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PARTIES

Elaine Scott is an author and citizen of Houston, Texas.

Scribd, Inc. is a Delaware corporation with its principal place of business at 211 Sutter Street, 2nd Floor, San Francisco, CA 94108, and accepting service of process through Business Filings Incorporated, 1232 Q. Street 1st Floor, Sacramento, CA 94108.

NOTICE OF ACTION AND FACTS

1. Under the aegis of self-promoting mis-interpretations of federal statutes, the West coast technology industry has produced a number of startup firms premised on the notion that commercial copyright infringement is not illegal unless and until the injured party discovers and complains of the infringing activity and the infringer fails to respond to such complaints.

Apparently, they believe any business may misappropriate and then publish intellectual property as long as it ceases to use a stolen work when an author complains. Many millions of dollars have been invested in this business plan.

2. Scribd, Inc. (“Scribd”) is one such egregious infringer. The have built a technology that’s broken barriers to copyright infringement on a global scale and in the process have also built one of the largest readerships in the world. The company shamelessly profits from the stolen copyrighted works of innumerable authors. Scribd, in fact, takes the basic model one step further and both (a) creates a system whereby any user in the world can upload copyrighted works without permission; and (b) having created a vast new potential for theft of copyrighted works, Scribd – without permission – misappropriates copyrighted works for its copyright protection system.

3. Thus, Scribd is building two profitable businesses on a foundation of enterprise-wide copyright infringement – a website that provides storage, searching, and retrieval of documents,

and a copyright protection system fed by stolen works that is used to identify and prevent the uploading of unlicensed copyrighted works. The value of the copyright protection system may someday exceed (or already has) the value of the document storage and retrieval system, especially if it were illegal to operate a Scribd-type business unless the business also implemented a copyright filter.

4. Elaine Scott ("Plaintiff") is a successful children book author and victim of the Scribd enterprise.

5. Ms. Scott authored the copyrighted book "Stocks and bonds : profits and losses : a quick look at financial markets." ("Stocks and Bonds")

6. Ms. Scott wrote Stocks and Bonds in 1984. The work was published in March of 1985, and registered at the Copyright Office in May of 1985.

7. The Copyright Office registration number for Stocks and Bonds is TX0001591794 (see Exhibit 1).

8. Ms. Scott is the owner of all copyrights in Stocks and Bonds.

9. Around July 2009 Ms. Scott searched the document database at Scribd and discovered that Stocks and Bonds had been uploaded to the site and made available to the public. She reviewed the statistics about her work on the website. Stocks and Bonds had been downloaded more than 100 times. Ms. Scott had not licensed the work to either Scribd or any other person.

10. Ms. Scott sent a letter requesting the removal of her book from the Scribd website on July 23, 2009. Subsequently, Ms. Scott filed this suit.

11. As an author and lecturer, Ms. Scott regularly addresses the issues of plagiarism and the rights of authors. In her own words:

12. "I am frequently invited into classrooms across the country to speak to students about how I research and write my books. I begin by talking to students about the sacredness of words - theirs and mine - explaining that the words in my books are copyrighted to me, and therefore belong to me - just as the words they write belong to them. I add that their words are so important and valuable that the United States government considers them copyrighted too, even if their copyright isn't registered. Therefore, I say to my wide-eyed audience, stealing a classmate's words by copying them without permission is not only cheating, it is a form of copyright violation and technically is against U. S. law. I usually close this portion of the presentation by stating that stealing someone else's words is a little like stealing that person's lunch money. It simply is wrong."

13. "I bring this complaint, because I believe that just as it isn't right for children to steal words, it isn't right for websites like Scribd.com to do it, either. And just as it isn't right for students to receive an 'A' based on work others have done, websites should not receive advertising revenue based on infringed copyrights posted on their web pages. If that behavior is allowed to continue I believe it makes a mockery of the copyright laws of the United States and sets a terrible example for all."

14. Other authors have also voiced their concerns about the mass appropriation and publication model promoted by Scribd: "I'm an aspiring author - Scribd is the end of the professional author. The internet will be awash with drivel and written culture will be in the hands of government, corporate and personal patronage. Now that kind of worked in the Renaissance - but there was very little Art produced that was not propaganda for one body or

another. Scribd and its like will be the death of the written word as a significant cultural phenomenon."¹

15. Scribd is a website focused on self-publishing and free access to a database of uploaded documents using extensive search facilities. The website and its contents can be accessed through a web browser directly, a programmatic interface, or by linking to a document on the Scribd website from a different website.

16. One special feature is iPaper, a proprietary format created by Scribd. When documents are uploaded to Scribd, they are converted into a special data format known as iPaper. Regardless of what format a document is in when it is uploaded, it is thereafter available in the iPaper format to any browser using the iPaper viewer (built with the Adobe Flash technology available in most web browser software).

17. The Scribd operation is described succinctly on their website (<http://www.scribd.com>):

Scribd began with a simple observation — that the desire for self-expression through the written word is as old as humanity itself. But even with the proliferation of blogs and other self-publishing tools, there was no easy way for average people to publish to a readership of millions.

Today, Scribd is the largest social publishing company in the world — the website where more than 60 million people each month discover and share original writings and documents.

Scribd's vision is to liberate the written word — to turn everyone into a publisher and create the best possible reading experience on the web and mobile platforms.

With Scribd's iPaper document reader, anyone can easily upload and immediately share their original works on Scribd.com or any other website. iPaper transforms "print" files like PDF,

¹ Anonymous, April, 4, 2009, <http://bookseller-association.blogspot.com/2009/04/scribd-trips-out-of-litopia.html>.

Word or PowerPoint into web document — with all the fonts, layout and artwork that makes your document unique.

Your work can be shared with Scribd's community of passionate readers, and because your document is indexed for search engine optimization, your screenplay, novel or even sheet music and recipes can be discovered by the world.

At Scribd, we built a technology that's broken barriers to traditional publishing and in the process also built one of the largest readerships in the world.²

18. Trip Adler is CEO of Scribd and one of its founders. He has appeared in a number of interviews available on the internet and in print. He presents the clearest case for Scribd's illegal activity. In his own words (italicized):

19. *"Scribd makes it easy to share documents online."*³

20. *"If you want to publish online, with Scribd you can just take it, upload it, and its published online in a few seconds and the whole world can see it."*⁴ More than 50,000 new documents are uploaded to Scribd every day.⁵ Scribd purposely designed their system to attract as much content as possible. Much of the content is uploaded without license from the copyright holder.

21. *"[When] [s]omething copyrighted gets uploaded, which does often happen, we just remove it when the copyright holder complains."*⁶ Scribd admits they regularly infringe copyrighted works. They incorrectly believe that they are immune from liability. According to their view, in the internet-enabled world - which spawns ten thousand businesses for every new

² <http://www.scribd.com/about> (see Exhibit 2).

³ Trip Adler, Interview on February 2, 2008, <http://www.fastcompany.tv/video/make-your-documents-social-objects-with-scribd-0> (see Exhibit 3).

⁴ Trip Adler, Interview in 2007, <http://intruders.tv/en-tech/trip-adler-of-scribd-youtube-for-documents/> (see Exhibit 4).

⁵ Spencer Ante, Interview in June, 2009, http://www.businessweek.com/magazine/content/09_25/b4136054153678.htm (see Exhibit 5).

⁶ Adler, *supra* note 4.

business model - a copyright holder must now devote substantial time to monitoring the content of innumerable websites and sending out takedown notices to receive protection from the law. In pursuit of this radical re-characterization of intellectual property rights, Scribd continues to promote widespread infringement of copyrighted works.

22. *"We can't control it [copyright infringement]... We'd like them to let us know to take it down."*⁷

23. *"We've actually gone above and beyond the DMCA by implementing a copyright filter so that anytime something that's uploaded that's already been taken down before is automatically recognized we just remove it immediately. This keeps a lot of copyrighted books and other documents that were being uploaded frequently off the site completely."*⁸ Without permission of the authors, Scribd maintains copies of author's works for use in a copyright protection system. Once a copyrighted work is uploaded to Scribd without the copyright holder's permission, the infringement is ongoing and permanent. Even if the work becomes unavailable for download by users, Scribd illegally copies the work into its copyright protection system, without permission or compensation to the author.

24. Scribd admits on their website that all "content removed from Scribd via a DMCA copyright infringement takedown notice are added to our text-matching copyright protection system."⁹ This system of infringement is presented as an example of how Scribd helps "protect

⁷ Matt Marhsall, Scribd, the "YouTube for Documents", Copyright Violations and All (March 28, 2007), <http://venturebeat.com/2007/03/28/scribd-the-youtube-for-documents-copyright-violations-and-all/> (see Exhibit 6).

⁸ Adler, *supra* note 4.

⁹ <http://support.scribd.com/forums/33563/entries/25057> (see Exhibit 7).

the rights of authors."¹⁰ In fact, the copyright protection system is built and maintained without compensation to the authors of the works that provide the only real value for the copyright filter.

25. Ms. Scott did not give Scribd permission to make use of her work in their copyright protection system. Even in their purported attempts to "help" authors, Scribd continues to infringe for private gain.

26. *"We've created an ad system for documents."*¹¹ Scribd isn't a non-profit, public service – they do what they do for profit.

27. *"Our belief is that all the documents out there on the web right now are not being monetized, and we'd like to change that"*¹²

28. *"There's a ton of documents that are not being monetized"*¹³

29. *"Documents are viewed in a web browser, so you can have ads inside and around the document"*¹⁴

30. *"We got access to this special Google API so that we can display Google AdSense inside of [iPaper] documents"*¹⁵

31. *"Ultimately we want to monetize the hundreds of millions of PDFs and other kinds of documents on the web."*¹⁶ Scribd reaps substantial and direct financial benefit from copyright infringement. Their misuse of copyrighted works attracts more users to their website, which in turn increases the advertising revenues for the website.

¹⁰ *Id.*

¹¹ Adler, *supra* note 4.

¹² Adler, *supra* note 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

32. The attraction of the extensive library of unauthorized copyrighted works offered by Scribd is well known: "[w]hat attracts visitors to [Scribd]? Well, many things – but one thing Donna noticed immediately was what appeared to be a pirated copy of Harry Potter. Then the hunt was on, and we quickly discovered more and more illegal copies of books – just sitting there, all ready for anyone to download and steal."¹⁷

33. Scribd knowingly and willingly engages in copyright infringement. In documents published on their website, Scribd acknowledges that distribution of copyrighted content without the copyright's owner permission is illegal. For example, the FAQ on copyright and DMCA states: "[d]istributing copyrighted content without the copyright owner's permission is copyright infringement even if you give the document away for free."¹⁸

34. Scribd unlawfully creates derivative works when it takes uploaded documents and converts them into the iPaper format. In documents published on their website, Scribd admits this may be illegal. For example, the FAQ on copyright and DMCA states: "[e]ven if you used your creativity to make a new document that contained another person's copyrighted work, you may be liable for copyright infringement."¹⁹

35. Scribd asks authors to send a DMCA takedown notice to remove a copyrighted work from their system. Scribd lists the following information for the designated agent for takedown notices:

Scribd, Inc.
Attn: Scribd DMCA copyright infringement notification
539 Bryant St.
Suite 200

¹⁷ Anonymous, Trip Adler, CEO of Scribd, Answers His Critics! Not (April 3, 2009), <http://www.litopia.com/podcast/litopia-after-dark-trip-adler-ceo-of-scribdcom-answers-his-critics-not/> (see Exhibit 8).

¹⁸ <http://support.scribd.com/forums/33563/entries/25445> (see Exhibit 9).

¹⁹ *Id.*

San Francisco, CA 94107
USA

or fax to:
415.896.9897
Attn: Scribd DMCA copyright infringement notification

or email to:
copyright@scribd.com
Subject: Scribd DMCA copyright infringement notification²⁰

36. The same information is required by the Copyright Act to be on file at the Copyright Office. However, the information listed at the Copyright Office for Scribd's putative designated agent is:

Jason Bentley
211 Sutter Street
Floor 2
San Francisco, CA 94108
phone: 415-839-7499
fax: 650-745-0703
copyright@scribd.com²¹

37. Scribd 's copyright filter (or protection) system is known as the "Copyright Management System." This system allows authors to contribute works to the system. Scribd uses this system to screen documents uploaded to the system, and will block the uploading of any document that is present in the Copyright Management System. The system is not free to authors. To include a work in the Copyright Management System voluntarily, an author must contractually relinquish her rights to sue Scribd for infringement violations unrelated to use of the Copyright Management System: "[y]ou understand that Scribd complies with the Digital Millennium Copyright Act ('DMCA'), 17 U.S.C. 512, including but not limited to its counter-notification provisions. You understand and agree that the Copyright Management System does

²⁰ <http://support.scribd.com/forums/33563/entries/22981> (see Exhibit 10).

²¹ See Exhibit 11.

not give Scribd the right and ability to control content uploaded to or hosted by Scribd. You further agree that to the extent any of Your works appear on Scribd without Your permission, You will send DMCA-compliant take-down notices to Scribd."²²

38. Scribd also reserves the right to change the terms of the agreement related to the Copyright Management System at any time. And it does not guarantee that your waiver of rights to sue will insure that your works will no longer be uploaded and made available on the system. Several clauses in the agreement specifically waive any liability for Scribd if the Copyright Management System fails to protect the author's rights.²³ Thus, an author must either consent to the legality of the entire Scribd system to receive some level of protection, or they receive no protection at all, and face the substantial harm caused by Scribd's operations.

39. Since its inception, Scribd has acknowledged that it engages in widespread infringement of copyrights. Scribd's system shifts risk, unfairly burdens authors, and disingenuously offers unreliable protection only when authors are willing to waive their right to sue the very system that is responsible for the theft of their works. The sweep of this illegal activity threatens to severely disrupt the traditional balance of rights between Authors, Readers, and the Merchants of Copyright. Ms. Scott doubts that Congress intended to enfranchise the wholesale theft of intellectual property. She doubts that Congress or the authors of our Constitution ever imagined that mass appropriation of protected works holds any place in a free society.

40. For infringement of her work, and on behalf of all similarly situated authors, Ms. Scott brings this suit to recover damages, enjoin Scribd from continuing to operate their website in a manner that promotes copyright infringement, promote the literary arts by asserting the

²² <http://support.scribd.com/forums/33939/entries/38439> (see Exhibit 12).

²³ *Id.*

statutory and constitutional rights coincident with Authorship, uphold the moral tradition of respect for the intellectual property of others, and plead for enforcement of the fundamental rights guaranteed to all Authors.

JURISDICTION AND VENUE

41. This is a civil action seeking damages, declaratory relief, and injunctive relief from copyright infringement under the Copyright Act, 17 U.S.C. 101 et seq.

42. This Court has original subject matter jurisdiction over all claims pursuant to 28 U.S.C. 1331 and 1338(a).

43. This Court has personal jurisdiction over Scribd. On information and belief, Scribd conducts continuous and systematic business in Texas and this District, and derives substantial revenues from services offered and rendered in Texas. Scribd has also committed infringing acts outside of Texas that caused injury to Plaintiff and other class members in Texas. Plaintiff has her personal residence in Texas and this District.

STANDING

44. Plaintiff and class members have constitutional standing to assert their claims. Scribd willfully engages in wholesale infringement of copyrighted works, which it has acknowledged in public interviews. The injuries suffered by Plaintiff and class members are readily traceable to the acts of Scribd. Further, copyright infringement is a redressable wrong in and of itself, and plaintiffs can obtain statutory damages even when evidence of actual damages is not presented. See *Atlantic Recording Corp. v. Lopez* 2007 WL 2010752, 1 (S.D.Tex.) (S.D.Tex.,2007) (“Thus, authorities have interpreted the [Copyright Act] to mean that a Plaintiff need not present evidence of actual damages in order to recover statutory damages.”). Therefore, standing to sue is clearly present in this case. See *Hein v. Freedom From Religion Foundation, Inc.*, 127 S. Ct. 2553, 2562 (2007) (quoting *Allen v. Wright*, 468 U.S. 737, 751

(1984)) ("A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief").

CLASS ALLEGATIONS

45. Plaintiff brings this action on behalf of herself and every author who owns a valid, registered copyright in a work infringed by Scribd. This action satisfies the prerequisites of F.R.C.P. 23(a)(1) - (4) for maintenance as a class action. Scribd is now the 50th or 60th largest website in the world, larger than the New York Times website, and often described as the "YouTube for documents."²⁴ It is estimated that over 50,000 new documents are uploaded to Scribd every day.²⁵ How many of these documents are copyrighted works uploaded without the author's permission is difficult to estimate, but illegal uploading of copyrighted works "does happen often" according to Trip Adler, CEO of Scribd. If the rate of illegal uploading was just 1%, that would amount to over 180,000 copyrighted works uploaded each year without permission. Therefore, the class of authors described here is too numerous for joinder. The information necessary to define the class with respect to infringed works where the author requested the website to take down the work is uniquely in the possession of Scribd. Information regarding the authors of infringed works available on Scribd without the knowledge of the authors is also uniquely within the possession of Scribd.

46. The class member's claims turn on at least the following common questions of fact and law: (1) does Scribd violate the Copyright Act when copyrighted works are uploaded, processed, stored, searched, and downloaded from their system without authorization of the copyright holder; (2) does Scribd violate the Copyright Act when copyrighted works are added to

²⁴ Ante, *supra* note 5.

²⁵ *Id.*

Scribd's copyright protection system without authorization of the copyright holder; and (3) does Scribd qualify for the safe harbor provisions of the DMCA. 17 U.S.C. 512(a) - (d).

47. This case presents only issues of federal law, and there is no threat of the complications that arise when state law issues are present.

48. Plaintiff is an adequate class representative. She is an author of several books and has never licensed or authorized use of her works to Scribd or its affiliates. Her claims are largely identical with the claims of other class members. Counsel for Plaintiff are experienced trial and class action lawyers who have also litigated copyright and technology issues.

49. Certification is appropriate under F.R.C.P. 23(b)(1)(A), 23(b)(2), and 23(b)(3). Regarding F.R.C.P. 23(b)(1)(A): the core issue in this case is whether the safe harbor provisions of the DMCA protect Scribd. 17 U.S.C. 512. Inconsistent rulings on the applicability of the DMCA would leave authors uncertain about the protection of their works under the Copyright Act. Scribd operates a single website accessible globally, and its operations could grow to impact potentially all of humankind's literary works. Consistent adjudication for class members is of the highest import.

50. Regarding F.R.C.P. 23(b)(2): The party opposing the class - Scribd - has acted in a manner that affects all class members similarly. A single ruling as to injunctive or declaratory relief would be appropriate.

51. Regarding F.R.C.P. 23(b)(3): For reasons not apparent to Plaintiff, the issues presented by this case remain largely un-litigated. Plaintiff is aware of only one other case, filed in August, 2009, by a potential class member and arising out of the same issues.²⁶ Thus, this case is ideally suited for a class action, as it may be the only vehicle through which class

²⁶ *Larry Williams v. Scribd, Inc.*, Case No. 09-CV-1836LAB (S.D.Cal.).

members could achieve legal satisfaction. The cost of litigating these issues has likely been a strong deterrent for many class members. Perhaps a further deterrent is evolving case law in the Ninth Circuit that is popularly interpreted as favoring Scribd's presumed defense that its actions are protected by the DMCA. Plaintiff believes that her case factually varies in a dispositive manner from previous cases decided in the Ninth Circuit; and to the extent the Ninth Circuit precedent would favor Scribd, that precedent does not reflect Fifth Circuit law and good policy. While a split among the circuits is not an objective sought, the issues here are so fundamentally important to the evolution of intellectual property law that a hearing of these cases in different circuits can only benefit the eventual resolution of the difficult questions presented.

52. Plaintiff believes that common representation of the rights of authors is critical to the protection of those rights. Also, due to the unique and common mechanisms employed by Scribd to infringe Plaintiff's and class member's works, litigating this matter as a class action will likely be no more difficult to manage than individual litigation of Plaintiff's cause of action.

CAUSES OF ACTION

I. Copyright Infringement

53. The elements of copyright infringement are (1) ownership of a valid copyright, and (2) the defendant copied constituent elements of the plaintiff's work that are original. *Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 141 (5th Cir.2004). The elements of copyright infringement are met in this case because Plaintiff and class members have valid registered copyrights in their books and other documents, such works are not and were never licensed to Scribd, and Scribd willfully infringed and continues to infringe those works by, for example, making unauthorized copies of the works for various purposes including storage in internal databases and inclusion in a copyright protection system. Further, the DMCA safe harbor provisions do not protect Scribd. See 17 U.S.C. 512(a) - (d).

II. Contributory and Vicarious Copyright Infringement

54. A contributory infringer is one who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another. *Cooper v. Sony Music Entertainment Inc.* 2002 WL 391693, 4 (S.D.Tex.,2002) citing *Alcatel USA, Inc.*, 166 F.3d at 790, citing *Gershwin Pub. Corp. v. Columbia Artists Management, Inc.*, 443 F.2d 1159, 1162 (2nd Cir.1971). Contributory infringement may also be found where a party contributes “machinery or goods that provide the means to infringe.” 3 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 12.04[A] [2], at 12-72 (2001). Scribd has actual and constructive knowledge that its users employ the Scribd website to infringe copyrighted works. Further, Scribd induces this activity for its private financial gain, and materially contributes to this activity of its users through the provision of its website and programmatic interfaces.

55. Vicarious liability may be imposed when an individual has the right and ability to supervise the infringing activity and also has a direct financial interest in the activities. *Cooper v. Sony Music Entertainment Inc.* 2002 WL 391693, 4 (S.D.Tex.,2002) citing *Playboy Enters. Inc. v. Webworld, Inc.*, 991 F.Supp. 543, 553 (5th Cir.1997). As with direct copyright infringement, intent or knowledge of the infringement is not an element of a claim for vicarious liability. *Playboy Enters. Inc. v. Webworld, Inc.*, 991 F.Supp. 543, 553 (5th Cir.1997) citing *Peer Int'l Corp. v. Luna Records, Inc.*, 887 F.Supp. 560, 565 (S.D.N.Y.1995). Scribd manages and transforms documents uploaded by users into its system, and has the right and ability to supervise these infringing acts, which include (a) converting documents to iPaper format; (b) storing and displaying documents; and (c) copying documents into the copyright protection system. Scribd’s collection of advertising revenues for advertisements viewed by website visitors in relation to displayed infringed works constitutes a direct financial interest. Scribd may have other direct financial interests in the infringing activities.

III. Declaratory Judgment that Scribd Is Not Protected by DMCA Safe Harbor Provisions

56. In the interest of efficiency and just procedure, Plaintiff intends to bring a Motion for Expedited Declaratory Ruling to adjudge that Scribd is not exempt from monetary and injunctive relief in accord with 17 U.S.C 512. Plaintiff contends that Scribd (a) is a publisher and not a "service provider" under 17 U.S.C. 512; (b) receives a financial benefit directly attributable to infringing activity and has the right and ability to control such activity; (c) has actual knowledge that material or activities using material on their system or network are infringing; (d) has not both made available through its service, including on its website in a location accessible to the public, and provided to the Copyright Office, substantially conforming information about a designated agent; and (e) such other acts and omissions that make Scribd ineligible for protection under 17 U.S.C. 512.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff and class members respectfully request:

1. certification of the class described;
2. trial by jury;
3. declaratory ruling that Scribd is not protected by DMCA safe harbor provisions;
4. actual damages and disgorgement or statutory damages as allowed by 17 U.S.C. 504;
5. temporary and/or final injunctions commanding Scribd to cease and desist all current infringing activities and all operations likely to result in future infringing activity, in accordance with 17 U.S.C. 502;
6. costs and attorneys fees in accordance with 17 U.S.C. 505;
7. such other relief at law and equity to which Plaintiff and class members are entitled.

Respectfully submitted,

Camara & Sibley LLP



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ATTORNEY FOR PLAINTIFF
ELAINE SCOTT

1

Type of Work: Text

Registration Number / Date:
TX0001591794 / 1985-05-31

Title: Stocks and bonds : profits and losses : a quick look at
financial markets.

Notes: Cataloged from appl.

Copyright Claimant:
Elaine Scott

Date of Creation: 1984

Date of Publication:
1985-03-07

Authorship on Application:
text: Elaine Scott.

Variant title: Stocks and bonds : profits and losses

Names: Scott, Elaine

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