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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CHRISTOPHER BOFFOLI,
an individual,

Plaintiff,

v.

TWITTER, INC., a Delaware Corporation;

Defendant.

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

CHRISTOPHER BOFFOLI, (“Boffoli” or “Plaintiff”) hereby alleges for his complaint against Twitter, Inc. (“Twitter”) upon personal information as to Plaintiff’s own activities, and upon information and belief as to the activities of others, as follows:

I. NATURE OF THE CASE

1. This is a claim for copyright infringement arising under the copyright laws of the United States, Title 17 of the United States Code.

II. JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has general jurisdiction over Twitter because it conducts substantial business in the State of Washington. This Court has specific jurisdiction

1 because Twitter purposefully availed itself of the benefits of the State of Washington by
2 conducting business here and advertising to Washington consumers, among other actions.

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

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

6 III. PARTIES

7 6. Plaintiff is an individual and resident of the Western District of
8 Washington.

9 7. Upon information and belief, Twitter is a Delaware corporation with its
10 headquarters and principal business address at 795 Folsom St., Ste 600, San Francisco
11 CA 94107.

12 IV. FACTS

13 A. **Boffoli created copyrightable photographs and registered them with the U.S. 14 Copyright Office.**

15 8. Boffoli is a James Beard-award nominated art photographer who created
16 the “Disparity Series”, a series of art photographs featuring miniature figures in
17 whimsical poses on fruit. The Disparity Series has been featured in numerous magazines,
18 newspapers, television, and other media, including the Washington Post, Der Spiegel in
19 Germany, Oprah.com, NBC and ABC television series, the Telegraph, Daily Mail and
20 Sun in the United Kingdom, the Telegraph in Australia, and The Nation in Pakistan,
21 along with tens of others. To date, the Disparity Series has been published in print and
22 online in more than 90 countries.

23 9. Boffoli’s business is based on licensing and selling photographs he creates.
24 Disparity Series photographs are currently available for purchase at five fine art galleries
25 located in New York, Seattle, London, Toronto, and Monaco. Disparity Series
26 photographs can also be purchased over the Internet, including through Boffoli’s website.
27 Boffoli has licensed use of the Disparity Series photographs to greeting card companies,
28 calendars, and others.

1 10. Boffoli registered the Disparity Series photographs with the U.S. Copyright
2 Office and was issued Copyright Registration No. VAu001106484 (June 13, 2011).

3
4 **B. Twitter published and displayed copies of Boffoli’s photographs without
license or permission from Boffoli.**

5 11. Twitter operates an Internet-based service that allows its users to send
6 messages through Twitter’s website and mobile site, client applications, or third-party
7 applications. Twitter calls its messages “Tweets”. Tweets can contain a link to a video
8 or image that is either hosted on Twitter’s computer servers, or on third-party servers.
9 Twitter has thousands or hundreds of thousands of users in this District, including
10 individuals, corporations, and government entities. Thousands or hundreds of thousands
11 of Tweets are sent to and from this District every month.

12 12. Twitter users copied numerous photographs from the Disparity Series
13 without license or permission from Boffoli (the “Infringing Uses”). The Infringing Uses
14 were hosted either on Twitter or on third-party servers. For each Infringing Use, the
15 Twitter user sent a Tweet advertising or linking to the Infringing Use.

16 **C. Twitter failed to remove the Infringing Uses despite notice from Boffoli.**

17 13. Twitter can remove each Infringing Use that is hosted on Twitter. Twitter
18 can also disable each Tweet advertising or linking to an Infringing Use, regardless of
19 whether the photograph is hosted on Twitter’s servers or on the Twitter user’s or third-
20 party servers.

21 14. Twitter has registered an agent with the United States Copyright Office for
22 receipt of Digital Millenium Copyright Act (“DMCA”) notices.

23 15. On July 12, 2012, Boffoli sent a notice by email to Twitter’s registered
24 agent regarding some of the Infringing Uses. Twitter responded by email that it received
25 Boffoli’s notice.

26 16. On July 26, 2012, Boffoli sent a notice by email to Twitter’s registered
27 agent regarding additional Infringing Uses. Twitter responded by email that it received
28 Boffoli’s notice.

1 17. On August 2, 2012, Boffoli sent a notice by email to Twitter's registered
2 agent regarding additional Infringing Uses. Twitter responded by email that it received
3 Boffoli's notice.

4 18. On August 16, 2012, Boffoli sent a notice by email to Twitter's registered
5 agent regarding additional Infringing Uses. Twitter responded by email that it received
6 Boffoli's notice.

7 19. Boffoli never authorized the Infringing Uses.

8 20. Twitter has not removed or disabled access to the Infringing Uses.

9
10 **V. CAUSE OF ACTION**
 COPYRIGHT INFRINGEMENT

11 21. Boffoli hereby incorporates Paragraphs 1-20 by reference.

12 22. Boffoli is, and at all relevant times has been, the owner of the copyright in
13 the photographs in the Disparity Series.

14 23. Each photograph in the Disparity Series is copyrightable subject matter
15 under 17 U.S.C. § 102(a)(5).

16 24. Boffoli has complied in all respects with the provisions of the Copyright
17 Act and all regulations thereunder.

18 25. Boffoli registered the copyright in each photograph in the Disparity Series
19 with the United States Copyright Office.

20 26. Boffoli has the exclusive rights under 17 U.S.C. § 106 to (1) reproduce the
21 photographs in the Disparity Series, (2) prepare derivative works based on the Disparity
22 Series, (3) distribute copies of the Disparity Series, and (4) display the Disparity Series
23 publicly.

24 27. Without the permission or consent of Boffoli, photographs from the
25 Disparity Series were reproduced, derivative works were made from, copies were
26 distributed of, and the photographs were displayed on Twitter.

27 28. Boffoli's exclusive rights in the photographs in the Disparity Series were
28 violated.

1 29. Twitter induced, caused, or materially contributed to the Infringing Uses.

2 30. Twitter had actual knowledge of the Infringing Uses. Boffoli provided
3 notice to Twitter in compliance with the DMCA, and Twitter failed to expeditiously
4 disable access to or remove the Infringing Uses.

5 31. Twitter acted willfully.

6 **VI. RELIEF REQUESTED**

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

10 1. Temporary and permanent injunctions preventing and restraining
11 infringement of the Disparity Series by Twitter under 17 U.S.C. § 502;

12 2. An order requiring the destruction of all copies made by or under the
13 control of Twitter of the photographs in the Disparity Series and all articles by which
14 such copies may be reproduced under 17 U.S.C. § 503;

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

18 4. Alternatively, if Boffoli so elects, an award of statutory damages for each
19 infringement of the Disparity Series under 17 U.S.C. § 504;

20 5. A judgment that Twitter’s infringement was willful and an increased
21 statutory damage award under 17 U.S.C. § 504(c)(2);

22 6. An award of Plaintiff’s full costs including a reasonable attorney’s fee
23 under 17 U.S.C. § 505; and

24 7. For such other and further relief as may be just and proper under the
25 circumstances.

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1 Dated this 10th day of September, 2012.

2
3 Respectfully Submitted,

4
5 **NEWMAN DU WORS LLP**

6 By: /s/ Keith Scully
7 Keith Scully, WSBA No. 28677

8 Attorneys for Plaintiff
9 CHRISTOPHER BOFFOLI

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12 **JURY DEMAND**

13 Pursuant to FED. R. CIV. P. 38(b), Plaintiff Christopher Boffoli demands a trial by
14 jury of all issues presented in this complaint which are triable by jury.

15
16 Dated this 10th day of September, 2012.

17 Respectfully Submitted,

18
19 **NEWMAN DU WORS LLP**

20 By: /s/ Keith Scully
21 Keith Scully, WSBA No. 28677

22 Attorneys for Plaintiff
23 CHRISTOPHER BOFFOLI