

1 Devin A. McRae, SBN 223239
2 *dmcrae@earlysullivan.com*
3 Peter Scott, SBN 247786
4 *pscott@earlysullivan.com*
5 EARLY SULLIVAN WRIGHT
6 GIZER & McRAE LLP
7 6420 Wilshire Boulevard, 17th Floor
8 Los Angeles, California 90048
9 Telephone: (323) 301-4660
10 Facsimile: (323) 301-4676

11 Attorneys for Plaintiff
12 WILLIAM CRABTREE

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 WILLIAM CRABTREE,
16
17 Plaintiff,

18 v.

19 ROBERT KIRKMAN, an individual;
20 ROBERT KIRKMAN, LLC, a
21 Kentucky limited liability company,
22 and DOES 1-10, inclusive.

23 Defendants.

Case No. 2:22-cv-00180

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. Declaratory Relief
2. Promissory Fraud
3. Declaratory Relief
4. Breach of Oral Contract
5. Common Counts – Money Had and Received
6. Accounting

1 Plaintiff William Crabtree (“Crabtree” or “Plaintiff”) brings this action
2 against Defendants Robert Kirkman (“Kirkman”) and Robert Kirkman, LLC
3 (“Kirkman LLC”) as follows:

4 **I. INTRODUCTION**

5 1. Crabtree is an artist and colorist who co-created the comic series
6 *Invincible* (the “Work”), acting as the colorist for the first fifty issues of the book,
7 comprising more than one third of the title’s complete run, and establishing much of
8 the palette and color schemes that would be followed in subsequent issues. The Work
9 was prepared by Crabtree, Kirkman and others with the intention that their
10 contributions be merged into inseparable or interdependent parts of a unitary whole.
11 As such, Crabtree and Kirkman were thus joint authors and co-owners of the
12 copyrights in the Work under the Federal Copyright Act.

13 2. Kirkman is a comic book author cum television and film producer who
14 has notoriously boasted in public interviews of swindling artists with whom he has
15 collaborated out of their rights in their jointly created works. For example, in a May
16 31, 2011 interview, Kirkman had the following exchange: “Q. As an aspiring writer
17 and comic book writer, how do I go about getting an illustrator? Kirkman: Uh,
18 trickery and deceit . . . People are a little squirrely, so it’s very difficult. And so I
19 would advise trickery and deceit.” Kirkman similarly gave at least four podcast
20 interviews wherein he bragged about deceiving comic artist Tony Moore into creating
21 the artwork for the original comic series *The Walking Dead*. (“I was lucky enough to
22 meet Tony Moore in seventh grade, and so I knew that guy and was able to trick him
23 into drawing comic books for me at a very young age.”)¹ Fraud and deceit has become
24

25
26 ¹ Kirkman was sued by Mr. Moore in 2012 based on allegations of Kirkman
27 fraudulently wresting Mr. Moore’s copyright ownership rights in *The Walking*
28 *Dead* series that are shockingly similar to Mr. Crabtree’s allegations herein. See
<https://www.thewrap.com/walking-dead-writer-robert-kirkman-jokingly-advised-trickery-and-deceit-illustrators-his-sue/>. Mr. Moore’s lawsuit against Kirkman was
settled confidentially before the matter went to trial. See
<https://www.hollywoodreporter.com/business/business-news/walking-dead-robert->

1 a standard business practice for Kirkman and is apparently where his true creative
2 aptitude lies. It is precisely this conduct which has led to the present lawsuit (and
3 evidently to Kirkman’s business “success” generally).

4 3. In 2005, Kirkman and his agents devised a scheme to fraudulently induce
5 Crabtree to abandon and assign his copyright interest in the Work to Kirkman’s alter-
6 ego limited liability company, Kirkman LLC. Based on a series of false promises,
7 false representations and material omissions (which was a routine business practice
8 at the time), Kirkman and his agents convinced Crabtree to enter into a written
9 “Certificate of Authorship” which *post-hoc* purported to classify Crabtree’s
10 contributions as “works made for hire.” Kirkman expressly represented to Crabtree
11 that this Certificate of Authorship would not change Crabtree’s agreed upon rights
12 and participation in the Work (including, but not limited to, co-ownership of the
13 copyright in the Work and any renewals and extensions thereof, and the right to
14 receive contingent compensation generated from the exploitation of the Work and any
15 derivative and ancillary rights in connection therewith), but that Hollywood studios
16 and executives did not want to deal with multiple creators and that this Certificate of
17 Authorship would make the Work far more commercially exploitable for both
18 Crabtree and Kirkman. Consistent with his representations to Crabtree, after the
19 execution of the Certificate of Authorship, Kirkman continued to pay proceeds to
20 Crabtree per his ownership interest in the Work. Kirkman now falsely claims those
21 payments were simply “bonuses.”

22 4. Further, even if the Certificate of Authorship was valid (it is not),
23 Kirkman and Kirkman LLC have also materially failed to perform their payment,
24 reporting and accounting obligations thereunder.

25
26
27

[kirkman-lawsuit-373667/; https://deadline.com/2012/09/walking-dead-robert-kirkman-lawsuit-settlement-anthony-moore-342710/.](https://deadline.com/2012/09/walking-dead-robert-kirkman-lawsuit-settlement-anthony-moore-342710/)

1 5. Through this action, Crabtree seeks, among other things, (1) a
2 declaratory judgment that he is a joint author of the Work and holds an undivided
3 ownership interest in the entire Work, (2) rescission of the Certificate of Authorship
4 and the return of his co-author copyright interests in the Work, (3) an accounting of
5 what is owed to Crabtree by Kirkman and/or Kirkman LLC by virtue of Crabtree’s
6 copyright interests in the Work and (4) monetary damages, including punitive
7 damages.

8 **II. PARTIES**

9 6. Plaintiff is an individual residing in the State of Oregon, County of
10 Multnomah.

11 7. Kirkman is an individual who, on information and belief, resides in the
12 State of California, County of Los Angeles

13 8. Kirkman LLC is a Kentucky limited liability company with its principal
14 place of business located in the State of California, County of Los Angeles. On
15 information and belief, Kirkman is Kirkman LLC’s sole member and manager.

16 9. The true names and capacities of Defendants sued herein as Does 1
17 through 10, inclusive (“Does,” collectively with Kirkman and Kirkman LLC,
18 “Defendants”), are presently unknown to Plaintiff, and therefore are sued under
19 fictitious names. Plaintiff will seek leave to amend this Complaint to allege the true
20 names and capacities of Does when they are ascertained.

21 10. On information and belief, Defendants are, and at all times mentioned
22 herein, were, the agents, servants and/or employees of each of the other Defendants,
23 and each of them was acting within the scope of its, his or her authority as the agent,
24 servant and/or employee of each other. On information and belief, Defendants
25 performed the acts and conduct herein alleged directly, aided and abetted the
26 performance thereof or knowingly acquiesced in, ratified and accepted the benefits of
27 such acts and conduct, and therefore each of the Defendants is liable to the extent of
the liability of the Defendants as alleged herein; consequently, all Defendants are

1 jointly and severally liable to Plaintiff for the damages sustained as a proximate result
2 of their conduct.

3 11. On information and believe, at all times herein material, each Defendant
4 was completely dominated and controlled by its co-Defendants and each was the alter-
5 ego of the other. Whenever and wherever reference is made in this Complaint to any
6 conduct by Defendant or Defendants, such allegations and references shall also be
7 deemed to mean the conduct of each of Defendants, acting individually, jointly and
8 severally. Whenever and wherever reference is made to individuals who are not
9 named as Defendants in this Complaint, but were employees and/or agents of
10 Defendants, such individuals at all relevant times acted on behalf of Defendants
11 named in this Complaint within the scope of their respective employment.

12 **III. JURISDICTION AND VENUE**

13 12. This action arises under the copyright laws of the United States, 17
14 U.S.C. §§ 101, et seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq.
15 This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

16 13. Venue lies in this District under 28 U.S.C. §§ 1391(b) and (c). Defendant
17 Kirkman is a resident of this District. Defendant Kirkman LLC is deemed a resident
18 of this District as it maintains its principal place of business in Los Angeles County,
19 State of California, and thus is subject to personal jurisdiction in this District.

20 **IV. GENERAL ALLEGATIONS**

21 **A. Joint Authorship of the Work**

22 14. The Work consists of a comic book and graphic novel series entitled
23 *Invincible*, which follows the coming of age story of an eponymously named
24 superhero. The series gained critical acclaim and a devoted following as a result of
25 the juxtaposition of extreme graphic violence with beautifully rendered and richly
26 colored artwork and visuals.

27 15. The Work was initially co-created by Kirkman, Crabtree and artist Cory
Walker in the early 2000's.

1 16. At the outset, Kirkman and Walker provided the plot, characters,
2 dialogue, themes, sequence of events and the drawings, and Crabtree the color, and
3 with that, the setting, costumes, mood, and overall look and feel. This collaboration
4 turned into finished comic books, expressing the three authors' ideas through the
5 collaborative combination of artwork, coloring and accompanying text. Indeed, the
6 character William Clockwell in the Work (appearing in the very first issue in the
7 comic series) is based on Crabtree, with Kirkman and original artist Cory Walker
8 having requested a photograph of Crabtree from which to draw the character. Walker
9 ceased participation on the Work after Issue No. 7 of the Work and was replaced by
10 a new artist.

11 17. Crabtree and Kirkman eventually jointly authored the Work, with
12 Crabtree creating the coloring and certain other artistic elements and Kirkman
13 providing the accompanying text on the initial 50 issues of the series.

14 18. Crabtree and Kirkman intended that their respective contributions be
15 merged into inseparable and/or interdependent parts of a unitary whole.

16 19. The co-creation process of the Works was a collaborative, "give and
17 take" effort by both Crabtree and Kirkman – with the two co-creators bouncing ideas
18 back and forth.

19 20. Each party contributed intellectual modification to the Work and neither
20 party worked exclusively at the other's direction or on a "work for hire" basis.

21 21. Aside from jointly masterminding with Kirkman the foundational
22 elements of the series, Crabtree's artistic contributions provided, among other things,
23 the "look" and "feel" of the Work – a critically important element in intensely visual
24 works such as comic books.

25 22. In particular, Crabtree's artistic vision for the Work has been utilized and
26 drawn upon extensively in subsequent comic issues and the subsequent television
27 adaptation of the comic book series.

1 23. In recognition of Crabtree’s co-authorship and co-ownership of the
2 Work, Kirkman and Crabtree agreed that Crabtree was to receive twenty percent
3 (20%) of single issue sales of the Work with a minimum of \$40 per page and ten
4 percent (10%) of any revenues generated from other film or television commercial
5 exploitation of the Work together with any derivative projects based on the Work and
6 any allied or ancillary rights in the Work.

7 **B. Kirkman Fraudulently Induces Crabtree to Waive and Assign his**
8 **Copyright Interest in the Work**

9 24. In July 2005, Kirkman was attempting to license television and theatrical
10 rights to certain comic series with which he was involved, including without limitation
11 the Work, as well as numerous other titles including *The Walking Dead* comic series.

12 25. Without any advance notice, Kirkman approached Crabtree at the 2005
13 “Comic-Con” Convention in San Diego, California and presented Crabtree with a pre-
14 printed document entitled “Certificate of Authorship,” which purported to post-hoc
15 characterize all of Crabtree’s contributions to the Work as a “work for hire” – even
16 though this was demonstrably untrue. Kirkman and Kirkman LLC told Crabtree that
17 Kirkman was in final stage discussions with certain Hollywood studios to license the
18 Work for television and/or theatrical production and that, as per the specific request
19 of these studios, having the Work represented by a single creator would increase its
20 commercial viability and result in higher monetary benefits for both Kirkman and
21 Crabtree.

22 26. As the document was being presented to Crabtree after his contributions
23 had already been completed on the Work and the financial arrangement had already
24 been established, Kirkman falsely told Crabtree that Crabtree’s rights and financial
25 interest in the Work would remain unchanged if he signed the Certificate of
26 Authorship and that the document would simply allow Kirkman to market the
27 licensure of the Work more easily, resulting in greater profits for both of them.
28 Kirkman specifically told Crabtree that Crabtree could “trust him.” Kirkman

1 specifically told Crabtree: “Our deal [on the Work] stays the same. This is just for
2 the Hollywood people so we can get paid.” Crabtree was given no opportunity to
3 have the document reviewed by an attorney and Kirkman gave the impression that it
4 needed to be signed then and there right away as Kirkman was attending meetings
5 with Hollywood studios during the convention regarding the Work that would cease
6 if the document was not signed. Crabtree was never provided with a copy of what
7 Kirkman had him sign.

8 27. Under these false pretenses, Crabtree signed the Certificate of
9 Authorship, specifically relying on the fact that, based on Kirkman’s express
10 representations, Crabtree’s ownership of the Work and financial interest therein
11 remained unchanged and that the document was a mere formality for Kirkman to
12 market the Work. No consideration was paid to Crabtree for signing the Certificate
13 of Authorship.

14 28. Kirkman continued to pay Crabtree per their original financial
15 arrangement at rates greater than \$40 per page for single issue sales of the Work even
16 after the execution of the Certificate of Authorship. Additionally, after execution of
17 the Certificate of Authorship, Kirkman paid Crabtree thousands of dollars in
18 connection with licensure of the Work by MTV for a television based motion comic
19 and by Paramount Pictures for an option for film and television rights on the Work.
20 Based on these repeated and ongoing payments, Crabtree believed that what Kirkman
21 had originally stated remained true – namely, that Crabtree continued to be an owner
22 of the Work entitled to a share of the financial proceeds generated from the
23 exploitation thereof.

24 29. In 2020, Crabtree learned that Amazon Prime was moving forward on its
25 plan to launch an episodic series based on the Work. Crabtree promptly contacted
26 Kirkman to discuss the particulars of the series and the license with Amazon Prime,
27 but Kirkman ignored Crabtree’s communications. When Crabtree was finally able to
communicate with Kirkman between August 26 and 31, 2020, Kirkman repudiated

1 the representations he made to induce Crabtree’s signature on the Certificate of
2 Authorship 16 years prior and informed Crabtree that Kirkman LLC was the sole
3 owner of the Work, that Crabtree had no ownership interest and was not entitled to
4 any monetary proceeds generated from the Work as a result of the Certificate of
5 Authorship. When Crabtree questioned Kirkman about why Kirkman continued to
6 pay Crabtree royalties on the Work for years after the Certificate of Authorship,
7 Kirkman stated that those royalty payments were actually just “bonuses,” that he paid
8 at his discretion.

9 30. Crabtree has demanded that Kirkman provide an accounting of or permit
10 an inspection of the books and records reflecting the proceeds generated by the Work,
11 but Kirkman has ignored these requests and has failed to provide any accounting or
12 inspection opportunity whatsoever.

13 **FIRST CLAIM FOR RELIEF**

14 **(Declaratory Relief (28 U.S.C. §§ 2201, *et seq.*; 17 U.S.C. §§ 101, 201(a))**
15 **against all Defendants)**

16 31. Crabtree incorporates herein by reference each and every allegation
17 contained in the preceding paragraphs as though set forth in full.

18 32. An actual controversy exists between Crabtree, on the one hand, and
19 Defendants Kirkman and Kirkman LLC, on the other hand, regarding Crabtree’s co-
20 authorship copyright interests in the Work. Crabtree and Kirkman jointly created the
21 Work with the preconcerted common design to render the Work into finished comic
22 books, expressing Kirkman’s general concepts through both the comic artwork,
23 contributed by Crabtree, and the accompanying text, contributed by Kirkman.
24 Crabtree and Kirkman intended that their respective contributions be merged into
25 inseparable and/or interdependent parts of a unitary whole. Crabtree and Kirkman
26 each contributed intellectual modification to the Work and neither party worked
27 exclusively at the other’s direction or on a “work-for-hire” basis. Crabtree contends
that he is a co-author of the Work. Kirkman disputes that Crabtree is a co-author of

1 the Work.

2 33. Accordingly, Crabtree is entitled to a declaratory judgment that he is a
3 joint author under 17 U.S.C. §§ 101 and 201(a), entitled to all rights and benefits of
4 the attendant, undivided copyright interests, of the Work *Invincible*.

5 **SECOND CLAIM FOR RELIEF**

6 **(Promissory Fraud against all Defendants)**

7 34. Crabtree incorporates herein by reference as though set forth in full the
8 allegations in the preceding paragraphs.

9 35. In July 2005, prior to executing the Certificate of Authorship, Kirkman
10 was attempting to license the television and theatrical rights to the Work. Kirkman
11 told Crabtree that he was in final stage discussions with Hollywood studios to license
12 the Work, and that, as per the specific request of these studios, having the Work
13 represented by a single creator would increase its commercial viability and result in
14 higher monetary benefits for both Kirkman and Crabtree.

15 36. Without any advance notice, Kirkman approached Crabtree at the 2005
16 “Comic Con” Convention and presented Crabtree with a pre-printed document
17 entitled “Certificate of Authorship,” which purported to post-hoc characterize all of
18 Crabtree’s contributions to the Work as a “work for hire” – even though this was
19 demonstrably untrue. Kirkman falsely told Crabtree that his rights and financial
20 interest in the Work would remain unchanged if he signed the Certificate of
21 Authorship and that the document would simply allow Kirkman to market the
22 licensure of the Work more easily, resulting in greater profits for both of them.
23 Kirkman specifically told Crabtree that Crabtree could “trust him.” Crabtree was
24 given no opportunity to have the document reviewed by an attorney.

25 37. Crabtree reasonably relied on Kirkman, Kirkman LLC and their agents’
26 statements and Crabtree signed the Certificate of Authorship, understanding that,
27 based on Kirkman’s representations, Crabtree’s ownership of the Work and financial
interest therein remained unchanged and that the document was a mere formality for

1 Kirkman to market the Work. No consideration was paid to Crabtree for signing the
2 Certificate of Authorship.

3 38. On information and belief, Kirkman and Kirkman LLC knew that such
4 representations were false and fraudulent and/or made such representations with
5 reckless disregard for the truth at the time they were made, and made such
6 misrepresentations for the purpose of inducing Crabtree to rely thereon to his
7 detriment and execute the Certificate of Authorship and waive and assign his
8 copyright ownership in the Works to Kirkman LLC – a new entity that had only been
9 in existence for approximately 3 or 4 months at the time the Certificate of Authorship
10 was executed.

11 39. Crabtree, at the time that such representations were made, did not know,
12 and had no reason to know that the representations were false, instead believing them
13 to be true. In reasonable reliance thereon, Crabtree executed the Certificate of
14 Authorship. Had Crabtree known that Kirkman’s representations were false, he
15 would have never executed the Certificate of Authorship.²

16 40. Crabtree’s reliance on the aforementioned misrepresentations was
17 reasonable and justified.

18 41. The aforementioned misrepresentations were a substantial factor in
19 causing harm to Crabtree, who has not received the proper amount of royalties owed
20 to him and has never received an accounting. As a proximate result of the
21 misrepresentations, Crabtree has suffered damages in an amount to be proven at trial.

22 42. Defendants are liable for any loss or damages, subject to proof, suffered
23 by Crabtree as a direct and proximate result of Defendants’ acts and omissions alleged
24 herein. Crabtree cannot ascertain at this time the full nature, extent or amount of
25 damages suffered as a result of Defendants’ conduct, but it is above the jurisdictional
26

27
28 ² As alleged above in Paragraph 29, Crabtree did not discover Kirkman’s July
2005 representations were false when made until August 2020 when Kirkman
shockingly denied and repudiated them.

1 minimum of this Court. Furthermore, Defendants’ conduct as described herein was
2 done with a conscious disregard of the rights of Crabtree, with the intent to vex, annoy
3 and/or harass Plaintiff and to unjustly profit from the Work to the exclusion of
4 Crabtree. Such conduct was unauthorized and constitutes oppression, fraud and/or
5 malice entitling Crabtree to an award of punitive damages in an amount appropriate
6 to punish or set an example of Defendants in an amount to be determined at trial.

7 **THIRD CLAIM FOR RELIEF**

8 **(Declaratory Relief against all Defendants)**

9 43. Crabtree incorporates herein by reference as though set forth in full the
10 allegations in the preceding paragraphs.

11 44. An actual controversy exists between Crabtree, on the one hand, and
12 Defendants Kirkman and Kirkman LLC, on the other hand, regarding the existence
13 and validity of the Certificate of Authorship. Kirkman and Kirkman LLC contend
14 that the Certificate of Authorship is a valid and binding agreement between Kirkman
15 LLC and Crabtree. Crabtree disputes that the Certificate of Authorship is a valid and
16 binding agreement because, among other things, it was procured by fraud as alleged
17 above and neither Kirkman nor Kirkman LLC provided any consideration to Crabtree
18 in connection with the Certificate of Authorship.

19 45. In the alternative, and in the event the Certificate of Authorship is
20 deemed to be a valid and binding agreement, the parties dispute its interpretation.
21 Crabtree contends that the Certificate of Authorship applies only and exclusively to
22 treat Crabtree’s contributions to the Work as a “work made for hire” in the event the
23 Work is turned into a motion picture. Crabtree contends the Certificate of Authorship
24 has no applicability to and does not modify or transmute his copyright ownership
25 rights in the Work if the Work is used for any purpose other than a motion picture.
26 Kirkman and Kirkman LLC dispute this contention as to the limited applicability of
27 the Certificate of Authorship as affects Crabtree’s rights in the Work. An actual
28 controversy exists between Crabtree, on the one hand, and Defendants Kirkman and

1 Kirkman LLC, on the other hand, regarding the interpretation of the Certificate of
2 Authorship (if, and only if, the Certificate of Authorship is deemed to be a valid and
3 binding agreement in the first instance).

4 46. Crabtree desires a judicial determination of the parties' respective rights
5 and/or obligations under the Certificate of Authorship and the validity thereof. A
6 judicial declaration is necessary and appropriate at this time under the circumstances
7 in order that Crabtree and Defendants can prospectively govern their affairs
8 appropriately with respect to the Certificate of Authorship.

9 47. Crabtree therefore requests a judicial determination that the Certificate
10 of Authorship is void ab initio and of no force or effect or, in the alternative, that it
11 applies solely to Crabtree's ownership rights in a motion picture derived from the
12 Work and for no other purpose.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Breach of Oral Contract against all Defendants)**

15 48. Crabtree incorporates herein by reference as though set forth in full the
16 allegations in the preceding paragraphs.

17 49. Crabtree and Kirkman and Kirkman LLC had an oral agreement that
18 Crabtree was to receive twenty percent (20%) of single issue sales of the Work with
19 a minimum of \$40 per page and ten percent (10%) of any revenues generated from
20 other film or television commercial exploitation of the Work together with any
21 derivative projects based on the Work and any allied or ancillary rights in the Work.

22 50. Crabtree has performed each and every act, condition and covenant
23 incumbent upon him in accordance with the terms of the aforementioned agreement,
24 except as excused, waived or prevented by the acts of Kirkman and/or Kirkman LLC.

25 51. Kirkman and Kirkman LLC have breached their contractual obligations
26 by, among other things, their failure to pay all money owed to Crabtree in accordance
27 with their agreement.

28

1 **As to the Sixth Claim for Relief:**

2 7. For a preliminary and permanent injunction requiring Kirkman and
3 Kirkman LLC to provide compete and timely cooperation with an audit by Crabtree
4 or his agents as concerns the Work.

5 **As to all Claims for Relief:**

- 6 8. For pre-judgment interest at the legal rate for all amounts owed;
- 7 9. For costs of suite incurred herein, including reasonable attorney’s fees;
- 8 10. For such further legal or equitable relief as this Court may deem just
9 and proper under the circumstances.

10 Respectfully submitted,

11 Dated: January 9, 2022

EARLY SULLIVAN WRIGHT
GIZER & McRAE LLP

14 By: /s/ – Devin A. McRae
15 Devin A. McRae
16 Peter Scott
17 Attorneys for Plaintiff
WILLIAM CRABTREE

18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff William Crabtree hereby demands trial by jury for all issues so
21 triable.

22 Dated: January 9, 2022

EARLY SULLIVAN WRIGHT
GIZER & McRAE LLP

25 By: /s/ – Devin A. McRae
26 Devin A. McRae
27 Peter Scott
Attorneys for Plaintiff
WILLIAM CRABTREE