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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIM and PENNY PATERSON, husband and
wife and the marital community thereof,

Case No.

Plaintiffs,

vs.

COMPLAINT FOR DAMAGES FOR
DEFAMATION AND FALSE LIGHT
INVASION OF PRIVACY

LITTLE, BROWN AND COMPANY, a
Massachusetts state corporation, TIME
WARNER BOOK GROUP, a Delaware state
corporation, HAROLD EVANS
ASSOCIATES LLC, a New York state
limited liability company, HAROLD EVANS,
and DAVID LEFER,

Defendants.

COME NOW Plaintiffs Tim and Penny Paterson (“Patersons” or “Plaintiffs”), by and
through their attorney, D. Michael Tomkins, and for Complaint allege and say:

COMPLAINT - 1

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3 **THE PARTIES**

4 1. Plaintiff Tim Paterson was and is a citizen of the state of Washington and he resides in
5 the city of Redmond.

6 2. Plaintiff Penny Paterson was and is a citizen of the state of Washington and she resides
7 in the city of Redmond. Plaintiff Penny Paterson is the spouse of Plaintiff Tim Paterson.

8 3. Defendant Little, Brown and Company (“Little Brown”) was and is a for-profit
9 corporation, believed to be incorporated in the state of Massachusetts and which does conduct
10 business throughout the United States, including the state of Washington and the city of
11 Seattle.

12 4. Defendant Time Warner Book Group (“Time Warner”) was and is a for-profit
13 corporation, believed to be incorporated in the state of Delaware and which does conduct
14 business throughout the United States, including the state of Washington and the city of
15 Seattle.

16 5. Defendant Harold Evans Associates LLC was and is a New York limited liability
17 company, which conducts business throughout the United States, including the state of
18 Washington and the city of Seattle.

19 6. Defendant Harold Evans was and is believed to be a citizen of New York and was and
20 is the author of a publication entitled “They Made America”, which was published and
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23 COMPLAINT - 2

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1 distributed by Defendants Little Brown and Time Warner throughout the United States, and
2 which was intended by Defendant Evans to be read by the general public.

3 7. Defendant David Lefer was and is believed to be a citizen of New York and was and is
4 the co-author of a publication entitled "They Made America", which was published and
5 distributed by Defendants Little Brown and Time Warner throughout the United States, and
6 which was intended by Defendant Evans to be read by the general public.

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9 **JURISDICTION**

10 8. This court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §
11 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of interests and
12 costs, and is between citizens of different states.

13 9. This court has personal jurisdiction over Defendants because the book at issue and the
14 statements written in the book were intended to be and were distributed to consumers all over
15 the country, including the state of Washington, and was intended to be read and was read by
16 consumers all over the country, including in the state of Washington.

17 10. Furthermore, the harm to Plaintiffs occurred and continues to occur in the state of
18 Washington.

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23 COMPLAINT - 3

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1 **VENUE**

2 11. Venue is proper in this district pursuant to 28 U.S. C. §1391(a) because a substantial
3 part, if not all, of the events giving rise to Plaintiffs' claims occurred in this district. Plaintiffs
4 reside in this district and the written statements complained of herein were distributed and
5 continues to be distributed in this district.

6
7 **FACTUAL BACKGROUND**

8 12. In June of 1978, Plaintiff Tim Paterson ("Plaintiff") began working as a computer
9 engineer at Seattle Computer Products (SCP), which conducted its business out of Tukwila,
10 Washington.

11 13. While employed at SCP, Plaintiff began designing an 8086 CPU card for the S-100
12 microcomputers. After its first prototypes worked in May 1979, SCP contacted Microsoft to
13 obtain 16-bit software for its new computer. Plaintiff packed up the prototype he designed and
14 went to Microsoft with the intent of getting the Stand-Alone Disk BASIC to run on it.

15 14. By November 1979, SCP began shipping its 8086 computer system with the Microsoft
16 Stand-Alone Disk BASIC as the only software to run on it. However, this software was only
17 useful to a specific group of computer users and was not set up to serve the real needs of
18 commercial users. SCP then set out to find a software base for its machine that would make it
19 more useful for the public. SCP needed a general-purpose operating system.

20 15. Plaintiff made a proposal to the owner of SCP. That proposal was for SCP to take the
21 initiative and write its own operating system. Plaintiff, who graduated with a bachelors degree
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23 COMPLAINT - 4

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1 in Computer Science, proposed a two-phase software development project: first, to create a
2 quick and dirty operating system to fill the immediate need for SCP's 8086 computer; and,
3 second, to create a much more refined operating system that would be made available in both
4 single-user and multi-user version. SCP entrusted Plaintiff with the task of creating the
5 proposed operating system, which later became known as DOS (Disk Operating System).

6 16. Plaintiff's primary objective in the design of DOS was to make it easy as possible for
7 software developers to write applications for it. To achieve this, Plaintiff sought to make the
8 Application Program Interface (API) compatible with CP/M. CP/M's compatibility with the
9 API was key to enabling automated translation of 8-bit programs into 16-bit programs. Also,
10 it was hoped that the familiarity of the CP/M-style API would make it easier for developers to
11 learn to write programs for DOS. The secondary objective in the design of DOS was to make
12 it fast and efficient, so it was written entirely in 8086 assembly language. Plaintiff was
13 particularly concerned about the way files were organized on disk. Plaintiff felt that the
14 format used by CP/M was a significant bottleneck so he turned to the Microsoft Stand-Alone
15 Disk BASIC and used a File Allocation Table.

16 17. Between April and July of 1980, Plaintiff was able to spend about half of his time
17 working on QDOS, the Quick and Dirty Operating System. It began shipping with the 8086
18 computer system in August of 1980.

19 SCP approached Microsoft with a proposal to adapt its software to run under DOS. Microsoft
20 came back with a different proposal, which included Microsoft marketing DOS for SCP.

21 However, in July of 1981, Microsoft offered to buy DOS from SCP and subsequently did.

1 18. On or about 2004, Defendants Little Brown and Time Warner published and
2 distributed a book written by Defendant Harold Evans (“Defendant Evans”). This book,
3 entitled “They Made America” (“book”), contains a section on Gary Kildall. In that section of
4 the book, Defendant Evans asserted that Mr. Kildall was the “inventor” of DOS. This is false.
5 It is known in the computer world and the public in general that DOS was invented by Plaintiff
6 Tim Paterson.

7
8 **CAUSES OF ACTION**

9 **1. FIRST CAUSE OF ACTION: DEFAMATION**

10 1.1. Plaintiffs reallege the allegations stated in all of the preceding paragraphs and
11 incorporate those paragraphs herein by reference.

12 1.2. In his book, Defendant Evans wrote a number of false statements about the origins of
13 DOS, and made false allegations of theft against Plaintiff Paterson.

14 1.3. These statements were of and concerning Plaintiff Paterson.

15 1.4. The Statements included, but were not limited to:

- 16 a. “Paterson did it by taking a ride on Kildall’s system with a program he
17 officially called “Seattle DOS,” but which he also called QDOS, for Quick ‘n’
18 Dirty Operating System. Kildall writes: “Paterson’s Seattle DOS was yet
19 another one of the rip-offs of the CP/M design. The CP/M machine code was
20 taken apart, using CP/M’s own DDT [its debugger], to determine the internal
21 workings of CP/M in order to make a clone of CP/M operation.” Paterson has
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23 COMPLAINT - 6

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1 denied using CP/M source code but admits making the two systems similar to
2 help translate program into QDOS.”

3 b. “John Wharton, the former Intel engineer and computer specialist who became
4 a friend of Kildall’s neatly sums up the ethics of that: “I can empathize
5 somewhat with the bind in which SCP found itself: unable to sell its 8086
6 hardware for lack of software and unable to buy the software it wanted. But for
7 Mr. Paterson to cite the unavailability of CP/M-86 as justification for
8 appropriating the ‘look and feel’ of a competing operating system and its
9 utilities seems to me analogous to telling a judge, ‘I needed the car, Your
10 Honor, and the plaintiff wouldn’t sell me his, so I was forced to take it.”

11 c. “...Paterson’s adaptation of Kildall’s system...”

12 d. “...Paterson’s version of Kildall’s program...”

13 e. “What Paterson essentially had done was rewrite the bottom part of the
14 software – improving the way files were stored and adapting the program to a
15 16-bit machine – while copying most of the top part of Kildall’s operating
16 system (the Int 21 commands that allowed the operating system to interact with
17 the application program). Even if QDOS and CP/M were 80 percent different,
18 as Paterson had said, he took almost unaltered Kildall’s Int-21 mechanism – the
19 heart of his innovation. An independent examination of the two systems shows
20 some blatant copies, some slight alterations.”

21 f. “Paterson copied Kildall’s first 36 Int-21 functions into QDOS.”

1 g. "Paterson's file system, Rolander acknowledges, was better for the larger disks,
2 but he adds that mistakes were made in cloning Kildall's work."

3 1.5. These statements were false and defamatory.

4 1.6. At the time Defendants made and published the defamatory statements above,
5 Defendants knew they were false or failed to take the proper steps to ascertain their accuracy.

6 1.7. In making and publishing these statements, Defendants acted knowingly and/or
7 recklessly with respect to the statements' false and defamatory nature.

8 1.8. By reason of Defendants' statements, Plaintiff Paterson was greatly injured in his
9 character and reputation, the loss of potential business opportunities, and has endured great
10 pain and mental anguish to his damage in an amount over \$75,000.00, which will be proven at
11 the time of trial

12
13 2. SECOND CAUSE OF ACTION: FALSE LIGHT INVASION OF PRIVACY

14 2.1. Plaintiffs reallege the allegations stated in all of the preceding paragraphs and
15 incorporate those paragraphs herein by reference.

16 2.2. The statements published by Defendants in Defendant Evans' book were false
17 statements of fact about Plaintiff and how he took the work of another person and made it his
18 own. This alleged stolen project became what is widely known as "DOS".

19 2.3. Defendant Evans' book was disseminated in all fifty states, if not worldwide, thereby
20 publicizing the offending material to a substantial number of people.

21 2.4. As a result, Plaintiff Paterson was injured.

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23 COMPLAINT - 8

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Tim and Penny Paterson request that this Court grant their judgment against Defendants as follows:

- A. For an Order of the Court awarding Plaintiffs all applicable and appropriate actual, consequential, statutory and exemplary damages permitted by law;
- B. For an Order of the Court awarding Plaintiffs attorneys' fees and costs as allowed by law, including any appellate costs allowed;
- C. For an Order of the Court awarding Plaintiffs pre-judgment and post-judgment interest at the maximum rate(s) permitted by law; and
- D. For an Order of the Court awarding Plaintiffs all other relief, at law or in equity, to which Plaintiffs are justly entitled.

Dated this 12th day of October, 2005.

Respectfully submitted,

/S/

D. Michael Tomkins, WSBA # 4979
Attorney for Plaintiffs