the MP3 and seeking to deprive Greer of money.

140. Regarding damages: the 2019 screenshot evidencing this infringement shows that the Mp3 had been viewed 366 times. **EXHIBIT M.**

141. If Greer had been selling the song for \$4.99 on the CD Baby store, that was at least \$1,826.34 Greer had lost out on earning (= \$4.99 x 366).

142. Since 2019, the views on the MP3 have grown and it’s unknown where else the mp3 was uploaded.

143. While \$1,826 may not seem like a lot, small artists need every dime and dollar.

144. The two users’ goals were accomplished by those 366 views (which has since grown) not giving Greer any money.

145. The direct infringement incentivized users to *not* stream or purchase Greer's music because they had made it available on Kiwi Farms.

146. Greer seeks \$1,826 in actual damages, as that was the estimated loss in April of 2019, when the infringement was discovered.

147. Under Utah Code 78B-8-201, Greer seeks punitive damages because the actions of

Russtard were willful and intentionally fraudulent.

148. Greer seeks \$50,000 in punitive damages.

## **COUNT V**

### **STATE LAW CIVIL-CONSPIRACY CLAIM AGAINST JOHN DOE #1**

#### **(MOSEPH JARTELLI)**

149. Russell Greer realleges each and every allegation in paragraphs 1 through 148 as if fully set forth herein.

150. The elements of a claim for civil conspiracy under Utah law are "(1) a combination of

two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." *Pohl, Inc. of America v. Webelhuth*, 201 P.3d 944, 954-55 (Utah 2008).

151. On April 15<sup>th</sup>, 2019, the user crudely named, "Russtard" instructed fellow Kiwi Farms users to upload Greer's song, "*I Don't Get You*," so that "no one accidentally gives Russell money."

152. Fellow Kiwi Farms user Moseph Jartelli took up Russtard's urging of depriving Greer of money by in fact uploading Greer's copyrighted song and wrote, with a hint of evil delight, "Enjoy this repetitive turd."

153. Moseph was replying to Russtard when he uploaded the Mp3, thus clearly acting with Russtard to deprive Greer of money.

154. The plainly clear scheme, that was being publicly conspired to on the forum to be

accomplished, was uploading Greer's song and depriving him of money.

155. The users on Kiwi Farms in general, and the aforementioned two users in particular, share the same goal of tormenting their Lolcow targets.

156. In carrying out the conspiracy, Russtard and Moseph Jartelli sought to and indeed committed direct copyright infringement, violating 17 U.S.C. § 501, by uploading the MP3 and seeking to deprive Greer of money.

157. Regarding damages: the 2019 screenshot evidencing this infringement shows that the Mp3 had been viewed 366 times. **EXHIBIT M.**

158. If Greer had been selling the song for \$4.99 on the CD Baby store, that was at least \$1,826.34 Greer had lost out on earning (MP3 sales loss = \$4.99 x 366 views, assuming each 366 view was a single person).

159. Since 2019, the views on the MP3 have grown and it's unknown here else the mp3 was uploaded.

160. While \$1,826 may not seem like a lot, small artists need every dime and dollar.

161. The two users' goals were accomplished by those 366 views (which has since grown) not giving Greer any money.

162. The direct infringement incentivized users to *not* stream or purchase Greer's music.

163. Greer seeks \$1,826 in actual damages, as that was the number in 2019.

164. Under Utah Code 78B-8-201, Greer seeks punitive damages because the actions of

Moseph Jartelli were willful and intentionally fraudulent.

165. Greer seeks \$50,000 in punitive damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Russell Greer prays for judgement against Defendants:

166. For statutory damages in an amount of \$300,000 for contributory copyright infringement against Joshua Moon.

167. For statutory damages in an amount of \$300,000 for contributory copyright infringement against Lolcow LLC.

168. For punitive damages and actual damages against John Doe #1 in the amount of \$51,826.

169. For punitive damages and actual damages against John Doe #2 in the amount of \$51,826.

170. Attorneys' fees and costs, pursuant to 17 U.S.C. §§ 502-505.