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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF NEW YORK**

10 IAN SCHLEIFFER,)

11 *Plaintiff,*)

12 - V. -)

13 KITTEE BERNS,)

14 *Defendant.*)

Civ. Case No.: 17-CV-1649(BMC)

COPYRIGHT INFRINGEMENT

15 **AMENDED COMPLAINT**

16 1. IAN SCHLEIFFER (the "Plaintiff"), by and through his attorneys, Pardalis &
17 Nohavicka, LLP, hereby complains as follows against KITTEE BERNS (collectively, the
18 "Defendant"):

19 **NATURE OF THE ACTION**

20 2. This is an action arising out of Copyright Infringement pursuant to 17 U.S.C.
21 Section 501.

22 **JURISDICTION AND VENUE**

23 3. This Court may properly maintain original jurisdiction over the Defendant
24 pursuant to 28 U.S.C §1331 and 28 U.S.C §1338(b).

25 4. Venue is properly laid in this judicial district pursuant to 28 U.S.C.A §§ 1391(b)
26 because a substantial part of the acts and/or omissions giving rise to the claims set forth herein
27 occurred in this judicial district and because a substantial part of property that is the subject of
this action is situated in this judicial district.

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PARTIES

5. Plaintiff IAN SCHLEIFFER is a resident of the State of New York.
6. Defendant KITTEE BERNIS is a resident of the State of Tennessee.

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SUMMARY

The Plaintiff is a chef who managed vegetarian restaurants for fifteen years. After learning how to prepare and cook Ethiopian cuisine, Plaintiff discovered that he wanted to become a vegetarian and that Ethiopian cuisine would be a way for him to transition into doing so. After discovering that he had a talent in making the cuisine, Plaintiff introduced it commercially into the restaurants that he managed. Once he realized that other people loved the dishes as much as he did, Plaintiff decided to write the first ever Ethiopian, vegetarian cookbook entitled "Ethiopian-inspired Cooking, Vegetarian Specialties." The cookbook was published in 2007 and has a registered copyright, **with a second edition of the same book with registered copyright in 2016.** The Defendant then published a cookbook in 2015 entitled "Teff Love: Adventures in Vegan Ethiopian Cooking," ("Teff Love"). After reading both cookbooks, it is clear that Defendant has infringed on Plaintiff's copyright extensively, as "Teff Love" bears substantial similarities to Plaintiff's work. Further, the Plaintiff's work was misappropriated with absolutely no attribution or accreditation from the Defendant.

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FACTUAL ALLEGATIONS

7. The Plaintiff is a chef and a writer in the State of New York.
8. In 2007, the Plaintiff published the first Ethiopian, vegetarian cookbook entitled "Ethiopian-inspired Cooking, Vegetarian Specialties."
9. The Plaintiff has a registered copyright for the cookbook that he wrote with the registration number TX0008281274. (See Copyright Information annexed hereto as "Exhibit A")
10. **In 2016, Plaintiff released a second edition of his original cookbook.**
11. **The Plaintiff also has a registered copyright for the "second edition" cookbook that he wrote with the registration number TX0006250394.(See Copyright Information annexed hereto as "Exhibit B")**

1 12. **The 2007 version of the cookbook and the 2016 version (or "Second**
2 **Edition") only differ where there are additional colored pictures, laminate cover,**
3 **grammatical corrections, and a "Preface to the Second addition."**

4 13. **There are no substantive differences between the 2007 Schleiffer cookbook**
5 **and the Second Edition.**

6 14. Plaintiff's cookbooks are widely available on Amazon in both print and digital
7 formats.

8 15. The Defendant published the cookbook "Teff Love: Adventures in Ethiopian
9 Cooking," in 2015.

10 16. After reading both cookbooks, it is clear that Defendant has infringed on
11 Plaintiff's copyright extensively and in several ways.

12 17. **All infringements and copied texts can be found in both the 2007 and 2016**
13 **edition of the books.**

14 18. **In an interview of the Defendant on June 26, 2015, she states that she**
15 **"researched for the [cook]book by...reading a ton of books" before publishing "Teff Love"**
16 **in 2015. (See [https://www.pdxmonthly.com/articles/2015/1/26/explore-ethiopian-eats-with-i-](https://www.pdxmonthly.com/articles/2015/1/26/explore-ethiopian-eats-with-i-teff-love-i-january-2015)**
17 **teff-love-i-january-2015)**

18 19. **Defendant also wrote in "Papa Tofu Loves Ethiopian Food," "Everything I**
19 **know about Ethiopian Food I've learned from...reading through recipes." (See Papa Tofu**
20 **Loves Ethiopian Food, pg. 10, "everything i know")**

21 20. **Prior to and up until the publication of Defendants' cookbook, the Schleiffer**
22 **original cookbook was the first and only vegan Ethiopian cookbook available to the public.**

23 21. "Teff Love" bears several similarities to the Plaintiff's work.

24 22. The Plaintiff's work has been misappropriated with absolutely no attribution or
25 accreditation from the Defendant.

26 23. On January 27, 2017, Plaintiff sent a letter to Defendant regarding Notice of
27 Copyright Infringement and a Cease and Desist.

APPLICATION OF NEW YORK LAW

24. Plaintiff's federal-law claims in this matter are governed by New York Law due to the Plaintiff being a resident in New York State, and the cookbook, entitled "Ethiopian-inspired Cooking, Vegetarian Recipes," being licensed in New York State.

AS AND FOR A FIRST CAUSE OF ACTION
(Copyright Infringement Under Section 501 of the Copyright Act)

25. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

26. Plaintiff published the first ever Ethiopian, vegetarian cookbook entitled "Ethiopian-inspired Cooking, Vegetarian Specialties" in 2007.

27. Plaintiff has a registered copyright for the cookbook set forth above with the registration number TX0008281274.

28. Defendant's cookbook bears several similarities to the Plaintiff's work with absolutely no attribution or accreditation to the Plaintiff.¹

29. On page 28 of Plaintiff's cookbook it states: "Tibs. . . this is a *vegetarian spin on a popular meat dish*. . . Tibs is similar to a saute, *stir-fry*, or sizzle." Page 153 of "Teff Love" explains that "Tibs are *traditionally meat-filled stir -fry* dishes."

30. Page 10 of Plaintiff's work also uses language that Defendant then uses within her cookbook.²

31. There is also phrasing within the recipes in Plaintiff's work that Defendant uses in her recipes as well.³

32. When explaining Ethiopian traditions, Plaintiff uses specific language to really get his message across which Defendant then uses to describe the same traditions within her cookbook.⁴

¹ For example, on page 9 of Plaintiff's book it says, "Using our *spongy, crepe-like* injera bread. . . *soaked through* with the flavors and colors of the food." Page 1 of "Teff Love" states: "Injera, a *spongy, tangy*. . . *crepe-like* bread, that *soaks up* the yummy sauces from the food that rests upon it."

² Page 10 of Plaintiff's work warns readers by explaining that Berbere is a hot spice and to not use it if they "cannot *take the heat*." Defendant's "Teff Love" states in the Berbere recipe that "Berbere definitely *packs some heat*."

³ In Plaintiff's cookbook on Page 10 he says "Berbere, a complex *spice blend found in the hotter* traditional Ethiopian dishes. . ." Defendant then says in her berbere section that "*Berberere is a spice blend made from moderately hot* red peppers and a slew of other spices."

1 33. As a result of the Defendant's copyright infringement, the Plaintiff has been
2 damaged in an amount to be determined at trial.

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4 **AS AND FOR A SECOND CAUSE OF ACTION**

5 **(Unjust Enrichment)**

6 34. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully
7 set forth herein.

8 35. Defendant has unjustly benefited and enriched herself at Plaintiff's expense by using
9 using Plaintiff's copyrighted cookbook, and language therein, to generate revenue from the sale
10 of "Teff Love: Adventures in Ethiopian Cooking," without giving attribution or accreditation to
11 the Plaintiff.

12 36. It would be against equity and good conscience to permit the Defendant to continue
13 using the Plaintiff's work to her own benefit and to generate her own revenue without attribution
14 or accreditation to the Plaintiff.

15 37. By reason of the foregoing, Plaintiff is entitled to damages against Defendant for
16 Defendant's unjust enrichment at Plaintiff's expense in an amount to be determined at trial.

17 **DEMAND FOR TRIAL BY JURY**

18 38. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands
19 a trial by jury of all issues so triable in this action.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, the Plaintiff seeks the following relief:

22 **A.** That Defendant, and all persons acting under her permission, be enjoined and
23 restrained from infringing, in any manner, the copyrighted cookbook entitled "Ethiopian-inspired
24 Cooking, Vegetarian Specialties," licensed to Plaintiff;

25 **B.** That judgment be entered in favor of the Plaintiff against the Defendant for the
26 amount of statutory damages, pursuant to 17 U.S.C. Section 504(c);

27 ⁴ On Page 14 of Plaintiff's work he explains that "It is traditional for an Ethiopian hostess to roll up some of the meal in a piece of Injera and place the first bite in the guest's mouth." In the Acknowledgments section of Defendant's work she says that there's an "Ethiopian tradition of wrapping. . . foods in injera and popping it into the mouths of special friends."

1 C. That Defendant be ordered to pay costs, including a reasonable attorney's fee,
2 pursuant to 17 U.S.C. Section 505; and

3 D. That the Court award Plaintiff such other, favorable relief as may be available and
4 appropriate under federal or state law, or at equity.
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6 Dated: Astoria, New York
7 January 31, 2017

8 Respectfully submitted,

9 **PARDALIS & NOHAVICKA, LLP**

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11 By: 

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