



HM Courts & Tribunals Service

ROYAL COURTS OF JUSTICE GROUP
Queen's Bench Division
Foreign Process Section
Room E16
Royal Courts of Justice
Strand, London
WC2A 2LL

DX 44450 Strand

T 020 7947 7772

F 0870 324 0025

E

ForeignProcess.RCJ@hmcts.gsi.gov.uk

Text Phone 18001 020 7947 7772
(Helpline for the deaf and hard of hearing)

www.hmcourts-service.gov.uk

Kevin Schlosser C/o Meyer Suozzi, English & Klein
990 Stewart Avenue
Suite 300
Garden City
NY 11530
USA

Date: 27 November 2018

Our ref: SFP 2018-20179

Your ref: Nicholas "Nick"
Youngson

Dear Sir/Madam

**Re: Service of Foreign Process on
Nicholas "Nick" Youngson**

CERTIFICATE - ATTESTATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention L'autorite soussignee a l'honneur d'attester conformement a l'article 6 de ladite Convention.

1) that the document has been served the (date) 05 November 2018
que le demande a ete executee le (date)

-at (place, street, number) 15 Church Road
-a (localite, rue, numero) Hale Village
LIVERPOOL
L24 4AY

- in one of the following methods authorised by article 5:

-dans une des formes suivantes prevues a l'article 5:

a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the convention

selon les formes legales (article 5, alinea premier, lettre a)

b) in accordance with the following particular method selon la forme particuliere suivante

The documents were served by posting them through the defendant's letterbox. This method is good service under rule 6.3 (1) (c) of the Civil Procedure Rules of England and Wales.

c) by delivery to the addressee, who accepted it voluntarily
par remise simple

The documents referred to in the request have been delivered to:

Les documents mentionnes dans la demande ont ete remis a:

- (identity and description of person)
- (identite et qualite de la personne)

- relationship to the addressee (family, business or other)
- liens de parente de subordination ou autres avec
le desinataire de l'acts

2) that the document has not been served, by reason of the following facts:
que la demande n'a pas ete executee, en raison des faits suivants:

in conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay the expenses details in the attached statement.

Conformement a l'article 12, alinea 2 de ladite Convention, le requerant est prie de payer ou de rembourser les frais dont le detail figure au memoire ci-joint

Annexes

Documents returned

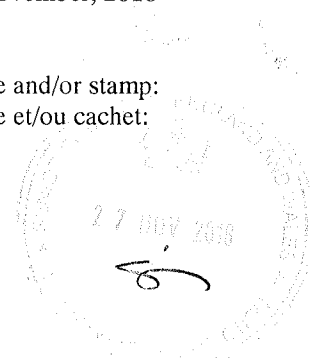
Pieces renvoyees

in appropriate cases, documents
establishing the service:
le cas echeant, les documents
justicatifs de l'execution:

Done at London
fait a

the 27 November, 2018
le

Signature and/or stamp:
Signature et/ou cachet:



SFP 2018 - 20779

ZURUCKSENDEN - TO RETURN
à retourner, de restituer

SUMMARY OF THE DOCUMENT TO BE SERVED ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965 (Article 5, fourth paragraph).

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965 (article 5, alinéa 4).

Name and address of the requesting authority: Nom et adresse de l'autorité requérante :	Kevin Schlosser (kschlosser@msek.com) c/o Meyer, Suozzi, English, & Klein 990 Stewart Avenue, Suite 300 Garden City, NY 11530
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Particulars of the parties*: Identité des parties* :	Meyer, Suozzi, English & Klein, P.C., v. Mathew K. Higbee, Esq., Nick Youngson, RM Media, Ltd., and Higbee & Associates.
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* If appropriate, identity and address of the person interested in the transmission of the document
S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte

JUDICIAL DOCUMENT**
ACTE JUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	These documents are to provide notice to the defendant of the claims against it and that a response is required within 21 days from the date of service.
Nature and purpose of the proceedings and, when appropriate, the amount in dispute: Nature et objet de l'instance, le cas échéant, le montant du litige :	All defendants have established and engaged in a scheme to defraud users of the defendant's free images by falsely claiming copyright infringement, knowing no such claim exists as a matter of law.
Date and Place for entering appearance**: Date et lieu de la comparution** :	Within 21 days from the date of service, the defendant must file its response with The District Court, Eastern District of New York, 100 Federal Plaza Central Islip, NY 11722, electronically at http://www.uscourts.gov/courtrecords/electronic-filing-cmecf
Court which has given judgment**: Jurisdiction qui a rendu la décision** :	N/A
Date of judgment**: Date de la décision** :	N/A
Time limits stated in the document**: Indication des délais figurant dans l'acte** :	The defendant must respond within 21 days from the date of service. Otherwise, a default judgment may be entered against it.

** if appropriate / s'il y a lieu

EXTRAJUDICIAL DOCUMENT**
ACTE EXTRAJUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	
Time-limits stated in the document**: Indication des délais figurant dans l'acte** :	

** if appropriate / s'il y a lieu

WARNING
AVERTISSEMENT

Identity and address of the addressee

Identité et adresse du destinataire Nicholas "Nick" Youngson
15 Church Road
Liverpool, L24 4A7, England

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES « ÉLÉMENTS ESSENTIELS DE L'ACTE » VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE, SOIT DANS VOTRE PAYS, SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES À :

Department of Pro Bono Services
New York State Bar Association
One Elk Street
Albany, NY 12207
518-487-5641

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou l'une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis, soit dans la langue de l'État où le document doit être adressé, soit en langue française, soit en langue anglaise.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFF MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

DEFENDANTS JFP 2018-20179 MATHEW K. HIGBEE, Esq., NICK YOUNGSON, RM MEDIA, LTD., And HIGBEE & ASSOCIATES

RETRUCKSENDEN - TO RETURN a retourner - de restituer

(b) County of Residence of First Listed Plaintiff Nassau (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Orange County, CA (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Meyer, Suozzi, English & Klein, P.C. 990 Stewart Avenue Garden City NY 11530 (516) 741-6565

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal claims like 110 Insurance, 310 Airplane, 365 Personal Injury - Product Liability, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 17 U.S.C. §§ 101 et seq.

Brief description of cause: Declaratory judgment of non-infringement pursuant to Declaratory Judgment Act 28 U.S.C. §§ 2201 and 2202, the Copyright Laws of the United States, 17 U.S.C. §§ 101 et seq. and violation of N.Y. Gen. Bus. L. § 349.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 6/6/18 SIGNATURE OF ATTORNEY OF RECORD /s/ Kevin Schlosser

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Kevin Schlosser, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$1,000,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason **The action seeks a declaratory judgment.**

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

No publicly held corporation owns 10% or more of Plaintiff's stock.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: NO
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Kevin Schlosser

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,

Plaintiff(s)

v.

Mathew K. Higbee, Esq.,
Nick Youngson, RM Media, Ltd., and
Higbee & Associates,

Defendant(s)

Civil Action No. 18cv3353(ADS)(ARL)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Mathew K. Higbee, Esq.
1504 Brookhollow Dr.
Suite 112
Santa Ana, CA 92705

Nick Youngson
15 Church Road
Liverpool L24 4A7
England

RM Media, Ltd.
c/o Higbee & Associates
1504 Brookhollow Dr.
Suite 112
Santa Ana, CA 92705

Higbee & Associates
1504 Brookhollow Dr.
Suite 112
Santa Ana, CA 92705

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kevin Schlosser, Esq.
Meyer, Suozzi, English & Klein, P.C.
990 Stewart Avenue, Suite 300
Garden City, NY 11530-9194

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



DOUGLAS C. PALMER
CLERK OF COURT

Date: 06/08/2018

Deanna Rodin

Signature of Clerk or Deputy Clerk

Civil Action No. 18cv3353(ADS)(ARL)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,

Plaintiff,

-against-

**MATHEW K. HIGBEE, Esq.,
NICK YOUNGSON,
RM MEDIA, LTD.,
And HIGBEE & ASSOCIATES,**

Defendants.

Docket No.:

COMPLAINT

Plaintiff Meyer, Suozzi, English & Klein, P.C., pro se, complaining of defendants Nicholas “Nick” Youngson, RM Media, Ltd., Mathew K. Higbee, Esq., and Higbee & Associates (collectively, the “Defendants”), alleges as follows:

NATURE OF ACTION

1. Plaintiff brings this action as one of the unsuspecting victims of a fraudulent scheme in which Defendants abuse the copyright laws by filing copyright registrations over effortless and mundane photographs, making the photos freely available on the internet for no charge so that Defendants can thereby catch innocent people unwittingly using the photos without an “attribution” that is requested on Defendants’ purposefully convoluted website where the photos are offered under “license,” and then, by using harassing scare tactics to extract money from their victims to “settle” purported copyright claims with the specter of statutory damages of up to \$150,000 to which Defendants know fully that they are not entitled.

2. Thus, upon information and belief, Defendants have conspired to orchestrate their fraudulent scheme through the following deceptive tactics, among others:

- a. An individual who reportedly lives in England takes photographs of common text printing.
- b. A copyright registration is filed with the United States Copyright Office for the subject photos.
- c. The photos are then made available on the internet, and easily found through the use of common search terms of the text in the photos, for anyone to copy the photos and use such in whatever manner and for whatever purpose they wish, including for commercial use.
- d. On the website page where the photo is found, no charge or any fee is requested for use of the photo as it appears, as Defendants know that no one would actually pay any meaningful money for such mundane photos, yet Defendants have used this scheme to extract thousands of dollars from unsuspecting victims as further described herein.
- e. The website from which the photos can be easily copied has a convoluted configuration by which the user would be forced to “click” through a series of different pages and websites to try to decipher who is really entitled to the so-called copyright, under what terms the photos can be used, what the “license” agreement is, who the actual licensor is, what the attribution requested is and what connection the attribution has to the copyright owner, if any, none of which is clearly set forth or even decipherable on careful study.
- f. The deceptive website indicates the license is automatically given to the user, but then requires the user to “click” through a series of hyperlinks that lead to a third-party website where there is a different form of “license.”

- g. Although on the original website where the photo is located, the photo is offered free under license, there is also a free “shared” *form* of license agreement on an entirely different page and website (published by an independent company having nothing to do with these photos or the copyrights) that does not even contain the names of the parties to that form of license or any place in which either party can sign or agree to the terms.
- h. In their pursuit of catching innocent victims, Defendants then troll the internet by using precise search criteria tied to the photos so that they can easily monitor who has copied the photos on the internet.
- i. Once Defendants identify someone who has used the photo(s) and unwittingly failed to include the “attribution” that is requested on the convoluted website, Defendants launch their extortionate tactics to harass, intimidate and scare the user into paying thousands of dollars.
- j. Although, in the website maze in which the photos appear, a party called “Blue Diamond Gallery” is purportedly making the photos available, Defendants do not purport to assert claims on behalf of “Blue Diamond Gallery” or the individual who filed the actual copyright registration, or the entity for which an attribution is requested. (On the website where the photo appears, there is no explanation of who or what “Blue Diamond Gallery” is or what connection it has to the photos or any copyrights.)
- k. As part of their extortionate tactics, Defendants send threatening letters through use of a California lawyer and law firm to the unsuspecting victims demanding thousands of dollars to “settle,” claiming that the use of the photo constitutes copyright infringement and thereby exposes the user to statutory damages of up to \$150,000.

- l. Defendants' demand letter does not provide any factual basis under which damages of up to \$150,000 would ever be awarded.
- m. In fact, contrary to the assertions in the demand letter, there is no copyright infringement under the circumstances because the photos are freely made available to the user under a "license," which thereby precludes a claim for copyright infringement and simply renders the use subject to a mere alleged claim of breach of the "license," for which no such "statutory damages" are available and for which no actual damages can be proved, certainly not the thousands of dollars deceptively demanded by Defendants.
- n. Defendants then continue their harassing conduct by repeatedly attempting to extract some form of "settlement" money from their victims, including threatening suit, or in some instances, bringing suit and then quickly settling and/or dismissing such suits.

3. As a result of the foregoing, Plaintiff brings this action for a declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, determining and declaring that (a) Defendants have no legitimate claim for copyright infringement because Plaintiff did not infringe as a matter of law, and (b) Defendants have no cognizable or recoverable damages for breach of contract or otherwise.

4. Plaintiff also seeks relief, including damages, for Defendants' false, fraudulent and deceptive practices, which violate N.Y. Gen. Bus. L. § 349.

PARTIES AND JURISDICTION

5. Plaintiff is a professional corporation duly organized and authorized to do business in the State of New York, with a place of business at 990 Stewart Avenue, Suite 300, Garden City, New York 11530.

6. Upon information and belief, Defendant Nick Youngson is a natural person who resides in the United Kingdom and who claims to be photographer by trade.

7. Upon information and belief, Defendant RM Media, Ltd. is a foreign business entity that operates out of the United Kingdom.

8. Upon information and belief, Defendant Mathew K. Higbee is a natural person, and an attorney licensed under the laws of the State of California.

9. Upon information and belief, Defendant Higbee & Associates (the "Firm") is a law firm with a principal place of business in and formed under the laws of the State of California.

10. Upon information and belief, the Firm is the agent for and conducts business through and on behalf of Defendant RM Media, Ltd., including in and throughout the United States, including the State of New York.

11. An actual, antagonistic and justiciable controversy now exists between Plaintiff and Defendants with respect to which Plaintiff is entitled to have a declaration of its rights and protections, as well as relief, from Defendants' unlawful conduct.

12. This Court has original jurisdiction pursuant to Title 28 of the United States Code, Section 1338(a) (federal question) because this action arises under the Copyright laws of the United States (17 U.S.C. §§ 101 et seq.), and pursuant to the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202).

13. This Court has personal jurisdiction over Defendants because they are doing business, and/or transacting business within and directed to New York, and Plaintiff's claims herein arise from those activities.

14. At all relevant times hereto, Defendants' acts and practices occurred in and throughout the United States, including in the State of New York.

15. Defendants' wrongful acts and practices, including those upon which the claims herein are based, have crossed into and taken place in the State of New York.

16. At all times relevant herein, upon information and belief, Defendants have acted in concert with each other, with the knowledge and participation of each other, to commit the wrongful acts alleged herein.

17. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the alleged events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action, is situated in this Judicial District.

FACTS

18. On or about December 26, 2017, Plaintiff published, on one of its blogs, an article (the "Article").

19. To accompany the Article, Plaintiff's marketing personnel used a generic stock photograph (the "Image") from a website offering "[t]he burden-of-proof *free* pictures for your web site." (Emphasis added.).

20. The Image was "offered" by the Blue Diamond Gallery and hosted on the following website page: <http://thebluediamondgallery.com/b/burden-of-proof.html> (the "Blue Diamond Website").

21. Copies of the Blue Diamond Website and other related web pages, where the Image was "offered," are annexed hereto as Exhibit 1.

22. On February 5, 2018, Plaintiff received a letter from Defendants, dated January 30, 2018 ("Demand I").

23. Immediately upon receiving Demand I, Plaintiff removed the Image from its website and discontinued such use.

24. Plaintiff has received no monetary benefit from the Image.

25. Any failure by Plaintiff to provide any attribution with the Image was inadvertent, innocent and unintentional.

26. Any failure to provide any attribution with the Image has not resulted in any monetary or other known damage to any of the Defendants.

27. In Demand I, Defendants Higbee and the Firm claimed to represent Defendant RM Media concerning the Image.

28. The Image is a copyrighted work registered to Defendant Youngson.

29. In Demand I, Defendants falsely contended that Plaintiff had infringed Defendant RM Media's alleged copyright in the Image and that "[i]f forced to go to court, [Defendants] will ask for the maximum relief possible, which may include statutory damages under 17 U.S.C. ¶ [sic] 504 for up to \$150,000 for intentional infringement or \$30,000 for unintentional infringement."

30. In Demand I, Defendants referenced an already-established online collection account associated with Plaintiff to which payments were to be immediately made.

31. In making these allegations against Plaintiff, Defendants did not set forth a good faith basis to believe that Plaintiff's use of the Image constituted copyright infringement.

32. In fact, Defendants sent Demand I to Plaintiff knowing that there was no claim of copyright infringement as a matter of law because the Image was offered under license for free including for commercial purposes.

33. In Demand I, Defendants attempted to extract a "settlement" of \$5,280 from Plaintiff without ever explaining how Defendants arrived upon that amount, what the basis for such amount could be, or any other explanation.

34. Upon information and belief, Defendants sent Demand I to Plaintiff as a means of harassing and intimidating Plaintiff into thinking that it was exposed to such significant damages, even though Defendants knew full well that there was no legal basis for their claim.

35. Though Demand I provides that Plaintiff had thirty (30) days to respond, in furtherance of their intimidation tactics, Defendants sent multiple communications to Plaintiff within that time that were harassing and threatening.

36. On February 13, 2018, Plaintiff responded to Defendants, informing them of the inherent flaws in their claim, the innocent and *de minimus* nature of the use of the Image, that Plaintiff had discontinued use of the Image and considered the matter closed, and requested that Defendants likewise consider the matter closed.

37. Defendants thereafter sent additional emails and repeatedly called Plaintiff to extract money from Plaintiff, by falsely claiming copyright infringement and demanding thousands of dollars.

38. Defendants then sent an escalated communication dated May 9, 2018, which Plaintiff received on May 22, 2018, which included a purported draft of a civil complaint (“Demand II”).

39. In Demand II, Defendants falsely claimed again that Plaintiff “engaged in copyright infringement when it posted [the] client’s copyrighted image on its website without a valid licensing agreement.”

40. However, Defendants were fully aware that the Image was made available by license (albeit in the convoluted and confusing websites that Defendants used to trap unsuspecting victims of its fraudulent and deceptive scheme).

41. In Demand II, Defendants again claimed that they are “entitled to recover Statutory damages of up to \$150,000 for each infringement and may also recover attorney fees and court costs. *See* 17 U.S.C. §§ 504 & 505.”

42. Demand II stated that the “offer will be open for fifteen (15) days from the date of [the] letter, after which our client has instructed us to file the enclosed Complaint and seek damages to the full extent of the law.”

43. Upon information and belief, Defendants falsely and strategically claimed entitlement to the maximum statutory damages, emphasized the discretionary fees and cost, and marked Demand II with a period of urgency, to further pressure, intimidate, and frighten Plaintiff into immediately paying the requested settlement amount.

44. Defendants’ assertions of copyright infringement are false and deceptive for various reasons, including, but not limited to, the fact that the Image was “offered” expressly under license, and thus, Plaintiff had a license and did not infringe the copyright as a matter of law.

45. Defendants are also guilty of fraudulent business practices in violation of N.Y. Gen. Bus. L. § 349, for various reasons, including, but not limited to numerous wrongful and deceptive acts as further set forth herein, including as alleged above and as follows:

- a. promoting the Image as “free,” with no restriction on access and no requirement to agree to terms before use, with the intent that it be so used;
- b. trolling the Internet for users of the Image with intent to trap innocent and unsuspecting victims, whom Defendants could then intimidate into unjustifiably paying thousands of dollars;

- c. sending demand letters falsely claiming that Plaintiff does not have a license to use the Image and that Plaintiff infringed the Image copyright, while knowing fully that there is no infringement as a matter of law because the Image was “offered” under a license; and
- d. sending the aforementioned demand letters with the intent and purpose to threaten and intimidate Plaintiff into paying money that the Defendants are not entitled to, while knowing fully that there was no good faith basis to believe any claim existed.

FIRST CLAIM FOR RELIEF
(For Declaratory Judgment of Non-Infringement)

46. Plaintiff repeats and re-alleges each of the allegations of this complaint as though fully set forth herein.

47. There is a substantial controversy between Plaintiff and Defendants, and they have adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

48. By reason of Defendants’ wrongful allegations of infringement and other wrongdoing committed by Defendants as alleged herein, a declaratory judgment is necessary to resolve, clarify and settle the respective rights and legal positions of the parties.

49. As such, the Court should issue a declaratory judgment that (a) Plaintiff’s use of the Image under license does not constitute copyright infringement as a matter of law, and (b) Defendants cannot sustain any claim for breach of contract (any license) because there are no resulting damages.

SECOND CLAIM FOR RELIEF
(For Defendants’ violation of N.Y. Gen. Bus. L. § 349)

50. Plaintiff repeats and re-alleges each of the allegations of this complaint as though fully set forth herein.

51. By reason of the Defendants' deceptive practices of attempting to extort money from Plaintiff under false claims of copyright infringement and as more fully described in this complaint, the Defendants have violated N.Y. Gen. Bus. L. § 349 and thus, Plaintiff is entitled to damages from Defendants, jointly and severally, in an amount established at trial.

WHEREFORE, Plaintiff Meyer, Suozzi, English & Klein, P.C., respectfully requests judgment as follows:

- 1) Issuing a declaratory judgment that (a) Plaintiff's use of the Image under license does not constitute copyright infringement as a matter of law, and (b) Defendants cannot sustain any claim for breach of contract (the license) because there are no resulting damages.
- 2) Awarding Plaintiff damages against Defendants, jointly and severally, including Plaintiff's full costs of this litigation, including reasonable attorneys' fees as provided for in 17 U.S.C. § 505 and N.Y. Gen. Bus. L. § 349(h); and
- 3) Awarding Plaintiff such other relief as this Court may deem just and proper.

Dated: Garden City, New York
June 6, 2018

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

Pro Se

By: /s/_____

Kevin Schlosser

990 Stewart Avenue, Suite 300

Garden City, New York 11530-9194

Tel.: (516) 741-6565

kschlosser@msek.com

EXHIBIT 1

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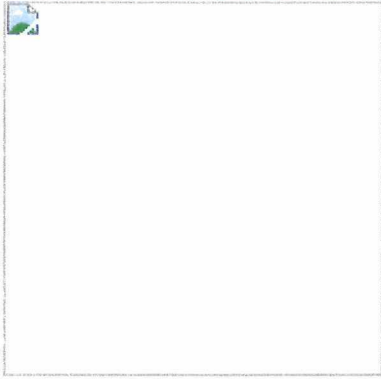
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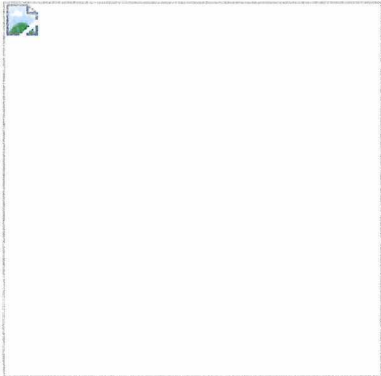
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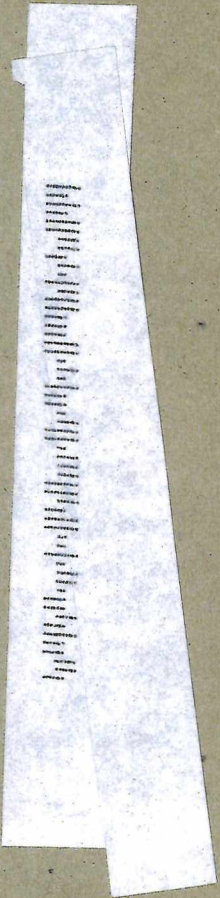
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