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11 ARMANDO CHRISTIAN PÉREZ

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 CLEVELAND CONSTANTINE ) Case No.: 2:21-cv-02840-AB-AFM

15 BROWNE, an individual; THE ESTATE )

16 OF WYCLIFFE JOHNSON; AND ) **DEFENDANT ARMANDO CHRISTIAN**

17 STEELY & CLEVIE PRODUCTIONS, ) **PÉREZ’S ANSWER TO THE SECOND**

18 LTD. ) **AMENDED COMPLAINT**

19 )

20 Plaintiffs, ) **DEMAND FOR JURY TRIAL**

21 )

22 v. )

23 )

24 RODNEY SEBASTIAN CLARK )

25 DONALDS, an individual, *ET AL.* )

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27 Defendants. )

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1 Defendant Armando Christian Pérez (“Pérez”) by and through his attorneys Pryor  
2 Cashman LLP, hereby responds to and answers the August 23, 2021 Second Amended  
3 Complaint (“Complaint”) filed on behalf of the plaintiffs Cleveland Constantine  
4 Browne (“Browne”), the Estate of Wycliffe Johnson (“EWJ”), and Steely & Clevie  
5 Productions, Ltd. (“S&C Productions” and, together with Browne and EWJ,  
6 “Plaintiffs”), as follows:

7 **ANSWER**

8 **Jurisdiction & Venue**

9 1. Pérez denies the allegations in paragraph 1 of the Complaint, avers that no  
10 response is required to the extent that the paragraph purports to state any conclusions  
11 of law, and refers the Court to the statute referenced therein for the terms and provisions  
12 thereof.

13 2. Pérez denies the allegations in paragraph 2 of the Complaint, avers that no  
14 response is required to the extent that the paragraph purports to state any conclusions  
15 of law, and refers the Court to the statute referenced therein for the terms and provisions  
16 thereof.

17 3. Pérez denies the allegations in paragraph 3 of the Complaint, avers that no  
18 response is required to the extent that the paragraph purports to state any conclusions  
19 of law, and refers the Court to the statute referenced therein for the terms and provisions  
20 thereof.

21 **Parties**

22 4. Pérez denies knowledge or information sufficient to respond to the  
23 allegations in paragraph 4 of the Complaint.

24 5. Pérez denies knowledge or information sufficient to respond to the  
25 allegations in paragraph 5 of the Complaint.

26 6. Pérez denies knowledge or information sufficient to respond to the  
27 allegations in paragraph 6 of the Complaint.

28 7. Pérez denies knowledge or information sufficient to respond to the

1 allegations in paragraph 6 of the Complaint.

2 8. Pérez denies knowledge or information sufficient to respond to the  
3 allegations in paragraph 8 of the Complaint.

4 9. Pérez denies the allegations in paragraph 9 of the Complaint except admits  
5 that he is an individual residing in Miami, Florida.

6 10. Pérez denies knowledge or information sufficient to respond to the  
7 allegations in paragraph 10 of the Complaint.

8 11. Pérez denies knowledge or information sufficient to respond to the  
9 allegations in paragraph 11 of the Complaint.

10 12. Pérez denies knowledge or information sufficient to respond to the  
11 allegations in paragraph 12 of the Complaint.

12 13. Pérez denies knowledge or information sufficient to respond to the  
13 allegations in paragraph 13 of the Complaint.

14 14. Pérez denies knowledge or information sufficient to respond to the  
15 allegations in paragraph 14 of the Complaint.

16 15. Pérez denies knowledge or information sufficient to respond to the  
17 allegations in paragraph 15 of the Complaint.

18 16. Pérez denies knowledge or information sufficient to respond to the  
19 allegations in paragraph 16 of the Complaint.

20 17. Pérez denies knowledge or information sufficient to respond to the  
21 allegations in paragraph 17 of the Complaint.

22 18. Pérez denies knowledge or information sufficient to respond to the  
23 allegations in paragraph 18 of the Complaint.

24 19. Pérez denies knowledge or information sufficient to respond to the  
25 allegations in paragraph 19 of the Complaint.

26 20. Pérez denies knowledge or information sufficient to respond to the  
27 allegations in paragraph 20 of the Complaint.

28 21. Pérez denies knowledge or information sufficient to respond to the

1 allegations in paragraph 21 of the Complaint and avers that no response is required to  
2 the extent that the paragraph purports to state any conclusions of law.

3 22. Pérez avers that no response is required to the bare, conclusory, and  
4 generalized statements contained in paragraph 22 of the Complaint, particularly to the  
5 extent that the paragraph purports to state any conclusions of law, but to the extent the  
6 paragraph is deemed to properly state any allegations against Pérez, those allegations  
7 are denied.

8 **Factual Background**

9 23. Pérez denies knowledge or information sufficient to respond to the  
10 allegations in paragraph 23 of the Complaint.

11 24. Pérez denies knowledge or information sufficient to respond to the  
12 allegations in paragraph 24 of the Complaint.

13 25. Pérez denies knowledge or information sufficient to respond to the  
14 allegations in paragraph 25 of the Complaint.

15 26. Pérez denies knowledge or information sufficient to respond to the  
16 allegations in paragraph 26 of the Complaint.

17 27. Pérez denies knowledge or information sufficient to respond to the  
18 allegations in paragraph 27 of the Complaint.

19 28. Pérez denies knowledge or information sufficient to respond to the  
20 allegations in paragraph 28 of the Complaint, and refers the Court to the copyright  
21 registration referenced therein for the content thereof.

22 29. Pérez denies knowledge or information sufficient to respond to the  
23 allegations in paragraph 29 of the Complaint, except denies that all or any portion of  
24 the referenced composition and/or sound recording “Fish Market” is original or  
25 protectible and avers that no response is required to the extent that the paragraph  
26 purports to state any conclusions of law.

27 30. Pérez denies knowledge or information sufficient to respond to the  
28 allegations in paragraph 30 of the Complaint.

1           31. Pérez denies knowledge or information sufficient to respond to the  
2 allegations in paragraph 31 of the Complaint.

3           32. Pérez denies knowledge or information sufficient to respond to the  
4 allegations in paragraph 32 of the Complaint except admits that he was a featured artist  
5 on a version of the song “Dame tu Cosita.”

6           33. Pérez denies the knowledge or information sufficient to respond to the  
7 allegations in paragraph 33 of the Complaint.

8           34. Pérez denies the allegations in paragraph 34 of the Complaint and avers  
9 that no response is required to the extent that the paragraph purports to state any  
10 conclusions of law.

11           35. Pérez denies the allegations in paragraph 35 of the Complaint and avers  
12 that no response is required to the extent that the paragraph purports to state any  
13 conclusions of law.

14           36. Pérez denies the allegations in paragraph 36 of the Complaint and avers  
15 that no response is required to the extent that the paragraph purports to state any  
16 conclusions of law.

17           37. Pérez denies the allegations in paragraph 37 of the Complaint and avers  
18 that no response is required to the extent that the paragraph purports to state any  
19 conclusions of law.

20           38. Pérez denies the allegations in paragraph 38 of the Complaint and avers  
21 that no response is required to the extent that the paragraph purports to state any  
22 conclusions of law.

23           39. Pérez denies the allegations in paragraph 39 of the Complaint and avers  
24 that no response is required to the extent that the paragraph purports to state any  
25 conclusions of law.

26           40. Pérez denies knowledge or information sufficient to respond to the  
27 allegations in paragraph 40 of the Complaint.

28           41. Pérez denies knowledge or information sufficient to respond to the

1 allegations in paragraph 41 of the Complaint.

2 **First Claim for Relief**

3 42. Pérez repeats and realleges the foregoing responses set forth in paragraphs  
4 1 through 41 hereinabove as though set forth herein in full.

5 43. Pérez denies knowledge or information sufficient to respond to the  
6 allegations in paragraph 43 of the Complaint.

7 44. Pérez denies knowledge or information sufficient to respond to the  
8 allegations in paragraph 44 of the Complaint, and refers the Court to the copyright  
9 registration referenced therein for the content thereof.

10 45. Pérez denies knowledge or information sufficient to respond to the  
11 allegations in paragraph 45 of the Complaint, except denies that all or any portion of  
12 “Fish Market” is original or protectible and avers that no response is required to the  
13 extent that the paragraph purports to state any conclusions of law.

14 46. Pérez denies knowledge or information sufficient to respond to the  
15 allegations in paragraph 46 of the Complaint except denies that they had access to “Fish  
16 Market” and avers that no response is required to the extent that the paragraph purports  
17 to state any conclusions of law.

18 47. Pérez denies the allegations in paragraph 47 of the Complaint and avers  
19 that no response is required to the extent that the paragraph purports to state any  
20 conclusions of law.

21 48. Pérez denies the allegations in paragraph 48 of the Complaint and avers  
22 that no response is required to the extent that the paragraph purports to state any  
23 conclusions of law.

24 49. Pérez denies the allegations in paragraph 49 of the Complaint and avers  
25 that no response is required to the extent that the paragraph purports to state any  
26 conclusions of law.

27 50. Pérez denies the allegations in paragraph 50 of the Complaint and avers  
28 that no response is required to the extent that the paragraph purports to state any

1 conclusions of law.

2 51. Pérez denies the allegations in paragraph 51 of the Complaint and avers  
3 that no response is required to the extent that the paragraph purports to state any  
4 conclusions of law.

5 52. Pérez denies knowledge or information sufficient to respond to the  
6 allegations in paragraph 52 of the Complaint and avers that no response is required to  
7 the extent that the paragraph purports to state any conclusions of law.

8 53. Pérez denies knowledge or information sufficient to respond to the  
9 allegations in paragraph 53 of the Complaint and avers that no response is required to  
10 the extent that the paragraph purports to state any conclusions of law.

11 54. Pérez denies the allegations in paragraph 54 of the Complaint and avers  
12 that no response is required to the extent that the paragraph purports to state any  
13 conclusions of law.

14 55. Pérez denies the allegations in paragraph 55 of the Complaint and avers  
15 that no response is required to the extent that the paragraph purports to state any  
16 conclusions of law.

17 56. Pérez denies the allegations in paragraph 56 of the Complaint and avers  
18 that no response is required to the extent that the paragraph purports to state any  
19 conclusions of law.

20 57. Pérez denies the allegations in paragraph 57 of the Complaint and avers  
21 that no response is required to the extent that the paragraph purports to state any  
22 conclusions of law.

23 58. Pérez denies the allegations in paragraph 58 of the Complaint and avers  
24 that no response is required to the extent that the paragraph purports to state any  
25 conclusions of law.

26 **Second Claim for Relief**

27 59. Pérez repeats and realleges the responses in the foregoing paragraphs 1  
28 through 58 hereinabove as though set forth herein in full.





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**FOURTH AFFIRMATIVE DEFENSE**

68. Plaintiffs’ claims fail because Pérez has not engaged in any type of infringement, and there is no actionable similarity between the works at issue.

**FIFTH AFFIRMATIVE DEFENSE**

69. Plaintiffs’ claims fail because any allegedly copied portions of the works at issue lie in the public domain.

**SIXTH AFFIRMATIVE DEFENSE**

70. Plaintiffs’ claims fail because any allegedly copied portions of the works at issue are neither original nor a protectable expression of an idea.

**SEVENTH AFFIRMATIVE DEFENSE**

71. Plaintiffs’ claims are barred because the works at issue were independently created.

**EIGHTH AFFIRMATIVE DEFENSE**

72. Without admitting the alleged use of any original and protectible copyrighted material allegedly owned by Plaintiffs, which is denied, Plaintiffs’ claims fail because any such alleged use was *de minimis*.

**NINTH AFFIRMATIVE DEFENSE**

73. To the extent that Pérez is found to have engaged in infringement, which Pérez denies, Plaintiffs expressly or implicitly consented to or ratified Pérez’ actions.

**TENTH AFFIRMATIVE DEFENSE**

74. Without admitting the alleged use of any original and protectible copyrighted material allegedly owned by Plaintiffs, which is denied, the conduct of which Plaintiffs complain constitutes fair use.

**ELEVENTH AFFIRMATIVE DEFENSE**

75. Without admitting any infringement, which is denied, the alleged infringement was innocent.

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**TWELFTH AFFIRMATIVE DEFENSE**

76. Plaintiffs’ claims are barred in whole or in part by the applicable statute of limitations.

**THIRTEENTH AFFIRMATIVE DEFENSE**

77. To the extent that Pérez is found to have engaged in infringement, which Pérez denies, Plaintiffs are precluded from recovering statutory damages or attorneys’ fees based on their belated registration of the pertinent copyright registrations.

**FOURTEENTH AFFIRMATIVE DEFENSE**

78. Plaintiffs’ claims are barred in whole or in part to the extent that Plaintiffs have failed to name necessary and/or indispensable parties.

**FIFTEENTH AFFIRMATIVE DEFENSE**

79. Plaintiffs’ claims are barred in whole or in part to the extent that Plaintiffs have sued the improper parties, defendants, or entities.

**WHEREFORE**, Pérez prays for judgment dismissing the Complaint in its entirety, awarding Pérez his costs and attorneys’ fees, and for such other and further relief as this Court deems just and proper.

**PRYOR CASHMAN LLP**

Dated: October 25, 2021      Bv /s/ James G. Sammataro  
James G. Sammataro  
*jsammataro@pryorcashman.com*

*Attorneys for Defendant*  
ARMANDO CHRISTIAN PÉREZ

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**DEMAND FOR JURY TRIAL**

Pérez hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

**PRYOR CASHMAN LLP**

Dated: October 25, 2021      Bv /s/ James G. Sammataro  
James G. Sammataro  
*jsammataro@pryorcashman.com*  
  
*Attorneys for Defendant*  
ARMANDO CHRISTIAN PÉREZ