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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

ZIRCONIA PUBLISHING, INC., a  
Colorado corporation,

Plaintiff,

v.

JOHN DOE 1 A/K/A “JOANNAH  
CLARKSON”, AND JOHN DOES 2-10,  
individuals or unknown entities.

Defendants.

NO.: 2:15-cv-598

**COMPLAINT**

**JURY DEMAND**

Zirconia Publishing, Inc. (“Plaintiff”) asserts for its Complaint against John Does 1-10 (“Defendants”) as follows:

**I. INTRODUCTION**

1. This action arises from the Defendants’ transmission of a Digital Millennium Copyright Act (“DMCA”) takedown notice (the “Notice”), pursuant to 17 U.S.C. § 512, to Amazon.com, Inc. (“Amazon”) in connection with the publication of the novel A Baby for My Billionaire Stepbrother (the “Book”) by Plaintiff Zirconia Publishing, Inc.’s (“Zirconia”).

2. Defendants’ Notice falsely claimed that Defendant “Joannah Clarkson” – which on

1 information and belief Zirconia alleges to be a pseudonym – owned the U.S. copyright in the  
2 Book.

3 3. Defendants’ Notice falsely claimed that Zirconia was infringing “Clarkson’s”  
4 copyright by causing the Book to be published via Amazon’s Kindle publishing service for  
5 electronic books.

6 4. Zirconia is duly authorized by the author of the Book – who assigned all copyright in  
7 and to the Book to Zirconia – to publish the Book on Amazon.

8 5. Defendants have no rights in the Book. Defendants falsely claimed in their Notice  
9 that they did have such rights. Defendants’ fraudulent Notice caused Amazon to cease  
10 publication of the Book, which resulted in considerable damage to Zirconia.

11 6. Zirconia has filed this action to stop Defendants’ tortious interference with Zirconia’s  
12 publication contract with Amazon, as well as Defendants’ unlawful misrepresentations in  
13 violation of federal copyright law, and to obtain compensation for the harm Defendants have  
14 caused Zirconia.

## 15 II. PARTIES

16 7. Zirconia Publishing, Inc. is a Colorado corporation with its principal place of  
17 business at 12801 Lafayette Street #K308, Thornton, Colorado 80241.

18 8. Defendant John Doe 1, also known as “Joannah Clarkson”, is an individual whose  
19 real identity is unknown to Zirconia at this time. On information and belief, in Defendants’  
20 fraudulent Notice to Amazon, “Clarkson” is identified as the owner of the copyright in the Book.

21 9. Defendants John Does 2-10 are individuals whose real identities are unknown to  
22 Zirconia at this time. On information and belief, Zirconia alleges that all Defendants worked in  
23 connection with each other to perform the wrongful actions alleged in this complaint, that each  
24 Defendant is an agent of all other Defendants, and that all Defendants are jointly and severally  
25 liable for the wrongful actions alleged herein.

26 10. Defendants’ wrongful Notice was sent to Amazon, which is located in Seattle,

1 Washington, within this judicial district.

2 **III. JURISDICTION AND VENUE**

3 11. This Court has subject-matter jurisdiction over Zirconia’s federal claims pursuant to  
4 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright claims).

5 12. This Court has subject-matter jurisdiction over Zirconia’s state law claims pursuant  
6 to 28 U.S.C. § 1367 (supplemental jurisdiction) because the claims alleged under state law are so  
7 related to claims in this action over which this Court has original jurisdiction that they form part  
8 of the same case and controversy under Article III of the United States Constitution.

9 13. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part  
10 of the events giving rise to Zirconia’s claims occurred in this district.

11 **IV. FACTS**

12 14. Zirconia publishes romance novels, including the Book and A Baby for My  
13 Billionaire Stepbrother 2, A Baby for My Billionaire Stepbrother 3, A Baby for My Billionaire  
14 Stepbrother 4, and A Baby for My Billionaire Stepbrother 5 (collectively, including the Book,  
15 the “Series”).

16 15. Zirconia publishes the Series, including the Book, via Amazon’s Kindle Direct  
17 Publishing (“KDP”) service. Zirconia is bound by Amazon’s Kindle Direct Publishing Terms of  
18 Service (the “KDP Terms”) with respect to the publication of each title on KDP, including the  
19 Book.

20 16. At Section 5.8(c), Amazon’s KDP Terms state as follows: “You represent and  
21 warrant that ... neither the exercise of the rights authorized under this Agreement nor any  
22 materials embodied in the content nor its sale or distribution as authorized in this Agreement will  
23 violate or infringe upon the intellectual property, proprietary or other rights of any person or  
24 entity, including, without limitation, contractual rights, copyrights, trademarks, common law  
25 rights, rights of publicity, or privacy, or moral rights, or contain defamatory material or violate  
26 any laws or regulations of any jurisdiction”.

1 17. Zirconia owns all rights in the Book or is otherwise authorized to publish the Book  
2 via Amazon's KDP service. No materials embodied in the content of the Book violate or infringe  
3 any third party's rights, nor do the sale or distribution of the Book violate or infringe such rights.

4 18. On or around March 10, 2015, Defendants sent a fraudulent DMCA takedown notice  
5 to Amazon, requesting that Amazon cease publication of the Book.

6 19. On March 10, 2015, Zirconia's agent received an email from Amazon, which read, in  
7 relevant part:

8 "Hello,

9 We've received a notice from a third party claiming that the distribution of the  
10 following title you submitted for sale through the Amazon Kindle Store may not be  
11 properly authorized by the appropriate rights holder:

12 B00TJ0LKVU A Baby for My Billionaire Stepbrother by Cassandra Zara

13 As a result, we've suspended sales of this title, pending further investigation.  
14 Below is the contact information of the third party who claims you infringed its  
15 rights. We expect that you'll compensate this party appropriately for any infringing  
16 copies sold:

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23  
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Joannah Clarkson  
joannah.clarkson@gmail.com

We take violations of intellectual property rights very seriously. The submission of  
titles that violate third-party rights is a violation of our agreement and may lead to  
suspension or termination of your account, among other remedies such as access to  
optional KDP services being revoked. Please ensure that you own sufficient rights for  
all your ebook titles to publish them on the Kindle."

20. On information and belief, Zirconia believes that the name "Joannah Clarkson" is  
fictitious and the Notice was sent by a competitor or someone similarly situated.

21. After Amazon ceased publication of the Book, Zirconia contacted Amazon and was  
able to resume publication of the Book via KDP. However, the takedown resulting from  
Defendants' Notice resulted in significant adverse economic consequences to Zirconia, including  
lost sales, ratings, and algorithm-based suggestions. Since the Book is the first novel in the

1 Series, and most readers will not purchase sequels until they have read the first book in a series,  
2 Defendants' wrongful notice caused a decrease in Zirconia's sales of multiple books.

3 22. On information and belief, Defendants knowingly and willfully misrepresented  
4 "Clarkson's" alleged rights in the Book to Amazon — when in truth "Clarkson" has no rights in  
5 the Book — and Defendants deliberately caused Amazon to cease publication of the Book,  
6 thereby causing damage to Zirconia.

## 7 V. CLAIMS

### 8 FIRST CAUSE OF ACTION

#### 9 TORTIOUS INTERFERENCE WITH CONTRACT

10 23. Zirconia realleges and incorporates by reference the allegations in paragraphs 1  
11 through 22 above as if fully set forth herein.

12 24. Zirconia contracts with Amazon for publication of the Book.

13 25. Defendants sent their Notice to Amazon "claiming that the distribution of [the Book  
14 which Zirconia] submitted for sale through the Amazon Kindle Store may not be properly  
15 authorized by the appropriate rights holder". This indicates that Defendants knew that Zirconia  
16 had a contractual relationship with Amazon for the publication of the Book.

17 26. Defendants' Notice to Amazon was designed to cause Amazon to terminate  
18 publication of the Book by misrepresenting to Amazon that its publication of the Book was not  
19 properly authorized by the appropriate rights holder.

20 27. Defendants' Notice to Amazon actually caused Amazon to cease publication of the  
21 Book, which resulted in damages to Zirconia, including lost sales, ratings, and algorithm-based  
22 suggestions.

23 28. Because of Defendants' previous misrepresentations to Amazon, Zirconia is  
24 concerned that Defendants will further disrupt, or attempt to disrupt, publication of the Book or  
25 other books in the Series.

26 29. Zirconia has been damaged, and will continue to be damaged, by Defendants'

1 unlawful conduct in an amount to be proven at trial.

2 30. In addition, Defendants' conduct described herein has caused and, if not enjoined  
3 will continue to cause, irreparable damage to the business, positive reputation and goodwill of  
4 Zirconia, which cannot be adequately compensated solely by monetary damages. Zirconia  
5 therefore has no adequate remedy at law and seeks permanent injunctive relief.

6 **SECOND CAUSE OF ACTION**

7 **17 U.S.C. 512(f) MISREPRESENTATION**

8 31. Zirconia realleges and incorporates by reference the allegations in paragraphs 1  
9 through 30 above as if fully set forth herein.

10 32. On information and belief, Zirconia alleges that Defendants knew that Zirconia's  
11 publication of the Book was not an infringement of copyright.

12 33. Defendants' Notice to Amazon regarding the Book was issued under the authority of  
13 17 U.S.C. § 512.

14 34. In their Notice, Defendants knowingly and materially misrepresented that Zirconia  
15 could be liable under U.S. copyright law for publishing the Book — and thereby infringing  
16 Defendants' purported copyright in the Book.

17 35. As a result of Defendants' Notice, Amazon ceased publication of the Book, which  
18 caused considerable damage to Zirconia.

19 36. Zirconia has been and will continue to be irreparably injured because of Defendants'  
20 wrongful use of DMCA takedown procedure in violation of the Copyright Act. Such irreparable  
21 damage will continue unless Defendants' unlawful acts are enjoined during the pendency of this  
22 action and thereafter.

23 **VI. JURY DEMAND**

24 37. Pursuant to Federal Rule of Civil Procedure 38(b), Zirconia demands a trial by jury  
25 as to all issues so triable in this action.

**VII. PRAYER FOR RELIEF**

WHEREFORE, plaintiff Zirconia Publishing, Inc. prays for the following relief:

1. A preliminary injunction and permanent injunction enjoining and restraining Defendants, their principals, officers, agents, servants, employees and all persons in active concert or participation with them, during the pendency of this action and thereafter perpetually from:

a. Filing any lawsuits against Zirconia or any other party for alleged copyright infringement based on Zirconia’s publication of the Book;

b. Sending any DMCA takedown notices requesting removal of the Book, or any part thereof, from any third-party website;

c. Otherwise interfering in any way with Zirconia’s lawful publication of the Book; and

d. Inducing, encouraging, enabling or assisting any third party to engage in the acts prohibited above;

2. An award of damages to Zirconia for intentional interference with contractual relations, including without limitation damages for lost sales;

3. An award of Zirconia’s costs of suit and reasonable attorneys’ fees pursuant to 17 U.S.C. § 512(f), and as otherwise permitted by law;

4. An award of prejudgment and post-judgment interest; and

5. Such further and other relief as the Court deems just and proper.

Respectfully submitted, and dated this 15th day of April, 2015.

**Focal PLLC**

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*Attorneys for Plaintiff*

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.