

PLAINTIFFS' REPLY TO COUNTERCLAIM OF ALOHA PLASTIC SURGERY, LLC, and MICHAEL ANTHONY PASQUALE [DOC. NO. 39-1]

COMES NOW, Plaintiffs HAWAIIAN ART NETWORK, LLC, (“HAN”) and VINCENT K. TYLOR (“Tylor”), by their attorneys, J. Stephen Street, AAL, and Paul Maki AAL and for Reply to the Counterclaim filed by Defendants ALOHA PLASTIC SURGERY, LLC (“APS”) and MICHAEL ANTHONY PASQUALE, (“Pasquale”) (Collectively “Counterclaimants”) on July 11, 2011, [Doc. No. 39-1], allege and aver as follows:

FIRST DEFENSE

1. The Counterclaim fails to state a claim upon which relief can be granted as to HAN and Tylor.

SECOND DEFENSE

2. HAN and Tylor admit the allegations set forth in paragraphs 1, 2, 3, 4, 7, and 8 of the Counterclaim.

3. HAN and Tylor deny the allegations set forth in paragraphs 6, 9, 9(c), 9(e), 9(f), 9(g), 9(h), 10, 11, 12, 14, 14.a, 14.b, 14.c, 14.d, 14.e, 14.f, 14.g, 14.h, 16, 17, 18, 19, 22, and 23 of the Counterclaim.

4. HAN and Tylor are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraphs 5 of the Counterclaim and, therefore, deny the same, except that HAN and Tylor deny that they are or were connected in some manner with any person or entity engaged in the activities alleged in the Counterclaim or otherwise responsible for the injuries or damages alleged therein.

5. HAN and Tylor are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 9(i) of the Counterclaim and, therefore, deny the same.

6. With respect to the allegations set forth in paragraphs 9(a), 9(b), 9(d) and 9(j) of the Counterclaim, HAN and Tylor are without sufficient knowledge or information to form a belief as to their truth and, therefore, deny the same.

7. With respect to the allegations set forth in paragraphs 13 and 15 of the Counterclaim, HAN and Tylor incorporate by reference their respective answers given in response to the allegations incorporated in these two paragraphs.

8. With respect to the allegations set forth in paragraphs 20 and 21 of the Counterclaim, HAN and Tylor affirmatively allege that Counterclaimants' recitation is an incomplete recitation of the statutory provisions cited and deny that Counterclaimants are "consumers" within the meaning of the statute.

9. All allegations set forth in the Counterclaim not specifically admitted herein are denied.

THIRD DEFENSE

HAN and Tylor give notice that they reserve the right to raise the defense that Counterclaimants lack standing to bring the alleged claims or that Counterclaimants' claims are otherwise non-judicial. To the extent that Counterclaimants lack standing to bring the alleged claims, or the claims are otherwise non-judicial, this Court lacks jurisdiction over such claims.

FOURTH DEFENSE

HAN and Tylor give notice that they reserve the right to raise the defense failure to join indispensable parties.

FIFTH DEFENSE

If Counterclaimants were injured or damaged as alleged in the Counterclaim, such injuries or damages were proximately caused by acts or omissions of Counterclaimants and/or their affiliates, or others outside the control of HAN and Tylor.

SIXTH DEFENSE

To the extent that Counterclaimants' claims under H.R.S. § 480-2 are asserted in an effort to prevent Plaintiffs' enforcement of their copyrights, those claims are preempted by the Copyright Act, 17 U.S.C. §101 *et seq.*

WHEREFORE, Plaintiffs HAWAIIAN ART NETWORK, LLC and VINCENT K. TYLOR pray that this Honorable Court dismiss the Counterclaim with prejudice and that Counterclaimants take nothing therefrom, and that HAN and Tylor

be awarded their costs of suit, including reasonable attorney's fees, costs and such other relief as the Court deems appropriate.

DATED: Honolulu, Hawai'i, August 2, 2012.

/s/ J. Stephen Street

J. STEPHEN STREET, AAL
PAUL MAKI, AAL

Attorneys for Plaintiffs and
Counterclaim Defendants
HAWAIIAN ART NETWORK, LLC
and VINCENT K. TYLOR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

HAWAIIAN ART NETWORK, LLC,)	CIVIL NO. 11-00722 JMS KSC
a Hawai'i limited liability company;)	(Copyright Infringement; Digital
and VINCENT K. TYLOR,)	Millennium Copyright Act Violation)
)	
Plaintiffs,)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
ALOHA PLASTIC SURGERY, LLC, a)	
Hawai'i limited liability company;)	
MICHAEL ANTHONY PASQUALE,)	
an individual; AIMIYO)	
INTERNATIONAL, LTD, a foreign)	
corporation; JOHN DOES 1-10; JANE)	
DOES 1-10; DOE CORPORATIONS)	
1-10; DOE PARTNERSHIPS 1-10; and)	
DOE ASSOCIATIONS 1-10,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document will be duly served electronically upon the following through CM/ECF on August 2, 2012:

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And MICHAEL ANTHONY PASQUALE

DATED: Honolulu, Hawai'i, August 2, 2012.

/s/ J. Stephen Street
J. STEPHEN STREET, AAL

Attorney for Plaintiffs and
Counterclaim Defendants
HAWAIIAN ART NETWORK, LLC
and VINCENT K. TYLOR