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EDWARD C. GREENBERG 1184217 (NY)
ecglaw@gmail.com
Edward C. Greenberg, LLC.
570 Lexington Avenue, 17th Floor
New York, NY 10022
Telephone: (212) 697-8777
(*pro hac vice* application pending)

THOMAS M. REGELE, Esq. (SBN 089865)
KAREN MOSKOWITZ, Esq. (SBN 109681)
karen@moskowitzlawgroup.com
9401 Wilshire Blvd., Suite 1250
Beverly Hills, California 90212
Telephone: (310) 203-0808
Facsimile: (310) 282-9101

Attorneys for Plaintiff
David Strick

FILED

11 MAY 11 PM 3:01
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID STRICK, an individual
Plaintiff,

vs.

LOS ANGELES TIMES
COMMUNICATIONS LLC d/b/a
LATIMES.COM; and TRIBUNE
COMPANY, a Delaware
Corporation

Defendants.

CV11 04043 GBM (FFMx)

Case No: _____

COMPLAINT

JURY TRIAL DEMANDED

ECF CASE

1 Plaintiff, DAVID STRICK, by his attorneys, alleges as follows:

2
3 **JURISDICTION AND VENUE**

- 4 1. This is a civil action for copyright infringement.
- 5 2. Jurisdiction is conferred upon this Court by 28 U.S.C. Section 1338.
- 6 3. Venue in the Central District of California is proper pursuant to 28
7 U.S.C. 1400.

8 **PARTIES**

9

10 4. At all times hereinafter mentioned, David Strick was, and still is, a
11 highly regarded professional photographer, who with respect to matters relevant
12 herein, has done business in the form of a sole proprietorship.

13 5. Plaintiff DAVID STRICK (hereinafter "Plaintiff" or "STRICK") is an
14 individual, residing in the Central District of California, County of Los Angeles,
15 State of California, actively engaged in the photography business in the State of
16 California and elsewhere, and does business under the name "David Strick
17 Photography", with offices located within the Central District of the County of Los
18 Angeles, State of California.

19 6. Defendant LOS ANGELES TIMES COMMUNICATIONS LLC
20 (hereinafter "LA TIMES"), is a foreign business corporation duly organized and
21 existing under the laws of the State of Delaware, and is authorized to do business in
22 California, with an office to conduct business located at 202 W. First Street, Los
23 Angeles, California, 90012. Defendant LA TIMES is a subsidiary of TRIBUNE
24 COMPANY, a corporation duly organized and existing under the laws of the State
25 of Delaware, and is authorized to do business in California, with upon information
26 and belief, an office to conduct business located at 202 W. First Street, Los
27 Angeles, California, 90012.

1 7. Defendant TRIBUNE COMPANY (hereinafter "TRIBUNE"), is a
2 foreign business corporation duly organized and existing under the laws of the State
3 of Delaware, and is authorized to do business in California, with, upon information
4 and belief, an office to conduct business located at 202 W. First Street, Los
5 Angeles, California, 90012.

6 8. Plaintiff is informed and believes, and based thereon alleges, that
7 TRIBUNE wholly owns and/or has a controlling interest in each and every one of
8 the below listed publications and websites, and, that each of the infringements
9 referenced herein by TRIBUNE subsidiaries were committed under the control of
10 TRIBUNE.

11 9. Plaintiff is further informed and believes that each of the named
12 Defendants were, in whole or in part, the agents, employees, or representatives of
13 each of the other said Defendants and were acting within the course and scope of
14 said agency or employment, within their express and implied authority and that
15 each of the acts complained of herein were done, in whole or in part, on behalf of,
16 or for the benefit of, said Defendants, and each act has been consented to and/or
17 ratified by said Defendant by, *inter alia*, failure to repudiate any or all of said acts.

18 FACTS COMMON TO ALL CLAIMS

19
20 10. STRICK is a professional photographer with many years of
21 experience whose photos include primarily a combination of business and celebrity
22 portraits and Hollywood documentary photography for clients including Time
23 Magazine, Fortune, Sempra Energy, The Gap, Paramount Pictures, Premiere
24 Magazine, and the LA Times, as well as countless other companies and
25 publications.

26 11. DAVID STRICK does business in the form and style of David Strick
27 Photography, an unincorporated professional name for his sole proprietorship.

28 12. STRICK is the sole creator of and holds the copyright in the subject

1 image(s) (copies of a portion of such image(s) are annexed hereto as Exhibit "A"
2 and Exhibit "L"), which are the subject of this litigation (hereinafter the "Image(s)"
3 or "Subject Image(s)" or "Plaintiff's Image(s)"), and duly registered same with the
4 United States Copyright Office on October 21, 2010, registration numbers VA 1-
5 750-184, VA 1-750-176, VA 1-750-183. Copies of Plaintiff's copyright
6 registrations are annexed hereto as Exhibit "B".

7 13. The copyright(s) in the Subject Image(s) were registered prior to the
8 publication of any such Image(s).

9 14. The Defendants, or one or more of them, are fully apprised and aware
10 of the registration of said copyrights and have not contested nor objected to same.
11 No copyright or portion thereof has been sold, transferred, or assigned by Plaintiff
12 to either of the Defendants, or to any other person or entity.

13 15. Defendant TRIBUNE owns, *inter alia*, approximately twelve
14 newspapers, including the "Los Angeles Times"; twenty-four television stations,
15 including KTLA (CW) Los Angeles; Chicago Magazine; the entertainment website
16 www.Metromix.com; six advertising websites, including careerbuilder.com and
17 cars.com; and the national cable television station WGN America.

18 16. Defendant LA TIMES is a major print and electronic newspaper,
19 which has, according to the Audit Bureau of Circulation, a daily print circulation of
20 600,449 making it the fourth largest print newspaper in the United States based on
21 circulation. Upon information and belief, the print edition of the newspaper is
22 available in every state of the United States and most countries throughout the
23 world. According to its website, latimes.com is the number one local news and
24 information website in the Los Angeles Metropolitan Area and the fourth largest
25 newspaper website in the *United States*, with an audience of more than 9 million
26 monthly unique visitors generating over 160 million monthly page views.

27 17. Plaintiff has been shooting behind-the-scenes photographs of movie,
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1 television and music video production sets for over thirty-years and is widely
2 known, respected and trusted for same in the entertainment industry. Plaintiff has
3 been referred to as “the closest thing Hollywood has to an industry photographer”.
4 Plaintiff shot a monthly photo column for Premiere Magazine, then shot for the LA
5 TIMES, and as of the date of this Complaint shoots for The Hollywood Reporter.
6 Plaintiff is frequently given special and unique behind the scenes access to
7 television and movie sets.

8 18. It has been said that “in the entire history of Hollywood photography,
9 no photographer has ever documented the craft of filmmaking the way DAVID
10 STRICK has”. Plaintiff’s photographs often capture the sometimes poignant
11 interplay between the reality of the filmmaking process and the fantasy of the
12 movies themselves in what STRICK calls Hollywood’s “industrial magic”.
13 Plaintiff’s images give fans and potential moviegoers their first look at the stars and
14 crew actually filming pending television shows and movies, and his work appeals to
15 both fans and industry insiders alike.

16 19. On or about February of 2007, Plaintiff pitched the idea of a
17 photography feature for the Los Angeles Times that would feature his behind-the-
18 scenes images of television and movie sets. Plaintiff and LA TIMES thereafter
19 entered into contract negotiations, whereby both parties negotiated the terms of said
20 agreement(s) and LA TIMES drafted same. Plaintiff first entered into a written
21 agreement with the LA TIMES on or around December of 2007.

22 20. Pursuant to his written agreements, Plaintiff had a web and print
23 photography feature in the “Los Angeles Times” entitled “David Strick’s
24 Hollywood Backlot”, whereby Plaintiff employed photographs taken by him which
25 capture “behind the scenes” views of the production of movies and television
26 shows. Copies of screen captures for “David Strick’ Hollywood Backlot” feature
27 for the LA TIMES’ website are annexed hereto as Exhibit “C”. Plaintiff’s website
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1 feature, “David Strick’s Hollywood Backlot”, had at times upwards of 200,000
2 unique page views per month and was a fixture of the Los Angeles Times website
3 as well as in print in its newspaper’s Calendar Section and Sunday Magazine.

4 21. Plaintiff entered two (2) written agreements with the LA TIMES, each
5 agreement governing defendant(s)’ use of Plaintiff’s images in the feature, “David
6 Strick’s Hollywood Backlot”. Each of the two written agreements, though covering
7 a separate term of duration, were substantially similar to each other and evidence a
8 course of dealing between the parties over the course of two (2) years.

9 22. Plaintiff and the LA TIMES entered into a third agreement beginning
10 January 1, 2010, to cover an additional period of six (6) months, but that agreement,
11 entitled the “Archive License and Services Agreement”, was, on information and
12 belief, executed by Plaintiff on or about January 1, 2010 but never signed by any
13 authorized representative of the LA TIMES (hereinafter the “Subject Unexecuted
14 Agreement” or “Unexecuted Agreement”) A copy of the Unexecuted Agreement is
15 annexed hereto as Exhibit “D”. The Subject Unexecuted Agreement was drafted
16 by LA TIMES and thus any ambiguity therein must be construed against LA
17 TIMES.

18 23. Under the Subject Unexecuted Agreement as well as each of the prior
19 two written agreements, Plaintiff retained his copyright in whole in each of his
20 images, regardless of whether such images were published by any of the
21 Defendants, or their newspaper(s), website(s), or other media outlet(s). That
22 Plaintiff would retain his copyright was a *specifically negotiated* term of the initial
23 written agreements by and between STRICK and LA TIMES, and was a term that
24 was present in the Subject Unexecuted Agreement.

25 24. Paragraph 1(a) of the Unexecuted Agreement sets forth as follows:
26 “For the avoidance of doubt, LATIMES.COM acknowledges
27 that the copyrights to the Photographs are owned by Strick.”

28 25. Plaintiff’s photographs provide a “first look” to fans and those in the

1 entertainment industry. The photo stories are generally timed for publication on or
2 about the release dates of the movies and shows captured by such images. Many of
3 the movies and television shows photographed by Plaintiff were scheduled to
4 premiere far beyond the end of the six (6) month term of the Unexecuted
5 Agreement.

6 26. Plaintiff actively collaborated and participated in the layout and
7 writing of captions for his photographs and approved such layout and captions prior
8 to the publication of such photographs in the LA TIMES' websites and print
9 publications. The collaboration and approval process whereby Plaintiff held an
10 active and requisite role therein was part of the course of conduct of the parties in
11 their execution of the Unexecuted Agreement.

12 27. The Unexecuted Agreement was for a six-month period which
13 concluded in June of 2010. The Unexecuted Agreement contained a provision
14 whereby the term of the Agreement would roll-over beyond the June 2010
15 expiration if LA TIMES so elected, but the LA TIMES did not make such election
16 and in fact cancelled such roll-over and terminated the agreement as of June, 2010.

17 28. On or about May 28, 2010, Sallie Hofmeister, Assistant Managing
18 Editor of LA TIMES, notified Plaintiff by email that the LA TIMES was
19 terminating its contract with Plaintiff (hereinafter the "Termination Email"). A
20 copy of the Termination Email is annexed hereto as Exhibit "E".

21 29. In response to the Termination Email, Plaintiff reasserted, by email
22 dated May 31, 2010, his exclusive rights to the Image(s) which he had uploaded to
23 the storage front end of the Times' internal content management system (the LA
24 TIMES "ftp" site), but which Image(s) had not been published by any of
25 Defendants, either online or in print. The LA TIMES disagreed with Plaintiff, via
26 an email dated June 11, 2010, and argued, *inter alia*, that even though Plaintiff had
27 satisfied his contractual minimum obligations, the LA TIMES was entitled by
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1 “implication” to the additional Image(s) uploaded by Plaintiff to the LA TIMES’ ftp
2 site, *though admittedly not previously published by any of the Defendant(s)’ media*
3 *properties or website(s).*

4 30. Plaintiff, by counsel, then issued on June 15, 2010, a cease and desist
5 email to in-house counsel for LA TIMES, Julie K. Xanders, Esq., providing LA
6 TIMES with additional actual notice of, *inter alia*, Plaintiff’s sole copyright in his
7 Image(s), and that any use of Plaintiff’s Image(s) by the LA TIMES would be
8 violative of Plaintiff’s copyright(s) therein.

9 31. Despite such clear and repetitive notice to LA TIMES of Plaintiff’s
10 rights, Defendants, or one or more of them, published a gallery of Plaintiff’s
11 Image(s) from the movie “Easy A”, starring Emma Stone, on October 7, 2010, to
12 the Defendant(s)’ website(s), including but not limited to www.latimes.com,
13 without Plaintiff’s license, authorization, or consent. Such violative posting of
14 Plaintiff’s Image(s) was published in connection with a three-feature story block
15 about the lead actress, Emma Stone, who had just been cast in “Spiderman 4”. The
16 unauthorized posting of Plaintiff’s Image(s) was removed from Defendant(s)’
17 website(s) on or about October 8, 2010. Copies of such offending uses of
18 Plaintiff’s Images are annexed hereto as Exhibit “F”.

19 32. Plaintiff duly registered the Subject Images with the United States
20 Copyright Office on October 21, 2010. Subsequently, Plaintiff, by his counsel,
21 issued an email to Jean Paul Jassy, Esq., outside counsel for Defendant LA TIMES,
22 on November 2, 2010, notifying the LA TIMES that *inter alia*, STRICK reserves all
23 rights to his Images, that STRICK holds the copyright in his images, and that in the
24 case of any dispute, Plaintiff would seek the maximum statutory penalties under
25 Title 17 of the United States Code.

26 33. Notwithstanding the aforementioned series of notices to LA TIMES,
27 Defendants, or one or more of them, proceeded to publish a series of at least sixteen
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1 (16) of Plaintiff's Image(s) from the movie "Burlesque", starring Cher and
2 Christina Aguilera on or about December 5, 2010 (copies of such offending uses of
3 Plaintiff's Image(s) are annexed hereto as Exhibit "G"). Plaintiff, by his counsel,
4 *once again* notified Defendants, and each of them, in writing by email dated
5 December 20, 2010 to Mr. Jassy and to TRIBUNE'S General Counsel, James
6 Osick, that such unauthorized use of Plaintiff's Image(s) was violative of his
7 registered copyrights.

8 34. Defendants, or one or more of them, simply ignored such repeated
9 notice and brazenly published more of Plaintiff's Images to Defendant(s)' websites
10 in relation to the first-run movies: "The Green Hornet", starring Seth Rogan and
11 Cameron Diaz; "The Roommate"; "Cedar Rapids"; starring Ed Helms, John C.
12 Reilly and Anne Heche; and, "Battle: Los Angeles", starring Aaron Eckhart.

13 35. Defendants, or one or more of them, published at least fifty-two (52)
14 of Plaintiff's Image(s) to the Defendant(s)' websites, including but not limited to
15 www.latimes.com, on or about January 1, 2011 in connection with the movie "The
16 Green Hornet", which was scheduled to open on January 14, 2011. (Copies of such
17 offending uses of Plaintiff's Image(s) are annexed hereto as Exhibit "H".) Such use
18 of Plaintiff's Images by Defendants, or one or more of them, was without his
19 license, authorization or consent.

20 36. Defendants, or one or more of them, published at least thirteen (13) of
21 Plaintiff's Image(s) to the Defendant(s)' websites, including but not limited to
22 www.latimes.com and at least fourteen (14) other TRIBUNE websites, on or about
23 January 28, 2011 in connection with the movie "The Roommate". (Copies of such
24 offending uses of Plaintiff's Image(s) are annexed hereto as Exhibit "I".) Such use
25 of Plaintiff's Images by Defendants, or one or more of them, was without his
26 license, authorization or consent.

27 37. Defendants, or one or more of them, published at least twelve (12) of
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1 Plaintiff's Image(s) to the Defendant(s)' websites, including but not limited to
2 www.latimes.com and at least thirty-five (35) other TRIBUNE websites, on or
3 about February 5, 2011 in connection with the movie "Cedar Rapids". (Copies of
4 such offending uses of Plaintiff's Image(s) are annexed hereto as Exhibit "J".)
5 Such use of Plaintiff's Images by Defendants, or one or more of them, was without
6 his license, authorization or consent.

7 38. Defendants, or one or more of them, published at least seventeen (17)
8 of Plaintiff's Image(s) to the Defendant(s)' websites, including but not limited to
9 www.latimes.com and at least thirty-four other TRIBUNE websites, on or about
10 February 15, 2011 in connection with the movie "Battle: Los Angeles". (Copies of
11 such offending uses of Plaintiff's Image(s) are annexed hereto as Exhibit "K".)
12 Such use of Plaintiff's Image(s) by Defendants, or one or more of them, was
13 without his license, authorization or consent.

14 39. The full nature and extent of Defendant(s)' use(s) of Plaintiff's
15 Image(s) is unknown to date, but may additionally include Plaintiff's photographs
16 of the sets of the movies: "Everything Must Go", starring Will Farrell; "Priest"
17 starring Paul Bettany; and "A Thousand Words", starring Eddie Murphy, the latter
18 two movies of which have not yet been released in theatres as of the date of this
19 Complaint (copies of Plaintiff's Images in connection with "Everything Must Go",
20 "Priest", and "A Thousand Words" are annexed hereto collectively as Exhibit "L").

21 40. On or about the date of this Complaint, May 5, 2011, the Defendants,
22 or one or more of them, published at least forty-five (45) of Plaintiff's Image(s) to
23 the Defendant(s)' websites, including but not limited to www.latimes.com, and
24 other TRIBUNE websites, or one or more of them, in connection with the movie
25 "Priest". (Copies of such offending uses of Plaintiff's Image(s) are included as part
26 of Exhibit "L" annexed hereto) Such use of Plaintiff's Image(s) by Defendants, or
27 one or more of them, was without his license, authorization or consent.

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1 41. The candid behind-the-scenes imagery created by STRICK has
2 substantial value and is in high demand. Defendants, or one or more of them,
3 employed Plaintiff's Image(s) without any compensation to Plaintiff, and in
4 violation of his copyrights.

5 42. Defendants, or one or more of them, published a total of *at least one*
6 **hundred seventy four (174)** of Plaintiff's registered Image(s), *subsequent to actual*
7 *notice* by both Plaintiff and Plaintiff's counsel that such uses were violative of
8 Plaintiff's copyrights, and did so without Plaintiff's license, authorization or
9 consent. The full nature and extent of Defendant(s)' uses of Plaintiff's Image(s) is
10 as yet unknown, pre-discovery, such information being within the custody,
11 possession and control of Defendants, or one or more of them.

12 43. Defendants, or one or more of them, cropped, altered, and/or
13 "Photoshopped" Plaintiff's Image(s) without Plaintiff's license, authorization or
14 consent, and employed same without authorization on at least the Los Angeles
15 Times website, www.latimes.com, as well as at least twenty-four (24) other
16 Tribune-affiliated or Tribune-owned websites (copies of a portion of such offending
17 use(s) of Plaintiff's Image(s) are annexed hereto as Exhibit "M"). Defendants, or
18 one or more of them, employed at least a portion of Plaintiff's Image(s) in articles
19 and feature stories, without Plaintiff's license, authorization, or consent (see,
20 Exhibit "M").

21 44. The full nature and extent of the uses of Plaintiff's Image(s) by
22 Defendants, or one or more of them, inclusive of each of the newspapers and/or
23 television stations or other media owned by TRIBUNE as referenced hereinabove,
24 is unknown pre-discovery, as such information is within the full custody and
25 control of Defendants, or one or more of them.

26 45. The use of each image by each Defendant constitutes a separate and
27 distinct infringement. That, upon information and belief, Defendants, or one or
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1 more of them, inclusive of the separate Tribune properties and/or sub-entities, have
2 collectively committed at least **five hundred ten (510) violations of Plaintiff's**
3 **copyrights.**

4 46. Despite actual notice that Plaintiff was and is the creator of the
5 Subject Images, that he holds the copyrights in said Image(s) and that he did/does
6 not consent to Defendant(s)' use of such Image(s), Defendants, or one or more of
7 them, willfully employed Plaintiff's Image(s), without regard for Plaintiff's rights.
8 That had Defendants, or one or more of them, sought Plaintiff's permission to
9 publish the Image(s), said permission would have been denied. Further, upon
10 information and belief, Defendants, or one or more of them, knew or should have
11 known that such permission(s), if sought, would have been denied.

12 47. Upon information and belief, the Defendants, or one or more of them,
13 were fully aware at all times relevant herein that it/they lacked a written license or
14 permission necessary to employ the use of Plaintiff's Image(s). Notwithstanding
15 such knowledge, Defendants, or one or more of them, employed Plaintiff's
16 Image(s) without the requisite license(s) or permission(s) from Plaintiff. Such
17 failure to obtain a license, consent, or permission from the Plaintiff constitutes
18 negligence, if not willful infringement.

19 48. Defendants, and each of them, are exceptionally sophisticated
20 licensee(s) and licensor(s) of intellectual property and employ persons expert in all
21 aspects of licensing, rights management and related matters. Defendants, and each
22 of them, have extensive resources including but not limited to in house legal
23 counsel and outside legal counsel available to its employees to assure compliance
24 with all appropriate business protocols and federal and/or state statutes including
25 but not limited to USC Title 17. Defendants, and each of them, knew or should
26 have known of the procedures and protocols for the licensing and publishing of
27 intellectual property created by third parties.

1 49. That, here, Defendants, or one or more of them, inexplicably,
2 negligently and/or willfully did not follow such standard procedures by not seeking
3 a license or consent of any kind from Plaintiff for the uses complained of herein.

4 50. Defendants, or one or more of them, knew or should have known that
5 Plaintiff is the sole copyright holder of the Subject Images. That present with the
6 publication of each of the Subject Image(s) to Defendant(s)' website(s), on
7 information and belief, is a photo credit to Plaintiff "David Strick".

8 51. Plaintiff's written agreements as well as the Unexecuted Agreement
9 with the LA TIMES, a subsidiary of TRIBUNE, expressly states that Plaintiff is the
10 copyright owner in the Subject Image(s), and thus put Defendants, or one or more
11 of them, on actual written notice that Plaintiff is the copyright holder in the Subject
12 Images. Defendants, and each of them, have never asserted that it is a co-creator of
13 the Subject Images, nor have they ever contested, at any time, that Plaintiff is the
14 sole copyright holder in said Images.

15 52. That despite such clear actual notice, via the written agreements and
16 Unexecuted Agreement, and by Plaintiff and Plaintiff's counsel prior to any
17 publication of the Subject Image(s), Defendants, or one or more of them, employed
18 Plaintiff's Image(s) without his license, authorization or consent for the use of
19 same.

20 53. The Defendants could have readily located Plaintiff. Defendants, or
21 one or more of them, were actively engaged in correspondence with Plaintiff's
22 counsel regarding the prohibited use of the Subject Images. Moreover, even a
23 simple Google search leads to Plaintiff's personal website with contact information.
24 Defendants' failure to contact Plaintiff and seek his permission, license, or consent
25 is either negligent or willful.

26 54. Upon information and belief, Defendants, or one or more of them,
27 have employed additional uses of Plaintiff's Image(s), unknown to Plaintiff pre-
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1 discovery.

2 55. Pursuant to Federal Rule 11, Plaintiff, by counsel, engaged in lengthy
3 correspondence with Defendant LA TIMES throughout a good portion of 2010 in a
4 good faith effort to obviate litigation. However, Plaintiff's good faith attempts at a
5 non judicial resolution of the issues herein have proved futile.

6 56. As of the date of this Complaint, the parties have been unable resolve
7 their disputes without the need for litigation, despite Plaintiff's good faith attempts
8 at same.

9 57. Defendants, or one or more of them, acted at all times as if Title 17
10 of the United States Code does not apply to them. The actions of the Defendants,
11 or one or more of them, as aforesaid, have forced Plaintiff, a sole proprietor, to
12 expend substantial sums of money to enforce his registered copyrights.

13 58. As of the date of this Complaint, Defendants, or one or more of them,
14 have *continued* to employ Plaintiff's registered Image(s), without his authorization,
15 consent, or license, despite having been put on actual prior notice by Plaintiff and
16 Plaintiff's counsel that any such use was unauthorized and would be violative of
17 Plaintiff's copyrights.

18 59. To this day, neither Plaintiff, nor Plaintiff's counsel have received a
19 representation from Defendant, or any of them, indicating that it has ceased use of
20 Plaintiff's Image(s).

21 60. That the Defendants, or one or more of them, have no defenses at law
22 to the claims set forth herein.

23 61. Paragraphs "1" through "60" are incorporated by reference with
24 respect to each of the below counts or claims for relief.

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