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11
12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT COURT OF NEVADA
14

15 DENNIS MONTGOMERY, an individual; and
MONTGOMERY FAMILY TRUST, a California
16 Trust,

Case No. 3:06-CV-00056-BES-VPC
Base File

17 Plaintiff,

Case No. 3:06-cv-00145-PMP-VPC

18 vs.

19 ETREPPID TECHNOLOGIES, L.L.C., a Nevada
Limited Liability Company; WARREN TREPP,
20 an individual; DEPARTMENT OF DEFENSE of
the UNITED STATES OF AMERICA, and
21 DOES 1 through 10,

22 Defendants

23 AND RELATED CASE(S)
24

25 **ETREPPID TECHNOLOGIES, LLC AND WARREN TREPP’S ANSWER TO FIRST**
26 **AMENDED COMPLAINT**

27 Defendants eTrepid Technologies, L.L.C., (“eTrepid”) and Warren Trepp (“Trepp”)), by
28 and through their undersigned counsel of record, Hale Lane Peek Dennison and Howard, set forth

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1 herein their Answer to Plaintiffs' First Amended Complaint, as follows:

2 **INTRODUCTION**

3 1. Defendants deny the allegations in Paragraph 1 of the First Amended Complaint.

4 **PARTIES**

5 2. Defendants are without sufficient knowledge to form a belief as to the veracity of the
6 allegations in Paragraph 2 of the First Amended Complaint and, therefore, deny the same.

7 3. Defendants are without sufficient knowledge to form a belief as to the veracity of the
8 allegations in Paragraph 3 of the First Amended Complaint and, therefore, deny the same.

9 4. Defendants admit the allegations in Paragraph 4 of the First Amended Complaint.

10 5. Defendants admit the allegations in Paragraph 5 of the First Amended Complaint.

11 6. Defendants are without sufficient knowledge to form a belief as to the veracity of the
12 allegations in Paragraph 6 of the First Amended Complaint and, therefore, deny the same.

13 **JURISDICTION AND VENUE**

14 7. Defendants deny the allegations in Paragraph 7 of the First Amended Complaint.

15 **FACTUAL ALLEGATIONS**

16 8. Defendants deny the allegations in Paragraph 8 of the First Amended Complaint.

17 9. Defendants deny the allegations in Paragraph 9 of the First Amended Complaint.

18 10. Defendants deny the allegations in Paragraph 10 of the First Amended Complaint.

19 11. Defendants admit the allegations in Paragraph 11 of the First Amended Complaint.

20 12. Defendants are without sufficient knowledge to form a belief as to the veracity of the
21 allegations in Paragraph 12 of the First Amended Complaint and, therefore, deny the same.

22 13. Defendants deny the allegations in Paragraph 13 of the First Amended Complaint.

23 14. Defendants deny the allegations in Paragraph 14 of the First Amended Complaint.

24 15. Defendants deny the allegations in Paragraph 15 of the First Amended Complaint.

25 16. Defendants deny the allegations in Paragraph 16 of the First Amended Complaint.

26 17. Defendants deny the allegations in Paragraph 17 of the First Amended Complaint.

27 18. Defendants are without sufficient knowledge to form a belief as to the veracity of the
28 allegations in paragraph 18 of the First Amended Complaint and, therefore, deny the same.

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1 19. Defendants deny the allegations in Paragraph 19 of the First Amended Complaint.

2 20. Defendants deny the allegations in Paragraph 20 of the First Amended Complaint.

3 **FIRST CLAIM FOR RELIEF**

4 **(Copyright Infringement against all Defendants)**

5 21. Defendants restate their responses to Paragraphs 1 through 20 as though fully set forth
6 herein.

7 22. Defendants deny the allegations in Paragraph 22 of the First Amended Complaint.

8 23. Defendants deny the allegations in Paragraph 23 of the First Amended Complaint and
9 also note that any claims for infringement of alleged derivative works have been dismissed.

10 24. Defendants deny the allegations in Paragraph 24 of the First Amended Complaint.

11 25. Defendants deny the allegations in Paragraph 25 of the First Amended Complaint.

12 26. Defendants deny the allegations in Paragraph 26 of the First Amended Complaint.

13 **SECOND CLAIM FOR RELIEF**

14 **(Copyright Infringement – Unlawful Distribution of Copyrighted Work – Injunction**

15 **17 U.S.C. §106(3)**

16 27. Defendants restate their responses to Paragraphs 1 through 26 as though fully set forth
17 herein.

18 28. Defendants deny the allegations in Paragraph 28 of the First Amended Complaint.

19 29. Defendants deny the allegations in Paragraph 29 of the First Amended Complaint and
20 also note that any claims for infringement of alleged derivative works have been dismissed.

21 30. Defendants deny the allegations in Paragraph 30 of the First Amended Complaint.

22 **THIRD CLAIM FOR RELIEF**

23 **(Declaratory Relief)**

24 31. Defendants restate their responses to Paragraphs 1 through 30 as though fully set forth
25 herein.

26 32. Defendants are without sufficient knowledge to form a belief as to the veracity of the
27 allegations in Paragraph 32 of the First Amended Complaint and, therefore, deny the same.

28

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1 33. Defendants are without sufficient knowledge to form a belief as to the veracity of the
2 allegations in Paragraph 33 of the First Amended Complaint and, therefore, deny the same.

3 34. Defendants deny the allegations in Paragraph 34 of the First Amended Complaint.

4 35. Defendants are without sufficient knowledge to form a belief as to the veracity of the
5 allegations in Paragraph 35 of the First Amended Complaint and, therefore, deny the same.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Accounting)**

8 36. Defendants restate their responses to Paragraphs 1 through 35 as though fully set forth
9 herein.

10 37. Defendants deny the allegations in Paragraph 37 of the First Amended Complaint.

11 38. Defendants deny the allegations in Paragraph 38 of the First Amended Complaint and
12 also note that any claims for infringement of alleged derivative works have been dismissed.

13 39. Defendants deny the allegations in Paragraph 39 of the First Amended Complaint.

14 **FIFTH CAUSE OF ACTION**

15 **(Breach of Fiduciary Duty)**

16 40. Defendants restate their responses to Paragraphs 1 through 39 as though fully set forth
17 herein.

18 41. Defendants deny the allegations in Paragraph 41 of the First Amended Complaint.

19 42. Defendants deny the allegations in Paragraph 42 of the First Amended Complaint.

20 43. Defendants deny the allegations in Paragraph 43 of the First Amended Complaint.

21 44. Defendants deny the allegations in Paragraph 44 of the First Amended Complaint.

22 **SIXTH CAUSE OF ACTION**

23 **(Fraud against Trepp)**

24 45. Defendants restate their responses to Paragraphs 1 through 44 as though fully set forth
25 herein.

26 46. Defendants are deny the allegations in Paragraph 46 of the First Amended Complaint.

27 47. Defendants deny the allegations in Paragraph 47 of the First Amended Complaint.

28 48. Defendants deny the allegations in Paragraph 48.

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- 1 49. Defendants deny the allegations of Paragraph 49 of the First Amended Complaint.
- 2 50. Defendants deny the allegations of Paragraph 50 of the First Amended Complaint.
- 3 51. Defendants deny the allegations of Paragraph 51 of the First Amended Complaint.

SEVENTH CAUSE OF ACTION

(Breach of Contract)

- 6 52. Defendants restate their responses to Paragraphs 1 through 51 as though fully set forth
7 herein.
- 8 53. Defendants deny the allegations of Paragraph 53 of the First Amended Complaint.
- 9 54. Defendants are without sufficient knowledge to form a belief as to the veracity of the
10 allegations in Paragraph 54 and, therefore, deny the same.

- 11 55. Defendants deny the allegations of Paragraph 55 of the First Amended Complaint.
- 12 56. Defendants deny the allegations of Paragraph 56 of the First Amended Complaint.
- 13 57. Defendants deny the allegations of Paragraph 57 of the First Amended Complaint.

EIGHTH CAUSE OF ACTION

(Misappropriation of Trade Secret)

- 16 58. Defendants restate their responses to Paragraphs 1 through 58 as though fully set forth
17 herein.
- 18 59. Defendants deny the allegations of Paragraph 59 of the First Amended Complaint.
- 19 60. Defendants deny the allegations of Paragraph 60 of the First Amended Complaint.
- 20 61. Defendants deny the allegations of Paragraph 61 of the First Amended Complaint.
- 21 62. Defendants deny the allegations of Paragraph 62 of the First Amended Complaint.

NINTH CAUSE OF ACTION

(Conversion)

- 24 63. Defendants restate their responses to Paragraphs 1 to 62 as though fully set forth herein.
- 25 64. Defendants deny the allegations of Paragraph 64 of the First Amended Complaint.
- 26 65. Defendants deny the allegations of Paragraph 65 of the First Amended Complaint.
- 27 66. Defendants deny the allegations of Paragraph 66 of the First Amended Complaint.
- 28 67. Defendants deny the allegations of Paragraph 67 of the First Amended Complaint.

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TENTH CLAIM FOR RELIEF

(Declaratory Relief Against United States)

68. Defendants restate their responses to Paragraphs 1 to 67 as though fully set forth herein.

69. Defendants are without sufficient knowledge to form a belief as to the veracity of the allegations in Paragraph 69 and, therefore, deny the same.

70. Defendants are without sufficient knowledge to form a belief as to the veracity of the allegations in Paragraph 70 and, therefore, deny the same.

71. Defendants are without sufficient knowledge to form a belief as to the veracity of the allegations in Paragraph 71 and, therefore, deny the same.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants are without sufficient knowledge to form a belief as to the veracity of the allegations in Paragraph 73 and, therefore, deny the same.

74. Defendants are without sufficient knowledge to form a belief as to the veracity of the allegations in Paragraph 74 and, therefore, deny the same.

AFFIRMATIVE DEFENSES

As and for a separate defense, Defendants allege the following affirmative defenses:

1. The First Amended Complaint fails to state a claim against Defendants upon which relief can be granted.

2. Without admitting that Defendants acted as alleged in the First Amended Complaint, Plaintiffs consented to the acts as alleged to have been committed by Defendants.

3. Without admitting that Plaintiffs are entitled to any damages whatsoever, any award to Plaintiffs should be reduced or precluded by reason of Montgomery’s comparative bad faith.

4. Defendants allege that the damages, if any, suffered by Plaintiffs were caused in whole or in part, or were contributed to by reason of the negligence of Plaintiffs.

5. By the doctrine of estoppel and Montgomery’s actions, Plaintiffs are estopped from asserting their claims against Defendants.

6. Plaintiffs’ claims are barred under the doctrine of copyright misuse because Montgomery has misused the copyrights at issue in a manner violative of public policy.

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1 7. Plaintiffs are barred from recovery by the doctrine of unclean hands.

2 8. Plaintiffs' claims, including its claims of copyright infringement, misappropriation of
3 trade secrets and conversion, are barred because any alleged use by Defendants of Plaintiffs'
4 copyrights or other property allegedly violative of rights of plaintiffs was authorized by Montgomery
5 and was pursuant to either an express or implied license.

6 9. Plaintiffs' claims are barred because eTreppid is the owner of the software at issue that
7 was either transferred to eTreppid by Montgomery by agreement or created by Montgomery within the
8 scope of his employment while he was a member and/or officer of eTreppid or is otherwise a work
9 made for hire.

10 10. Plaintiffs have failed to register in the Copyright Office any of the alleged derivative
11 works at issue and therefore are barred from instituting an action for infringement under the Copyright
12 Act, 17 U.S.C. §411 .

13 11. All acts and conduct, if any, and allegations made against Defendants were not the
14 proximate cause of damages, if any, sustained by Plaintiffs.

15 12. By the doctrines of waiver and acquiescence, any claims Plaintiffs may have had
16 against Defendants are barred.

17 13. By the doctrine of laches, any claim of Plaintiffs is barred by Plaintiffs delay in
18 pursuing such claims.

19 14. Defendants have satisfied any contractual obligations to Plaintiffs, or those obligations
20 have been excused.

21 15. Plaintiffs' claims are barred by the applicable statute of limitations.

22 16. Plaintiffs' claims of misappropriation of trade secrets and conversion are preempted by
23 the Copyright Act, 17 U.S.C. §301.

24 17. To the extent that any of the claims made against Plaintiffs by Montgomery in the
25 *eTreppid v. Montgomery, et. al.* matter, case number 3:06-cv-00145-PMP-VPC, also operate as
26 affirmative defenses in this matter, Defendants incorporate those affirmative defenses as though fully
27 set forth herein.

28 18. Pursuant to the provisions of Rule 11 of the Rules of Civil Procedure, at the time of the

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1 filing of Defendants' Answer to the First Amended Complaint, all possible affirmative defenses may
2 not have been alleged inasmuch as insufficient facts and other relevant information may not have been
3 available after reasonable inquiry, and therefore, Defendants reserve the right to amend this Answer to
4 allege affirmative defenses if subsequent investigation warrants the same.

5 WHEREFORE, Defendants demand relief as follows:

- 6 1. That Montgomery take nothing by way of his First Amended Complaint and that the
- 7 First Amended Complaint be dismissed with prejudice;
- 8 2. For reasonable attorney's fees;
- 9 3. For costs of said action; and
- 10 4. For such other and further relief as the Court deems just and proper.

11 DATED: This is the 14th day of September, 2007.

12
13 _____
14 /s/
15 J. Stephen Peek, Esq. (Nevada Bar No. 1758)
16 Jerry M. Snyder, Esq. (Nevada Bar No. 6830)
17 Adam G. Lang, Esq. (Nevada Bar No. 10117)
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21
22 *Attorneys for Defendants eTreppid Technologies, LLC*
23 *and Warren Trepp*
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PROOF OF SERVICE

I, Kimberly Blake, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada, by the law offices of Hale Lane Peek Dennison and Howard. My business address is: 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action. I am readily familiar with Hale Lane Peek Dennison and Howard’s practice for collection of mail, delivery of its hand-deliveries and their process of faxes.

On September 14, 2007, I caused the foregoing **eTrepid Technologies, LLC and Warren Trepp’s Answer to First Amended Complaint** to be:

X filed the document electronically with the U.S. District Court and therefore the court’s computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail addresses:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on September 14, 2007.

_____/s/_____
Kim Blake