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

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

Plaintiff,

v.

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

Defendants.

Case No. 2:18-cv-03353-ADS-ARL

**DECLARATION IN SUPPORT OF
 MOTION/CROSS-MOTION TO VACATE
 DEFAULT UNDER F.R.C.P. 55(C) AND
 QUASH SERVICE OF PROCESS OR
 OTHERWISE DISMISS ACTION**

DECLARATION OF NICK YOUNGSON

NICK YOUNGSON declares the following pursuant to 28 U.S.C. 1746:

1. I am a named Defendant in this action and a citizen and resident of the United Kingdom [hereinafter “UK”]. My registered address in the UK is 9 Lyndale Court, Winsford, England, CW7 2BZ.
2. I am also the founder and CEO of Defendant, RM Media, Ltd. [hereinafter “RM”], a foreign company with a UK registered office address of Suite 11, Stanley Grange, Ormskirk Road, Knowsley Village, Merseyside, United Kingdom, L34 4AR.
3. The UK Defendants are appearing in this action for the limited purpose of filing

the within motion/cross-motion to vacate the Clerk's Certificate of Default against the UK Defendants entered on February 20, 2019, pursuant to the Federal Rules of Civil Procedure [hereinafter "FRCP"] §55(c), and to Quash Service of Process or otherwise dismiss the action. By making this limited appearance, the UK Defendants are not waiving their jurisdictional or other defenses under FRCP §12(b) or otherwise appearing in the action.

4. The within motion is designated a motion/cross-motion as Plaintiff filed a Motion for Default Judgment against both UK Defendants on March 4, 2019, which Motion is pending before the Court. A copy of the Certificate of Default entered by the Clerk of the Court, on February 20, 2019, is attached hereto as "**Exhibit A.**" A copy of the Notice of Motion for Default Judgment and the supporting affidavit, filed on March 4, 2019, along with the related Referral Order, are attached hereto as "**Exhibit B.**" A copy of the Summons and Complaint is attached hereto as "**Exhibit C**".

5. I submit this Declaration on behalf of myself, individually, and on behalf of RM Media, Ltd. in my capacity as its CEO.

FACTS

6. I am a photographer by trade. RM Media Ltd. is a stock photography licensing company that I founded which supplies commercial photographic images. RM's content library consists of over 30,000 unique images offered for licensing.

7. RM Media offers two licensing options for those wishing to use its content. Under the first option, RM Media offers the majority of its content for a paid licensing fee. Under the second option, RM Media offers a limited portion of its content library (including the copyrighted work that gave rise to this action) for license under a Creative Commons Attribution-ShareAlike 3.0 Unported (CC BY 3.0) ("CC License"), which requires that the licensee "give appropriate

credit, provide a link to the license, and indicate if changes were made.” A copy of the CC License is attached hereto as “**Exhibit D**”.

8. Such images are offered through a series of affiliate websites including the website identified in the Complaint as the “Blue Diamond Gallery”, *See* <http://www.thebluediamondgallery.com/terms-and-conditions.html>. As evidenced in Exhibit 1 to the Complaint, attached hereto as Exhibit C, the Blue Diamond Gallery website contains a detailed explanation of the terms of the CC License as well as multiple disclaimers alerting prospective licensors that *attribution is a required condition* to obtaining a license. *See also* Exhibit D.

9. On or about January 19, 2018, it was discovered that Plaintiff – a law firm - was using one of RM’s copyrighted images as the main graphic on its law firm website without attributing the image as required for the CC License. The original image at issue is of a computer tablet bearing the words “burden of proof” [hereinafter the “Copyrighted Work”], which was an image arranged and photographed by me. Attached hereto as “**Exhibit E**” is an image of the Copyrighted Work. Attached hereto as “**Exhibit F**” is a true and correct copy of the post on Plaintiff’s website featuring the Copyrighted Work and showing that Plaintiff did not comply with the express attribution requirement necessary to qualify for a CC License.

10. I had previously registered the Copyrighted Work with the United States Copyright Office under registration number VAu 1-248-878, with an effective registration date of June 10, 2016. Attached hereto as “**Exhibit G**” is a copy of the Certificate of Registration.

11. On November 23, 2016, I assigned all rights to the Copyrighted Work to RM Media, along with another copyrighted work. Attached hereto as “**Exhibit H**” is a copy of the Assignment.

12. RM Media is currently the sole rights holder to the Copyrighted Work.

13. Shortly after learning of the copyright infringement, RM retained Higbee & Associates [hereinafter “Higbee”] to send correspondence to Plaintiff regarding its unlicensed use of the Copyrighted Work. Higbee is but one of several U.S. law firms used by RM to enforce its copyrights.

14. In response to the correspondence, Plaintiff acknowledged that it had used the copyrighted image without license or attribution, but refused to compensate RM. *See* Exhibit C.

15. Instead, on June 8, 2018, Plaintiff filed the current action against the UK Defendants, as well as Higbee and its principal, Mathew K. Higbee. *See* Exhibit C.

16. In its Complaint, filed on June 8, 2018, Plaintiff’s “First Claim for Relief” seeks a declaratory judgment that Plaintiff never committed any copyright infringements in connection with its use of the Copyrighted Work, and a declaratory judgment insulating it from any claims for breach of contract based on its use(s) of the Copyrighted Work. Amazingly, Plaintiff seeks this relief despite acknowledging in its Complaint that it used the Copyrighted Work without complying with the express terms on the Blue Diamond Gallery Website or otherwise crediting the Copyrighted Work. *See* Exhibit C at ¶¶ 18-28; Exhibit 1 to Exhibit C.

17. As stated, *supra*, RM Media is the sole owner of the rights to the Copyrighted Work, and thus, there should be no cause of action against me individually. *See* Exhibit H.

18. Plaintiff’s “Second Claim for Relief,” alleged against all Defendants, is a supplemental state claim under Section 349 of New York’s General Business Law. *See* Exhibit C at ¶¶ 50-51 The Statute, as I understand it, is a consumer protection statute that applies only to those “engaged in the sale of consumer goods and services” within New York State, and requires that specific injury and damages be alleged as a basis for maintaining a private cause of action.

19. Neither UK Defendant maintains a presence in the State of New York and neither engages in any business practices directed at consumers. RM deals exclusively with licensees, and I am merely an Officer of RM and act only in that capacity. Nor has Plaintiff alleged any injury or damages in its Complaint, let alone any caused by the UK Defendants. *See* Exhibit C at ¶¶ 50-51.

20. Finally, as detailed below, neither UK Defendant was served with the Summons and Complaint in this action.

SERVICE OF THE SUMMONS AND COMPLAINT

21. On November 5, 2018, the Summons and Complaint was allegedly served on me, individually, by inserting the papers through a mail slot at a residence located at 15 Church Road, Hale Village, Liverpool, England, L24 4AY. It is not clear whether this was done by a process server or a mail carrier. Attached hereto as “**Exhibit I**” are the documents relating to that attempt at Service of Process (sans Complaint) identified by Reference #SFP 2018-20179.

22. The Attestation of Service for SFP 2018-20179 clearly identifies the Defendant to be served as “Nicholas ‘Nick’ Youngson.” The Attestation does not state that RM was being served through me as its CEO; RM is not referenced as a party to be served; and I am not identified as the CEO of RM. *Id.*

23. According to the Royal Courts of Justice Group, Foreign Process Section [hereinafter “FPS”], service of process for SFP 2018-20179 was first requested on October 10, 2018, which is more than four months after the cause of action was initiated. A copy of the FPS email is attached hereto as “**Exhibit J**”.

24. First, the Church Road address was not the proper address at which to serve me in any capacity. My designated address of record for receipt of service of process, whether in my

capacity as CEO of RM or individually, was the Winsford, England address referenced in paragraph 1, *supra*. That is the address I registered with the United Kingdom Companies House [hereinafter “CH”] for that purpose. Attached hereto as “**Exhibit K**” is a copy of the Companies House Registration.

25. Second, even if I could be served at an address other than the address registered with the UK Companies House, the Church Road address was not the correct address. That address was not my residence at the time service was allegedly attempted. I had sold that property on June 7, 2018, a full 6 months *before* service was attempted. Attached as “**Exhibit L**” is a copy of the Land Registry showing that title to the property at 15 Church Road was transferred on June 7, 2018. Nor was I otherwise residing there. Attached as “**Exhibit M**” is a copy of my final tax bill for the property (showing a termination date of June 6, 2018) and my final gas bill for the property (showing a termination date of June 7, 2018).

26. The alleged service of process on RM was also defective. According to the Summons, service was allegedly made by mailing the documents to Co-Defendant Higbee in Santa Ana, California. *See Exhibit C*. Higbee is merely one of several law firms employed by RM to enforce its copyrights in the United States. Higbee is not authorized and has never been authorized to accept service of process for the UK Defendants. Nor is there any evidence that Higbee did so.

27. Plaintiff made no attempt to serve RM at either address registered with the CH. In addition to the Windsor address registered with CH, RM also had a registered CH office address in Merseyside, UK, at which service of process could have been served. *Id.* These addresses are designated for this purpose, and the information is readily available to the public at www.gov.uk/government/organisations/companies-house.

28. A final attempt at service of process on the UK Defendants was allegedly made on January 2, 2019 by again placing the Summons and Complaint in the mail slot of the 15 Church Road residence, a full seven months after the action was initiated. Attached hereto as “**Exhibit N**” are the documents relating to the Service of Process (sans Complaint) for SFP 2018-26592. According to FPS, service of process under SFP 2018-26592 was first requested on December 19, 2018, more than six months after the action was initiated. *See* Exhibit G.

29. For the reasons stated above, that attempt at service of process was also ineffective. In fact, the Attestation for that attempt does not even state that it complies with applicable law.

30. The fact is that the UK Defendants never received the Summons and Complaint in this action, and for the reasons stated above and in the attached Memorandum of Law by my attorney, I do not believe that any of the attempts at service can be considered “good service.”

31. In particular, it is my understanding that service on a foreign defendant in the U.K. must comply with the Articles of the Hague Convention, which requires the designated Central Authority to serve process in compliance with the local Country’s laws and rules regarding service of process, which in this case would be the CPR of England.

32. Rule 6.8(a) of the CPR of England requires service at the address designated by a defendant, which would be the address that the UK Defendants registered with the United Kingdom Companies House, as stated *supra*. That was not done here.

33. Rule 7.5 of the CPR of England requires that service of process be made within 4 months of the date of issuance of the claim. Neither attempt at service falls within this requisite time period.

34. Additionally, it is my understanding that under these circumstances, the failure of the UK Defendants to receive *actual* notice does not comply with the requirements of Due Process

under the Constitutions of the United States and the State of New York.

35. For the foregoing reasons, I believe that service of process on the UK Defendants was defective under the Hague Convention, the CPR of England, the United States and New York State Constitutions, the FRCP or the CPLR. Thus, I do not believe that either UK Defendant is subject to the jurisdiction of the Court; that any cause of action has been stated for which relief can be granted; that any injury or damages have been alleged; or that there is any merit whatsoever to the current action against the UK Defendants.

36. Wherefore, I respectfully request that the Court vacate the Default entered on February 20, 2019 and dismiss the action against both UK Defendants. In the alternative, I ask that service of process on the UK Defendants be quashed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this March 11, 2019, at 14:13 EST.

/s/ _____
Defendant Nick Youngson, individually
and as CEO of Defendant Rm Media, Ltd.