

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PATRICK SHIPSTAD,

16-CV-5145 (LAK)

Plaintiff,

**AMENDED COMPLAINT**

-against-

ONE WAY OR ANOTHER PRODUCTIONS, LLC,  
and PRINCETON HOLT,

ECF CASE

Defendants.  
-----x

Plaintiff, PATRICK SHIPSTAD, by his attorneys, EDWARD C. GREENBERG, LLC  
alleges as follows:

**PARTIES**

1. Plaintiff PATRICK SHIPSTAD (hereinafter “Plaintiff” or “SHIPSTAD”) is a professional photographer of considerable reputation, who resides and works in Los Angeles, California.

2. Defendant ONE WAY OR ANOTHER PRODUCTIONS, LLC, (hereinafter “Defendant” or “ONE WAY”), is a domestic business limited liability company, duly organized and existing under the laws of the State of New York, authorized to do business in the State and County of New York, which according to the New York State Department of State Division of Corporations has an address at 10 River Road in New York NY 10044.

3. Defendant PRINCETON HOLT (hereinafter “HOLT”) is an individual who upon information and belief works and resides in the City and State of New York.

**JURISDICTION AND VENUE**

4. This is a civil action for copyright infringement.

5. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1338.

6. Venue in the Southern District of New York is proper pursuant to 28 U.S.C. § 1400.

**FACTS COMMON TO ALL CLAIMS**

7. That Plaintiff SHIPSTAD is a successful professional photographer with many years of experience and a considerable reputation.

8. SHIPSTAD's clients include Universal Studios, Warner Brothers, Disney, DreamWorks, Pixar, DirecTV, Samsung, and many other household name brands.

9. SHIPSTAD has a background in music composition, sound design and video production.

10. SHIPSTAD's work has an emphasis on creative portrait, beauty and fashion

11. SHIPSTAD created a series of photographs of the late actor, known professionally as "Taylor Negron" (hereinafter "Negron"), which included the subject image of Negron (annexed hereto as **Exhibit "A"**, and hereinafter referred to as the "Subject Image").

12. That Negron was a comedian and actor.

13. Negron attended UCLA and studied company with Lee Strasberg and Lucille Ball. He joined the cast of an improvisational comedy group, whose ranks include talents like Robin Williams, Martin Short and Betty Thomas.

14. Negron had a busy and successful career with an extensive IMDB page, with a plethora of work from 1979 to 2015. A copy of the IMDB page is annexed hereto as **Exhibit "B"**.

15. He acted in movies such as "Fast Times at Ridgemont High", "Easy Money", "Freaky Friday", "The Last Boy Scout", and "Spy Hard, and in television shows including but not limited to "Seinfeld", "Hill Street Blues", "Falcon Crest, "Touched by an Angel", "ER", "Nash Bridges", and "The Hughleys", the latter for which he had an ongoing recurring role as "Chuck

Ballard”.

16. Shortly before his death, Negron starred in the movie entitled “Alienated”, which was released on June 1, 2015.

17. Negron died of cancer on January 10, 2015.

18. Defendant ONE WAY describes itself as a “prolific, New York-based independent film production company that produces and distributes independent films, and documentaries.”

19. Defendant HOLT is the producer of the film “Alienated” and is upon information and belief a principal and managing member of Defendant.

### THE IMAGES

20. From 2009 to 2014, SHIPSTAD created a variety of photographs of Negron, including the “Subject Image” [see Subject Image at Exhibit “A” hereto].

21. SHIPSTAD’s images of Negron (including the Subject Image) are unique, highly desirable, and of high value, particularly to those involved in the “Alienated” movie.

22. SHIPSTAD had unique access to Negron and served as his photographer from 2009 to 2014, just a year prior to his death.

23. That SHIPSTAD displayed the Subject Image on his professional website along with the following commentary “Taylor was unmatched at giving unique expressions and posing variations.”

24. That SHIPSTAD utilized his creative portrait skills to artistically capture Negron’s unique and creative spirit. Such crafts resulted in the Subject Image.

25. SHIPSTAD duly registered the Subject Image with the United States Copyright Office on March 25, 2011, Registration No. VA 1-767-688 (a copy of said registration is annexed hereto as **Exhibit “C”**).

26. SHIPSTAD is the sole owner and proprietor of all rights, title, and interest in and to

the Subject Image.

27. SHIPSTAD had displayed the Subject Image on his professional photography website, patrickshipstad.com.

28. That SHIPSTAD knew Negrón and photographed him on multiple occasions.

29. SHIPSTAD has a portion of his website devoted to Negrón, which includes photographs of Negrón and commentary by SHIPSTAD with regard to the images.

30. Upon information and belief, defendant ONE WAY, or someone on their behalf, appropriated the Subject Image from SHIPSTAD's website.

31. SHIPSTAD is easily contacted through his website.

32. That defendants, or anyone on their behalf, could have easily contacted SHIPSTAD through his website or otherwise.

#### **THE OFFENDING USE OF THE IMAGE**

33. Defendants displayed Plaintiff's Subject Image in connection with the promotion, marketing, and advertising of the movie entitled "Alienated".

34. That defendants have employed the Subject Image in several different layouts, which it has used on movie posters and in other media and promotional materials to market, advertise, and promote the movie "Alienated".

35. Annexed hereto as **Exhibit "D"** are just a few of the subject unauthorized uses by defendants of plaintiff's Subject Image.

36. Additionally, defendants, or one or more of them, have altered the Subject Image, in direct violation of the exclusive rights granted to Plaintiff by the United States Copyright Act.

37. Upon information and belief, Defendant ONE WAY, or someone on its behalf has "Photoshopped" or colorized the Subject Image

38. Upon information and belief, Defendant ONE WAY, or someone on its behalf, has

modified the Subject Image by the alteration of Negron's eyes, the thinning of his jaw, and the addition of shadows.

39. Such changes constitute unauthorized derivative works of plaintiff's copyright registered image.

40. Annexed hereto as **Exhibit "E"** is a side by side comparison of Mr. Shipstad's original image, and the alteration of same by Defendant, or someone on its behalf.

41. Defendants have willfully infringed plaintiff's copyright by using, copying, and displaying the Image without Plaintiff's license, authorization, or consent.

42. That defendants utterly failed to secure rights to use the Subject Image, and willfully used it anyway for its sole economic gain.

43. That HOLT stated in an article, dated April 15, 2016, with FilmCourage.com that he exercised due diligence and consulted with an attorney with regard to securing a distribution deal for "Alienated".

44. A copy of the referenced article from FilmCourage.com, dated April 15, 2016, is annexed hereto as **Exhibit "F"**.

45. HOLT is upon information and belief a principal and managing member of Defendant ONE WAY.

46. HOLT also stated that he obtained the artwork containing our client's Subject Image from one indie film graphic artist Jenny Menzel (hereinafter "Menzel").

47. Menzel is upon information and belief an employee or independent contractor of Defendant ONE WAY, but not a managing member of same.

48. Such exact relationship between Menzel and ONE WAY is unknown to plaintiff, pre-discovery, but is expected to be ascertained through discovery in this action and may necessitate the adding of Menzel as an individual defendant to this Action.

49. Upon information and belief, Holt had the right and ability to supervise and did in fact supervise Menzel and her use of the Subject Image in advertising, marketing and promotional materials for the film “Alienated”.

50. Upon information and belief, Holt personally participated in the subject unauthorized use of the Subject Image.

51. Holt further revealed that he showed the artwork around to distribution companies, using same to promote the movie and secure a distribution deal, and determined that the image was “market ready”.

52. Upon information and belief, HOLT and ONE WAY provided the artwork to distribution companies for their further distribution, thus contributing to the infringement and inducing the infringement of the Subject Image by the distributors.

53. Upon information and belief, defendants have provided materials with the Subject Image to distributors, including but not limited to TomCat Films / Summer Hill Films, and Gravitas Ventures.

54. That HOLT, upon information and belief, induced, caused, or materially contributed to the infringing conduct of the distributors as described herein.

55. That HOLT had a right and ability to supervise and did in fact supervise the use and distribution of the promotion, advertising, and marketing materials displaying the Subject Image.

56. The “artwork” featuring Mr. Shipstad’s copyright registered image has been credited with securing both foreign *and* domestic physical *and* digital distribution deals for “Alienated”.

57. In another article with FilmCourage, dated April 25, 2016, one Menzel stated as follows:

“Alienated received competing offers from three different distribution companies after attending AFM (American Film Market) because the artwork got them interested in viewing the trailer. The artwork PLUS the trailer made them ask to see the movie. Without that initial interest, without that first hook to grab their attention, it’s hard to say whether we would have even gotten distribution, let

alone a deal with Gravitas Ventures. In addition to this, the foreign rights were sold to another company and our DVD rights to another, both well established and both will be using our same key art for each market, both physical and digital.

“You never get a second chance to make a great first impression.”

58. A copy of the referenced article from FilmCourage.com, dated April 25, 2016, is annexed hereto as **Exhibit “G”**.

59. That defendants are sophisticated licensors and licensees of intellectual property.

60. That Defendant had access to legal counsel via one Monica Trombley (hereinafter “Trombley”, who at all relevant times held herself out as “in-house” counsel to defendant, and sophisticated in matters of intellectual property.

61. Indeed, Trombley authored an article, dated March 18, 2016, entitled “3 Reasons Why a Good Attorney Can Help You with Distribution by Monica Trombley, Esq.”.

62. A copy of said March 18, 2016 article by Trombley is annexed hereto as **Exhibit “H”**.

63. That in said article, Trombley enumerates with bullet points that attorneys should handle “[a]ll licenses for the use of music, service marks, trademarks, and other intellectual property not belonging to the production” [Exhibit “H”, page 3].

64. In-house counsel was completely aware of the consequences of not obtaining a proper license for the use of copyrighted material (see the highlighted portion on page 5 of Exhibit “H”).

65. Notwithstanding this awareness of the law and the consequences for not securing a license, defendants used plaintiff’s copyrighted and registered image in the promotion of their film without seeking or obtaining plaintiff’s license, authorization or consent.

66. That the full nature and extent of defendant(s)’ uses of plaintiff’s Subject Image cannot be known with certainty prior to discovery, as such information is within the full custody,

possession and control of defendants.

67. Pursuant to Federal Rule 11, Plaintiff has sought to obviate judicial intervention and the filing of suit.

68. That prior to the initiation of suit, plaintiff, by and through its counsel, issued and delivered a letter to defendants, dated May 6, 2016 (hereinafter the “Notice Letter”, a copy of which is annexed hereto as **Exhibit “I”**, sans its exhibits which are elsewhere separately annexed hereto).

69. That said Notice Letter notified defendants of its infringing uses of the Subject Image and advised that its uses of the Subject Image were in violation of SHIPSTAD’s copyright, and that it has no right to use Subject Image in any way, shape or form.

70. Pursuant to Federal Rule 11, the Notice Letter further provided Defendants with a formal request for any executed exculpatory documents or information to rebut plaintiff’s claim.

71. In an effort to resolve plaintiff’s claims, the Notice Letter sought a disclosure of the full nature and extent of defendant(s)’ uses of the image, pursuant inter alia to FRE 408 and FRCP 11, in a good faith effort to resolve the within claims without the need to file a lawsuit.

72. That said Notice Letter was served in an effort to mitigate the parties’ fees and expenses.

73. However, despite plaintiff’s efforts and requests, and defendant(s)’ acknowledged receipt of the Notice Letter, defendants failed to provide any of the requested information, necessitating the within lawsuit.

74. That defendant’s acknowledged receipt of the Notice Letter, via Trombley, who held herself out as “in-house” counsel to defendant.

75. The nature and extent of Monica Trombley’s relationship with ONE WAY and her use or involvement in the use of the Subject Image is unknown to plaintiff prior to discovery in



this action.

76. That defendant acknowledged that it lacked a license for its use of plaintiff's Subject Image.

77. That the Notice Letter further demanded that defendants cease and desist all uses of the Subject Image.

78. That despite such requests, upon information and belief, defendants have continued to use plaintiff's Subject Image.

79. That after receiving notice of plaintiff's claims, defendants, or those on their behalf, removed the articles set forth in Exhibits "F" "G" and "H", reflecting a consciousness of guilt.

80. Each of the articles set forth in Exhibits "F", "G" and "H" include a visual (and in some cases more than one visual) advertisement for the film "Alienated" with plaintiff's copyrighted image therein.

81. Each of the articles set forth in Exhibits "F", "G" and "H", promote not only the film "Alienated", but also ONE WAY, HOLT, Menzel and Trombley.

82. That another attorney for defendant thereafter contacted plaintiff's counsel.

83. That said attorney refused to disclose any of the requested source and/or usage information.

84. That such refusal necessitates the filing of the within action so that plaintiff may engage in discovery in order to protect his rights and prosecute the infringement of his copyright.

85. Defendants have failed to produce any exculpatory documents, although requested pre-suit by plaintiff.

86. That plaintiff's attempts at judicial obviation were made to mitigate damages and to mitigate attorneys' fees, which will be sought pursuant to Title 17.

87. That defendants have distributed the Subject Image into the stream of commerce.

88. That defendants have failed to timely and fully recall materials and publications that display the Subject Image from the stream of commerce.

89. That defendants have failed to timely and fully replace materials and publications that display the Subject Image.

90. Defendants have used our client's image for its own economic gain and profit, without our client's license, authorization or consent.

91. That the Subject Image has aided in defendant(s)' success and revenue with regard to the film "Alienated".

92. That the Subject Image is the first impression for the movie "Alienated".

93. That the Subject Image has been a key aspect in defendant(s)' securing of distribution deals for the movie "Alienated".

94. That all of the within described uses of the Subject Image by Defendants are without plaintiff's license, authorization or consent.

95. Additionally, Defendant(s)' use of Plaintiff's image is an attempt to undermine Plaintiff's copyright management tactics

96. SHIPSTAD states on his website, with regard to his photos of Negron, "All photos © 2009-2014 Patrick Shipstad Photography".

97. That defendants never sought a license, authorization or consent from Plaintiff for the uses of the Subject Image.

98. Defendants have no defenses at law to the alleged infringements of plaintiff's copyright.

99. The Defendants have no defense at law to the claims set forth herein.

100. The full nature and extent of all infringing uses of plaintiff's images by defendants are unknown to Plaintiff as of this writing, said information being within the sole knowledge, custody, and control of Defendants.

101. That such details and information are expected to be ascertained through discovery in this action.

102. Paragraphs "1" through "101" are incorporated by reference with respect to each of the below claims for relief.

**FIRST CLAIM FOR RELIEF**  
**Copyright Infringement**  
**Under Section 501 of the Copyright Act**  
**Against All Defendants**

103. That the use of Plaintiff's Image by the Defendants, in connection with the advertising, promotion, and marketing of the film "Alienated" were and are without the Plaintiff's authorization, license or consent.

104. That, upon information and belief, the aforementioned acts of Defendants, constitute federal statutory copyright infringement under Section 501 of the Copyright Act in violation of the rights granted to SHIPSTAD as copyright holder.

105. That, upon information and belief, Defendant(s)' use of the Subject Image was willful, intentional and in bad faith.

106. That, alternatively, upon information and belief, Defendant(s)' use of the Image in violation of Plaintiff's copyright was negligent in that it knew or should have known that it was without a license for the use(s) complained of herein.

107. That, upon information and belief, Defendants, had actual and/or constructive knowledge and/or through the exercise of ordinary business care and/or the examination of public records, knew or should have known that Plaintiff held the copyright in the Subject

Image, that Defendants never had (at any of the relevant times herein) a license, consent, or authorization by Plaintiff for the use of Plaintiff's Image on its website or in any other medium of news source employed by Defendants, and that any such use would be in violation of Plaintiff's copyright.

108. That as a result of Defendant(s)' acts, Plaintiff has been and will continue to be damaged in an amount as yet to be determined.

109. Plaintiff is a professional photographer who earns his livelihood by licensing rights to third parties to employ his photographic images.

110. That Plaintiff is further entitled to damages, attorneys' fees and costs under Section 504 and 505 of the Copyright Act, 17 U.S.C. Section 101 et., seq., given the willful, intentional, malicious and bad faith nature of Defendant(s)' copyright infringement, and as an alternative to statutory damages, Plaintiff, at his election prior to judgment is entitled to recover his actual damages and any additional profits of the Defendants, attributable to the infringement as under 17 U.S.C. Sections 504 (a)-(b). Plaintiff is similarly entitled to an injunction permanently enjoining and prohibiting the Defendants from utilizing the subject image in any manner.

**SECOND CLAIM FOR RELIEF**  
**Removal or Alteration of Copyright Management Information**  
**Under Section 1202 of the Copyright Act**  
**Against Defendant ONE WAY**

111. Upon information and belief, Defendant ONE WAY intentionally and willfully removed or altered the Plaintiff's copyright management information/data for the Subject Image, without the authority of SHIPSTAD.

112. That the Subject Image contained digital copyright management information within the digital file of the image, including inter alia, the identification of the author as "Patrick

Shipstad”, and a copyright notice stating “© 2015 Patrick Shipstad Photography. All rights reserved. Please inquire at info@patrickshipstad.com for usage.”

113. Upon information and belief, defendant ONE WAY removed and/or altered this copyright management data from the Subject Image.

114. That such actions further demonstrate defendant’s willful infringement of the Subject Image.

115. That the aforesaid actions constitute a violation of Section 1202(b) of the Copyright Act.

116. Upon information and belief, Defendant knew and/or had reasonable grounds to know that by concealing the Plaintiff’s copyright management data, that it would induce, enable, facilitate, or conceal defendant’s infringement of Plaintiff’s Image.

117. Upon information and belief, that Defendant intentionally and/or knowingly concealed the Plaintiff’s copyright management data as aforesaid, in order to conceal that its use of the Image was without the authorization of SHIPSTAD and in violation of law.

118. As a result of Defendant’s actions with regard to the Plaintiff’s copyright management data, Plaintiff has been and will continue to be damaged in an amount as yet to be determined.

119. As a result of Defendant’s actions with regard to the Plaintiff’s copyright management data, Plaintiff is entitled to damages in the form of actual or statutory damages pursuant to 17 U.S.C. 1203(b)(3) and 1203(c), costs pursuant to 17 U.S.C. 1203(b)(4), reasonable attorney’s fees pursuant to 17 U.S.C. 1203(b)(5), a temporary and permanent injunction pursuant to 17 U.S.C. 1203(b)(1), and or the impounding, modification or destruction of any items involved in the violation pursuant to 17 U.S.C. 1203(b)(2) and 1203(b)(6).

120. Plaintiff, in addition to remedies based in the cited sections of U.S.C. Title 17, is further entitled to award(s) of monetary damages as set forth in sections 17 U.S.C. § 1201 through at least 1204 inclusive, in amounts specifically set forth in said sections.

121. That plaintiff is entitled to a separate award of damages for each of defendant's violation of 17 U.S.C. 501-505 (Plaintiff's First Claim for Relief), and for defendant's violation of 17 U.S.C. 1202-1203 (Plaintiff's Second Claim for Relief).

**THIRD CLAIM FOR RELIEF**  
**Contributory Copyright Infringement**  
**Against All Defendants**

122. That, upon information and belief, defendants, or one or more of them, as well as at least the referenced distributors TomCat Films / Summer Hill Films, and Gravitas Ventures have directly infringed Plaintiff's copyrights by, *inter alia* displaying and distributing plaintiff's Subject Image in connection with the marketing, advertising, and promotion of the film "Alienated" in violation of Plaintiff's exclusive rights under the Copyright Act, 17 U.S.C. Sections 106 and 501.

123. That, upon information and belief, defendants, or one or more of them, are liable as contributory infringers for the copyright infringement(s) committed via production and/or distribution of the advertising, promotional and marketing materials displaying the Subject Image for the film "Alienated", and that such uses are in violation of Plaintiff's copyrights.

124. That, upon information and belief, defendants, or one or more of them, had actual and/or constructive knowledge and/or through the exercise of ordinary business care and/or the examination of public and/or business records, knew or should have known that the Subject Image was created by Plaintiff, and that any use thereof was in violation of Plaintiff's copyright.

125. That upon information and belief, defendants, or one or more of them, knew or should have known that they were not authorized to use Plaintiff's images.

126. That, upon information and belief, defendants, or one or more of them, have directly and/or indirectly caused, enabled, encouraged, facilitated, and materially contributed to the infringement(s) via the production and/or distribution of the advertising, promotional and marketing materials displaying the Subject Image for the film “Alienated”.

127. That, upon information and belief, defendants, or one or more of them, have in addition to the actions above, provided the tools, including the Subject Image, support, and/or instructions to the distributors, for the infringements via the production and distribution of the advertising, promotional and marketing materials displaying the Subject Image for the film “Alienated”.

128. That, upon information and belief, through the conduct described hereinabove, defendants, or one or more of them, are contributorily liable for the infringement(s) described herein.

129. That, upon information and belief, the aforementioned acts of the defendants, or one or more of them, constitute federal statutory contributory copyright infringement under Section 501 of the Copyright Act in violation of the exclusive rights granted plaintiff as copyright holder.

130. Upon information and belief, defendants or one or more of them, have contributed to the infringement(s) by, *inter alia*, failing to timely and fully recall the production and/or distribution of the advertising, promotional and marketing materials displaying the Subject Image for the film “Alienated”.

131. That, upon information and belief, defendant(s)' infringement(s) are and have been willful, intentional, purposeful, and/or in disregard of the rights of Plaintiff, and have caused substantial damage to Plaintiff.

132. That as a direct and proximate result of defendant(s)' infringement(s), plaintiff has

been and will continue to be damaged in an amount as yet undetermined.

133. That Plaintiff is entitled to the maximum statutory damages under 17 U.S.C. Section 504 (c), and as an alternative to statutory damages, Plaintiff, at his election prior to judgment is entitled to recover his actual damages and any additional profits of the defendants, or one or more of them, attributable to the infringement(s) as under 17 U.S.C. Sections 504 (a)-(b).

134. That Plaintiff is further entitled to damages, attorneys' fees and costs under Section 504 and 505 of the Copyright Act, 17 U.S.C. Section 101 et., seq., given the willful, intentional, malicious and bad faith nature of defendant(s)' copyright infringement(s).

**FOURTH CLAIM FOR RELIEF**  
**Induced Copyright Infringement**  
**Against All Defendants**

135. That, upon information and belief, defendants, or one or more of them, as well as at least the referenced distributors TomCat Films / Summer Hill Films, and Gravitass Ventures have directly infringed Plaintiff's copyrights by, *inter alia* displaying and distributing plaintiff's Subject Image in connection with the marketing, advertising, and promotion of the film "Alienated" in violation of Plaintiff's exclusive rights under the Copyright Act, 17 U.S.C. Sections 106 and 501.

136. That, upon information and belief, defendants, or one or more of them, are liable for inducing the copyright infringement(s) committed via production and/or distribution of the advertising, promotional and marketing materials displaying the Subject Image for the film "Alienated", and that such uses are in violation of Plaintiff's copyrights.

137. That, as explained herein, upon information and belief, defendants, or one or more of them, have actively facilitated, encouraged, and/or enticed each other and/or the distributors, including but not limited to TomCat Films / Summer Hill Films, and Gravitass Ventures to



commit copyright infringement.

138. Upon information and belief, defendants or one or more of them, have induced and/or continue to induce infringement(s) by, *inter alia*, producing, and/or distributing the advertising, promotional and marketing materials displaying the Subject Image for the film “Alienated”.

139. Upon information and belief, defendants or one or more of them, have induced and/or continue to induce infringement(s) by, *inter alia*, failing to timely and fully recall the production and/or distribution of the advertising, promotional and marketing materials displaying the Subject Image for the film “Alienated”, after being on notice of the infringements.

140. That defendants, or one or more of them, have taken affirmative steps toward the creation, production and distribution of the promotional and marketing materials displaying the Subject Image for the film “Alienated”.

141. That, upon information and belief, defendant(s)' infringement(s) are and have been willful, intentional, purposeful, and with disregard of the rights of Plaintiff's, and have caused substantial damage to Plaintiff.

142. That, upon information and belief, defendants, or one or more of them, had actual and/or constructive knowledge and/or through the exercise of ordinary business care and/or the examination of public and/or business records, knew or should have known that the Subject Image was created by Plaintiff, and that any use thereof was in violation of Plaintiff's copyright.

143. That upon information and belief, defendants, or one or more of them, knew or should have known that they were not authorized to use Plaintiff's images.

144. That, upon information and belief, through the acts described hereinabove, defendants, or one or more of them, are liable for inducing the infringement(s) described herein.

145. That as a direct and proximate result of defendant(s)' infringement(s), Plaintiff is

entitled to the maximum statutory damages under 17 U.S.C. Section 504 (c), and as an alternative to statutory damages, Plaintiff, at his election prior to judgment is entitled to recover his actual damages and any additional profits of the defendants, or one or more of them, attributable to the infringement(s) as under 17 U.S.C. Sections 504 (a)-(b).

146. That pursuant to 17 U.S.C. Section 505, Plaintiff is entitled to his costs, including reasonable attorneys' fees.

**JURY DEMAND**

147. That Plaintiff requests a trial by jury of all issues.

**WHEREFORE**, Plaintiff demands judgment as against the Defendant as follows:

**ON THE FIRST CLAIM-** (A) Award to plaintiff his actual damages incurred as a result of Defendant's infringements, and all profits realized as a result of their infringements, in amounts to be determined at trial but in an amount to be determined by this court; or (B) in the alternative, at Plaintiff's election, award to Plaintiff maximum statutory damages pursuant to 17 U.S.C. § 504 for each individual act of infringement, and for an order of injunction permanently enjoining and prohibiting the Defendant, including but not limited to wholly owned subsidiaries, from employing or utilizing in any manner or media whatsoever, including all future uses, sales, transfers, assignments, or licensing of any and all of Plaintiff's copyrighted Image, pursuant to 17 U.S.C. § 502 and for an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

**ON THE SECOND CLAIM-** (A) Award to Plaintiff his actual damages incurred as a result of Defendant's infringements, in amounts to be determined at trial but in an amount to be determined by this court; or (B) in the alternative, at Plaintiff's election, award to Plaintiff maximum statutory damages pursuant to 17 U.S.C. § 1203 and the sub-paragraphs therein for each individual act of infringement; and for an order of injunction permanently enjoining and

prohibiting the Defendant, including but not limited to wholly owned subsidiaries, from employing, altering, cropping, mutilating or otherwise utilizing Plaintiff's copyrighted Image or its copyright management information in any manner or media whatsoever, pursuant to 17 U.S.C. § 1203(b)1; and for an award of costs and attorneys' fees pursuant to 17 U.S.C. § 1203(b)(4)-(5);

**ON THE THIRD CLAIM-** (A) Award to plaintiff his actual damages incurred as a result of Defendant's infringements, and all profits realized as a result of their infringements, in amounts to be determined at trial but in an amount to be determined by this court; or (B) in the alternative, at Plaintiff's election, award to Plaintiff maximum statutory damages pursuant to 17 U.S.C. § 504 for each individual act of infringement, and for an order of injunction permanently enjoining and prohibiting the Defendant, including but not limited to wholly owned subsidiaries, from employing or utilizing in any manner or media whatsoever, including all future uses, sales, transfers, assignments, or licensing of any and all of Plaintiff's copyrighted Image, pursuant to 17 U.S.C. § 502 and for an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

**ON THE FOURTH CLAIM-** (A) Award to plaintiff his actual damages incurred as a result of Defendant's infringements, and all profits realized as a result of their infringements, in amounts to be determined at trial but in an amount to be determined by this court; or (B) in the alternative, at Plaintiff's election, award to Plaintiff maximum statutory damages pursuant to 17 U.S.C. § 504 for each individual act of infringement, and for an order of injunction permanently enjoining and prohibiting the Defendant, including but not limited to wholly owned subsidiaries, from employing or utilizing in any manner or media whatsoever, including all future uses, sales, transfers, assignments, or licensing of any and all of Plaintiff's copyrighted Image, pursuant to 17 U.S.C. § 502 and for an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

Prejudgment interest on all sums due;

And such other and further relief as this Court may deem just and proper inclusive of any and all relief or remedies allowable by the statutes referenced above or applicable hereinabove.

Dated: New York, NY  
August 1, 2016

Yours, etc.,

EDWARD C. GREENBERG, LLC.

s/Tamara L. Lannin (TL 3784)  
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