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Attorney for Defendants Giotto Multimedia
and Marianne Labelle

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Marianne Labelle,

Defendant and Cross-
Complainant

vs.

eBOOKS, Inc., a California
corporation, and John le
Stud, an Individual,

Cross-defendants.

Case No. 08-23456-JJ

Combined ANSWER TO
COMPLAINT

and

Cross-Complaint for
Damages for Sexual
Harassment

NOW COME THE DEFENDANTS, GIOTTO MULTIMEDIA and
MARIANNE LABELLE, and answering the allegations of eBOOKS'
complaint filed herein, admit, deny, and allege as follows:

1. Defendants admit the allegations of Paragraphs 1
through 5 of the complaint.

2. Defendants admit that Marianne signed Exhibit A to the complaint, but allege that her signature was obtained under duress, and through fraud, as is more fully alleged below.

3. Defendants admit the allegations of Paragraphs 7, 8, and 9 of the Complaint.

4. Responding to the allegations of Paragraph 10:
Defendants admit that eBOOKS has not completed the development of the e2Books software, and have no knowledge of whether eBOOKS has completed the patent application or not; and further admit that some of their present customers are former customers of eBOOKs, and that eBOOKS has suffered embarrassment in the marketplace. Except as expressly admitted herein, defendants deny, generally and specifically, each and every allegation of the said Paragraph 10, and the whole thereof

5. Defendants hereby incorporate their responses to Paragraphs 1 through 10 of the complaint by reference and constitute them their response to the said paragraphs as they are incorporated into each paragraph of the complaint.

**FIRST CAUSE OF ACTION OF THE COMPLAINT: BREACH OF
CONTRACT**

6. Defendants admit the allegations of Paragraph 12 of the complaint.

7. Defendants DENY the allegations of Paragraph 13 of the complaint and specifically deny that eBOOKS performed all things required of it to be performed under the contract.

8. Defendants DENY that Marianne breached the contract, and allege that Marianne's performance was excused, and in fact prevented by eBOOKS and its agents, as is more fully alleged below.

9. Defendants DENY, generally and specifically, that eBOOKS suffered damage as a result of their actions, either in the amounts alleged or in any amount at all.

**SECOND CAUSE OF ACTION OF THE COMPLAINT: COPYRIGHT
INFRINGEMENT**

10. Defendants admit the allegations of Paragraph 17 of the complaint.

11. Defendants DENY the allegations of Paragraph 18 of the complaint generally and specifically, and deny furthermore that

gBOOKS are nothing but a knockoff of e2Books, and deny that eBOOKS owns any copyright at all in any original act of authorship.

**THIRD CAUSE OF ACTION OF THE COMPLAINT: THEFT OF
TRADE SECRETS**

12. Defendants deny, generally and specifically, the allegations of Paragraphs 20, 21, and 22 of the complaint, and the whole thereof; and furthermore specifically deny that eBOOKS treated the e2Books project as a trade secret, or that Marianne took any copies with her at all of any eBOOKS internal documents when she left.

**FOURTH CAUSE OF ACTION OF THE COMPLAINT: BREACH OF
Fiduciary Duty**

13. With regard to the allegations of Paragraph 24, defendants admit that Marianne owed fiduciary duty towards eBOOKS at various times pertinent to this action, but for the reasons alleged below, contend that those duties terminated in 2006 or at the latest in 2007 by reason of eBOOKS' conduct towards Marianne, so that she owed no such duty in 2007.

14. Defendants admit the allegations of Par. 25 of the complaint.

15. With regard to the allegations of Par. 26 of the complaint, the defendants admit that Marianne left eBOOKS in October of 2007, and that certain former customers and employees of eBOOKS are now customers and employees of Giotto. Except as herein specifically admitted, defendants deny, generally and specifically, each and every allegation of the said Paragraph 26, and the whole thereof.

16. With regard to the allegations of Par. 27 of the complaint, defendants admit that Giotto was aware at all times of Marianne's situation at eBOOKS, including Exhibit A, and that Giotto offered her employment and encouraged her to develop gBOOKS once she had come to GIOTTO. Except as herein specifically admitted, Defendants deny generally and specifically, each and every allegation of the said Par. 27 and the whole thereof.

17. Defendants deny the allegations of Par. 28 of the complaint.

**FIFTH CAUSE OF ACTION OF THE COMPLAINT: UNFAIR
COMPETITION**

18. Defendants deny, generally and specifically, each and every allegation of Paragraphs 30 and 31 of the complaint and the

whole thereof, and furthermore specifically deny that the competitive activities in which they are engaged are in any way unfair, and deny furthermore that any injury suffered by eBOOKS is ascribable to any conduct of defendants.

AFFIRMATIVE DEFENSES

19. **Unclean Hands.** By reason of its own conduct, as alleged in the Cross-complaint below, eBOOKS has unclean hands in the premises which bar its recovery.

20. **Prevention of performance.** By reason of its own conduct as alleged in the Cross-complaint below, eBOOKS prevented Marianne from completing performance of the agreement.

21. **Lack of originality.** No aspect of e2books is or ever was new or original, and all of its functionality was obvious to those familiar with ebook software.

CROSS-COMPLAINT FOR DAMAGES FOR SEXUAL HARASSMENT

Defendant and cross-complainant MARIANNE LABELLE ("Marianne") cross-complains against the plaintiff, eBOOKS, Inc., and its Vice President of Research, John le Stud, as follows:

22. Marianne started to work at eBOOKS, Inc. as a Project Manager several years before the events which led to this dispute arose. Marianne is a graduate of MIT who holds a Ph.D. in mathematics and Computing. Marianne's responsibilities at eBOOKS at that time had nothing at all to do with invention or innovation. Instead, she was responsible for creating eBOOKS from existing printed materials, using existing software which eBOOKS purchased or licensed from the software companies involved.

23. In the year 2005, Marianne got a new idea for a new kind of eBOOK which would include, as part of its basic functionality, the capability to support a discussion forum related to the book. Subscribers to this new kind of eBOOK would be required to read the book online; but while online, they could make notes on the individual elements of the book, such as particular paragraphs, or

images; and they could read and respond to notes left by other readers. Such a discussion forum would be even more structured than a typical moderated online discussion forum, and for serious books which intended to create new areas of study or discourse, it would be a very attractive vehicle.

24. Although she had no obligation to do so, Marianne approached John le Stud, eBOOKS' VP of Research and Development, and told him the outlines of her idea. Le Stud was enthusiastic in his response, and told Marianne that he believed she was on to something, and that he had always felt her talents were being under-utilized at eBOOKS. He encouraged her to spend up to 50% of her time on this new project, and gradually, he provided her increasing amounts of support, in the form of computer resources, programming staff, and designers, to support her development of the project.

25. Marianne felt uncomfortable with le Stud's enthusiastic support of her project because there were others in eBOOKS' research department that should have been brought into the project at an early stage. Le Stud would often invite Marianne to company retreats where new technology plans were discussed and strangely,

his wife never attended any of these retreats with him. But the excitement of developing the new software, which was provisionally labelled "e2Books", was so great that Marianne overlooked what was still, at that point, a minor kind of discomfort and she threw herself into the project wholeheartedly.

26. In 2006, le Stud spoke to Marianne about promoting her to Asst. Vice President of Research, increasing her pay to something nearly twice as much as she had been receiving, with a 5-year contract calling for stock options and year-to-year escalations. Marianne was understandably excited about these prospects and wanted to avoid doing anything that could interfere with her prospects. When le Stud presented her with a contract to sign in the form of Exhibit B attached, she was glad to sign it, believing that it set her up for a prosperous future, at least for the next five years. The contract included Exhibit A to the complaint as an attachment, and Marianne signed Exhibits A and B in reliance on the promise of a five-year run at a new product, and a new market.

27. Marianne worked hard, and happily, at eBOOKS until a date in early 2007. In January of that year, Mrs. le Stud filed divorce proceedings against her husband. John le Stud became

depressed and emotional at work, and in March of that year, he started making overtly sexual advances towards Marianne.

Marianne tried her best at first to ignore his advances but they became progressively insistent. Finally, in July of 2007, Marianne told le Stud directly that his advances made her extremely uncomfortable and were unwelcome and she asked him to stop. But le Stud was becoming more and more vulgar and less and less able to control himself.

28. One day in August, 2007, le Stud came into Marianne's office and told her, "I love you and can't live without you. I must have you." And thereupon he started to undress. Marianne rang for security but before they arrived, le Stud had put his clothes back on and left the scene. The next day, Marianne asked for a private, confidential meeting with the VP of Human Resources; but le Stud showed up to attend the meeting, and Marianne realized that he had enough influence in the workplace to undermine her credibility and short-circuit her attempts to find an internal remedy. She sought a private interview with eBOOKS' President, but he told her that she should take up any issues she had either

with her direct superior, who was le Stud, or with the VP of Human Resources.

29. It was then that Marianne called two of her close friends from MIT, Antonio Alibrandi and his wife, Carlotta; and she told them the whole story of what was going on at eBOOKS and how it did not feel possible for her to continue to work there. Antonio and Carlotta tried to comfort her, and advised her to resign her position immediately. But she had a great deal invested in the e2Books project, and felt strong loyalty towards her employer. So she did her best to maintain the status quo and move the project forward. Among her many other responsibilities, she met regularly with the patent counsel at Dewey, Cheatem & How, and shared her ideas, and research findings whenever asked to do so.

30. Late in September of 2007, after all the members of Marianne's team had left the office, le Stud came into her office and exposed himself, and sought to embrace her. Marianne was just barely able to escape from her office; and she left the company premises in tears. She stayed away from work for the next two days, and on the 3d day, early in October of 2007, she sent in a letter tendering her resignation.

31. A few days later, she and the Alibrandis formed Giotto Multimedia, and Marianne began to design a different kind of eBOOK, which she called the "gBOOK" for "Giotto". The gBOOK also supports a discussion forum but instead of spending energy on the code necessary to bind individual comments to specific elements of the eBOOK, the gBOOK binds individual notes to specific pages. The gBOOK notes can also exist as sound files - not just text files. In order to implement gBOOKs efficiently, and so as to avoid taking any unfair advantage of eBOOKS, Marianne rewrote all the necessary code in JAVA, whereas the e2Books had been implented in C+.

32. Although she owns thirty percent of the stock of Giotto Multimedia, which is a privately held corporation, Marianne's total salary and earnings from her work there has come to just \$100,000 per year for the nearly two years she has been there. Giotto has been able to sell its services and products to some clients, but it is still a startup, and new initiatives by Adobe and other major players in the field make it highly unlikely that Giotto will ever afford its owners anything more than a modest living.

33. By reason of le Stud's conduct and eBOOKS' failure to provide a meaningful internal remedy, Marianne has suffered economic loss close to \$1 million, and she has suffered grave emotional distress as well as severe disruption of her working life and career, causing her additional financial and emotional damage.

WHEREFORE MARIANNE and GIOTTO PRAY:

1. That plaintiff take nothing from them by reason of its complaint herein.

2. For a joint and several judgment against eBOOKS and John le Stud in favor of Marianne for damages, in the amount of the difference between what she would have earned under her contract through the date of its projected termination (June 30, 2011) and what she has actually earned, and will earn, during that same time period, in the approximate amount of over \$900,000.

3. For a joint and several judgment in Marianne's favor against eBOOKS, Marianne's former employer, for damages for sexual harassment, including a separate amount for punitive and exemplary damages, in an amount to be determined by the court.

3. For their costs of suit herein, including their reasonable attorneys' fees.

4. For such other and further or different relief as the court may deem equitable and just.

Dated: May 3, 2008

MORE, MONEY & MORE
Attorneys for Marianne LaBelle
and Giotto Multimedia

By_____

D-Counsel