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| 7  | UNITED STATES DIS  | TRICT COURT          | 7  |
| 8  | FOR THE WESTERN DISTRIATION  | ICT OF WASHI         | NGTON  |
| 9  |  |                      |  |
| 10 | CHRISTOPHER BOFFOLI,   | Case No. 14-655      | 5  |
| 11 | an individual,   | COMPLAINT            | FOR COPYRIGHT  |
| 12 | Plaintiff,   | INFRINGEME           | NT   |
| 13 | V.   |                      |  |
| 14 | GOOGLE INC., a Delaware corporation,                                     | DEMAND FOR           | R JURY TRIAL   |
| 15 | DOES 1-5,  |                      |  |
| 16 | Defendants   |                      |  |
| 17 |  | I.                   |  |
| 18 | CHRISTOPHER BOFFOLI, ("Boffoli" o  | or "Plaintiff") here | by alleges for his   |
| 19 | complaint against GOOGLE INC. ("Google") u                               | pon personal info    | rmation as to Plaintiff's  |
| 20 | own activities, and upon information and belief                          | as to the activities | of others, as follows:   |
| 21 | I. NATURE O  | F THE CASE           |  |
| 22 | 1. This is a claim for copyright infrin                                  | gement arising ur    | nder the copyright laws  |
| 23 | of the United States, Title 17 of the United State                       | s Code.              |  |
| 24 | II. JURISDICTIO  | N AND VENUE          |  |
| 25 | 2. This Court has exclusive subject matter jurisdiction over this action |                      |  |
| 26 | pursuant to 28 U.S.C. §§ 1331 and 1338(a).                               |                      |  |
| 27 | 3. This Court has personal jurisdiction                                  | on over Google be    | cause it conducts  |
| 28 | substantial business in the State of Washington.                         |                      |  |
|    | COMPLAINT FOR COPYRIGHT NE<br>INFRINGEMENT- 1                            | WMAN DU WORS LLP     | 1201 Third Avenue, Suite 1600<br>Seattle, Washington 98101<br>(206) 274-2800 |

4. The claims alleged in this Complaint arise in the State of Washington and the Western District of Washington and elsewhere.

5. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1-3).

### III. PARTIES

5 6. Plaintiff is an individual and resident of the Western District of6 Washington.

7 7. Google is a Delaware corporation with its headquarters and principal
8 business address at 1600 Amphitheatre Parkway, Mountain View CA 94043.

9 8. Plaintiff doesn't know the true names of defendants named in this 10 complaint as Does 1 through 5 and therefore sues those defendants by such fictitious 11 names. Plaintiff will amend the complaint to include the true names of the Doe 12 Defendants and allege facts supporting their liability when Plaintiff learns them through 13 discovery. Plaintiff is informed and believes, and on that basis alleges, that each of the 14 fictitiously named defendants is responsible in some manner for the acts and omissions 15 that give rise to Plaintiff's injuries, and that the Doe Defendants proximately caused 16 Plaintiff's injuries.

### IV. FACTS

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# A. Boffoli created copyrightable photographs and registered them with the U.S. Copyright Office.

20 9. Boffoli is a fine art, editorial and commercial photographer who created 21 "Big Appetites", a series of photographs featuring tiny figures photographed against real 22 food backdrops. Big Appetites has been published in more than 100 countries around the 23 world, with coverage in publications such as the New York Times, Washington Post, 24 NPR, and CBS This Morning, among many others. Fine art photographs from the 25 collection can be found in galleries and private collections in the US, Canada, Europe and 26 Asia. Boffoli is frequently hired by magazines for editorial commissions and by large 27 brands for commercial work based on the Big Appetites series. Boffoli's images are also 28 licensed for publication for books, magazines, websites and greeting cards.

COMPLAINT FOR COPYRIGHT INFRINGEMENT- 2

NEWMAN DU WORS LLP

1 10. Boffoli's business is based on licensing and selling photographs he creates.
 2 Big Appetites photographs are currently available for purchase at fine art galleries, and
 3 can also be purchased over the Internet, including through Boffoli's website. Boffoli has
 4 licensed use of Big Appetites photographs to greeting card companies, calendars, and
 5 others.

6 11. Boffoli registered each photograph in the Big Appetites series with the U.S.
7 Copyright Office and has Copyright Registration Nos. VAu001106484 (June 13, 2011)
8 and VAu001148370 (August 3, 2013).

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## **B.** Google's customer posts photographs from Big Appetites without license or permission from Boffoli on webpages housed on Google's servers.

Google provides services to at least one Doe Defendant and allows that Doe
 Defendant to house its website content on Google's servers, including content that
 infringes on Boffoli's copyright (the "Infringing Content"). The Infringing Content is
 hosted on Google's servers at: <a href="http://ediideas.blogspot.com">http://ediideas.blogspot.com</a> and ing.busuk.org>.

15 13. The Infringing Content hosted by Google contains numerous photographs
16 from Big Appetites without license or permission from Boffoli. A copy of the infringing
17 content is provided as Exhibit A.

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- 19

### C. Google failed to prevent the Infringing Website from being assessable over the Internet despite notice from Boffoli.

20 14. On information and belief, Google can remove the Infringing Content
21 hosted on Google's servers. Google can also disable the Doe Defendant's ability to post
22 content to the Internet.

15. Google's registration with the United States Copyright Office for receipt of
Digital Millenium Copyright Act ("DMCA") identifies "dmca-agent@google.com" as the
email address of its designated agent. A copy of Google's registration is provided as
Exhibit B.

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 16. On December 20, 2013, Boffoli sent a notice to Google's dmca

agent@google.com email address notifying Google of the Infringing Content. Google

3 with Google are attached as Exhibit C. 4 17. Boffoli never authorized his work to be posted on the Infringing Website. 5 18. As late as April 9, 2014—more than 100 days after receiving Boffoli's 6 notice-Google had not removed or disabled access to the Infringing Content. (See 7 Exhibit A.) 8 19. On information and belief, on or about April 24, 2014 Google finally 9 removed or disabled access to the Infringing Content. 10 V. **CAUSE OF ACTION COPYRIGHT INFRINGEMENT AND CONTRIBUTORY COPYRIGHT** 11 INFRINGEMENT 12 20. Boffoli hereby incorporates Paragraphs 1-19 by reference. 13 21. Boffoli is, and at all relevant times has been, the owner of the copyright in 14 the photographs in the Big Appetites series. 15 22. Each photograph in Big Appetites is copyrightable subject matter under 17 16 U.S.C. § 102(a)(5). 17 23. Boffoli has complied in all respects with the provisions of the Copyright 18 Act and all regulations thereunder. 19 24. Boffoli registered the copyright in each photograph in Big Appetites with 20 the United States Copyright Office. 21 25. Boffoli has the exclusive rights under 17 U.S.C. § 106 to (1) reproduce the 22 photographs in Big Appetites, (2) prepare derivative works based on Big Appetites, (3) 23 distribute copies of Big Appetites, and (4) display Big Appetites publicly. 24 26. Without the permission or consent of Boffoli, photographs from Big 25 Appetites were reproduced, derivative works were made from, copies were distributed of, 26 and the photographs were displayed on the Infringing Website, which is hosted on 27 Google's servers. 28 Boffoli's exclusive rights in the photographs in Big Appetites were 27. 1201 Third Avenue, Suite 1600 COMPLAINT FOR COPYRIGHT NEWMAN DU WORS LLP Seattle, Washington 98101 **INFRINGEMENT-4** (206) 274-2800

responded by email that it received Boffoli's notice and asked him to confirm that it was

complete. Boffoli did so that same day. Boffoli's notice and subsequent correspondence

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violated.

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2 28. Google induced, caused, or materially contributed to the Infringing
3 Website's publication.

4 29. Google had actual knowledge of the Infringing Website. Boffoli provided
5 notice to Google in compliance with the DMCA, and Google failed to expeditiously
6 disable access to or remove the Infringing Website.

30. Google acted willfully.

8 31. Alternatively, Google directly infringed Boffoli's copyrights by continuing
9 to allow public access to the Infringing Website on Google's servers.

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#### VI. RELIEF REQUESTED

WHEREFORE, Boffoli asks this Court to enter judgment against Google and
Google's subsidiaries, affiliates, agents, employees, and all persons acting in concert or
participation with them, granting the following relief:

Temporary and permanent injunctions preventing and restraining
 infringement of Big Appetites by Google under 17 U.S.C. § 502;

16 2. An order requiring the destruction of all copies made by or under the
17 control of Google of the photographs in Big Appetites and all articles by which such
18 copies may be reproduced under 17 U.S.C. § 503;

3. An award of the actual damages suffered by Boffoli as the result of
Google's infringement plus the profits of Google attributable to the infringement under
17 U.S.C. § 504(b);

- 4. Alternatively, if Boffoli so elects, an award of statutory damages for each
  infringement of Big Appetites under 17 U.S.C. § 504;
- 24 5. A judgment that Google's infringement was willful and an increased
  25 statutory damage award under 17 U.S.C. § 504(c)(2);

26 6. An award of Plaintiff's full costs including a reasonable attorney's fee
27 under 17 U.S.C. § 505; and

28

| 1  | 7. For such other and further relief as may be just and proper under the   |  |
|--|--|--|
| 2  | circumstances.   |  |
| 3  |  |  |
| 4  | Dated May 2, 2014.   |  |
| 5  |  |  |
| 6  | Respectfully Submitted,  |  |
| 7  | NEWMAN DU WORS LLP   |  |
| 8  | INE WIMAN DU WORS LLF  |  |
| 9  | By: By:  |  |
| 10   | Keith Scully, WSBA No. 28677   |  |
| 11   | Attorneys for Plaintiff  |  |
| 12   | CHRISTOPHER BOFFOLI  |  |
| 13   |  |  |
| 14   |  |  |
| 15   |  |  |
|  | JURY DEMAND  |  |
| 16   | JUNI DEMAND  |  |
| 16<br>17   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by  |  |
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| 17   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by  |  |
| 17<br>18   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by  |  |
| 17<br>18<br>19   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by jury of all issues presented in this complaint which are triable by jury.  |  |
| 17<br>18<br>19<br>20   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by jury of all issues presented in this complaint which are triable by jury.  |  |
| 17<br>18<br>19<br>20<br>21   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by<br>jury of all issues presented in this complaint which are triable by jury.<br>Dated May 2, 2014<br>Respectfully Submitted,   |  |
| <ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>   | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by<br>jury of all issues presented in this complaint which are triable by jury.<br>Dated May 2, 2014  |  |
| <ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>                                     | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by<br>jury of all issues presented in this complaint which are triable by jury.<br>Dated May 2, 2014<br>Respectfully Submitted,<br><b>NEWMAN DU WORS LLP</b>  |  |
| <ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>                         | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by<br>jury of all issues presented in this complaint which are triable by jury.<br>Dated May 2, 2014<br>Respectfully Submitted,   |  |
| <ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>             | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by<br>jury of all issues presented in this complaint which are triable by jury.<br>Dated May 2, 2014<br>Respectfully Submitted,<br>NEWMAN DU WORS LLP<br>By:By:   |  |
| <ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol> | Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by<br>jury of all issues presented in this complaint which are triable by jury.<br>Dated May 2, 2014<br>Respectfully Submitted,<br><b>NEWMAN DU WORS LLP</b><br>By: <u>Mathewater</u><br>Keith Scully, WSBA No. 28677 |  |