



NATURE OF CASE

1. This is a copyright lawsuit brought by distinguished American photographer Carol M. Highsmith under the Digital Millennium Copyright Act (“**DMCA**”), 17 U.S.C. §§ 1202(a), 1202(b) and 1203. This lawsuit also asserts causes of action on behalf of Ms. Highsmith and the Foundation for false advertising and unfair competition asserted under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (“**Lanham Act**”), and New York State law; based upon the Defendants’ gross misuse of Ms. Highsmith’s photographs – more than 18,000 of them – and her personal name.

2. In December 2015, Ms. Highsmith received a letter addressed to the Foundation from the Defendants accusing the Foundation of copyright infringement and demanding payment for displaying one of Ms. Highsmith’s own photographs on the Foundation’s website. See attached Exhibit A.

3. Ms. Highsmith subsequently learned that the Defendants have been sending out similar threat letters to other users of her photography, and that Getty and Alamy were purporting to sell “licenses” for thousands of her photographs on their commercial websites without her permission.

4. Through the United States Library of Congress (“**Library**”), Ms. Highsmith had previously given the public the right to reproduce and display all the photographs at issue in this lawsuit, for free.

5. Beginning in about 1988 and continuing from time to time, to the present, Ms. Highsmith has been providing the Library with tens of thousands of her valuable photographs.

6. These photographs represent her extensive documentation of people and places throughout the United States of America.

7. The Defendants have apparently misappropriated Ms. Highsmith's generous gift to the American people. The Defendants were not only unlawfully charging licensing fees to people and organizations who were already authorized to reproduce and display the donated photographs for free, but were falsely and fraudulently holding themselves out as the exclusive copyright owner (or agents thereof), and threatening individuals and companies with copyright infringement lawsuits that the Defendants could not actually lawfully pursue.

8. As described further herein below, the conduct of the Defendants runs afoul of the DMCA's provisions proscribing the removal, modification, and falsification of "copyright management information," unlawful conduct that has injured Ms. Highsmith and the Foundation, thereby entitling the Plaintiffs to the relief sought herein.

9. Furthermore, the conduct of the Defendants constitutes the public, commercial issuance of false and/or misleading statements of fact that have commercially injured Ms. Highsmith's sterling professional reputation, and have harmed both her and the Foundation.

10. The Defendants' unlawful conduct has cast Ms. Highsmith and the Foundation in a false light, has misused Ms. Highsmith's personal name, and tarnished her professional reputation in a commercial manner, all conduct occurring without her prior, written permission.

11. Furthermore, despite the fact that Ms. Highsmith and the Foundation objected to the Defendants' conduct shortly after receiving the Defendants' threatening letter, such brazen and extortionate conduct continued up until they were sued and brought before this Court to account for their accused conduct.

12. The Defendants' violations of 17 U.S.C. § 1202 entitle the Plaintiffs to recover, among other things, and if they so elect as provided in 17 U.S.C. § 1203(c)(3)(B), "an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000."

13. Getty has committed at least **18,755** separate violations of 17 U.S.C. § 1202, one count for each of the **18,755** Highsmith Photos appearing on Getty's website. Thus, the Plaintiffs are entitled to recover, among other things, and if they so elect, aggregate statutory damages against Getty of not less than forty-six million, eight hundred eighty-seven thousand five hundred dollars (**\$46,887,500**) and not more than four hundred sixty-eight million, eight hundred seventy-five thousand dollars (**\$468,875,000**).

14. The unlawful conduct complained of herein is not Getty's first violation of the DMCA, codified at 17 U.S.C. § 1202.

15. **Getty was found by this Court to have violated 17 U.S.C. § 1202 within the last 3 years, and ordered to pay over \$1 million in damages for the misuse of eight (8) images.**

16. Because Getty has already had a final judgment entered against it by this Court under 17 U.S.C. § 1202 in the past 3 years, this Court may treble the statutory damages in this case against Getty.

17. Getty must therefore account for well over **one billion dollars (\$1B)** in statutory copyright damages in this case.

18. Furthermore, and independently, the Defendants must also account for damages to Ms. Highsmith and the Foundation, to be assessed under the Lanham Act and New York State's statutes prohibiting false advertising and unfair competition. For example, without limitation:

- a. Getty was demanding up to \$575.00 per image for a single user “license” to the Highsmith Photos (see **Exhibit B**);
- b. Similarly, Alamy was demanding hundreds of dollars for such “licenses” to the Highsmith Photos;
- c. Getty profited from bundling commercial copyright “licenses” to the Highsmith Photos to book publishers, magazines and others, which included false commercial “licenses” to use the Highsmith Photos, with erroneous attribution. See, e.g.:
  - i. **Exhibit C** (Introduction, Inside the White House: The History, Secrets and Style of the World’s Most Famous Home, Time Inc., Books, April 22, 2016 falsely attributed to: “Carol M. Highsmith/Buyenlarge/Getty”);
  - ii. **Exhibit D** (Streetcar Named Desire, 2016, falsely credited to: “© Carol M. Highsmith/Buyenlarge/Getty Images”);
  - iii. **Exhibit E** (DK Eyewitness Travel, Washington DC 2016, falsely credited to: “Getty Images: Buyenlarge/Carol M. Highsmith”; and
  - iv. **Exhibit F** (School in the Great Depression, 2017, falsely credited to: Getty Images: ... Buyenlarge/Carol M. Highsmith,”);
- d. The Defendants also unlawfully demanded and received revenue to “settle” false and/or fraudulent demand letters, related to use of the Highsmith Photos, containing spurious legal claims they could never have lawfully asserted.

19. Consequently, the Defendants' misuse of nearly 19,000 Highsmith Photos and Ms. Highsmith's name in this manner also entitles the Plaintiffs to actual damages, disgorgement of infringing profits, and attorneys' fees.

20. Even more shockingly, and to demonstrate why treble damages are warranted, as part of the wider fraud perpetrated on the public, and on thousands of people and organizations, Getty currently purports to "license" tens of thousands of other images, in which it apparently owns no legal rights, in exchange for money that it knows that it is clearly not entitled to collect.

21. For example, after the original Complaint was filed in this case, on August 1, 2016, third party Zuma Press, Inc., also independently sued Getty in this Court. See Zuma Press, Inc. v. Getty Images (US), Inc., 1:16-cv-06110-AKH (SDNY) [Dkt. 1] (hereinafter, the "Zuma Press case").

22. The Complaint in the Zuma Press case squarely alleges that Getty had misappropriated over 47,000 other images, and accuses Getty of holding itself out as the agent(s) of Zuma Press, Inc.'s photographers and/or the copyright owners of these images, despite having no right or approval from any of them to do so. Id.

23. It is also alleged in the Complaint in the Zuma Press case that many images that were available for "license" on Getty's website are part of the Defendants' widespread campaign to fraudulently "license" the right to use, display, and reproduce images to which they clearly have no legal claim of rights. Id.

24. It is alleged in the Complaint in the Zuma Press case that Getty offered and demanded copyright "license" fees to use and display these images, despite the fact that rights to these images are apparently not owned or managed by Getty. Id.

25. Unfortunately, the Defendants' bad faith business practices have proven to be so lucrative, their behavior has apparently continued unabated.

26. The law firm of Cuomo LLC has represented over 3,000 individuals and organizations, including Church groups, non-profit organizations, and veterans' groups, who received baseless threat letters from the Defendants.

27. On many occasions, when Cuomo LLC wrote to the Defendants, requesting proof that the Defendants were authorized to act on behalf of the copyright owner(s), the Defendants never responded.

28. Getty has also recently advanced a legal theory, through its public statements on this case, that claims that Getty was never actually "licensing" any of these images, at all, but rather simply it was making "public domain" images available (for thousands of dollars), as a convenience.

29. Nancy Wolff, counsel for Defendants Alamy and LCS, recently published a blog post advocating and endorsing Getty's practice of "licensing" public domain materials for profit. (See <http://blog.digitalmedialicensing.org/?p=3444>), attached as **Exhibit G.**

30. Getty linked to this blog post in their updated public statement on this case. (See <http://press.gettyimages.com/statement-regarding-highsmith-claim/>), attached as **Exhibit H.**

31. Nowhere on Getty's website did Getty ever reveal to those who were paying thousands of dollars in "license" fees that Getty owned no legal rights whatsoever to the images it was purportedly "licensing."

32. Further, nowhere in the Defendants' website advertisements or demand letters did the Defendants ever reveal that the Defendants possessed no legal rights whatsoever to

threaten anyone for use – or, in the words used in Defendants’ threat letters, “infringement” – of these images.

33. It is clear that, absent Order of this Court and significant exemplary damages to deter such egregious conduct, Ms. Highsmith, the Foundation, and the public at large will continue to be defrauded, misled, and irreparably injured by the Defendants’ unlawful acts.

**PARTIES**

34. Plaintiff Carol M. Highsmith is an individual and American citizen residing at 7501 Carroll Avenue, Takoma Park, Maryland 20912-5715.

35. Plaintiff This is America!, Inc. is a corporation organized under the laws of the State of Maryland, which has received tax-exempt status from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.

36. Defendant Getty Images (US), Inc., is a corporation organized and existing under the laws of New York, having its principal place of business at 605 Fifth Avenue South, Suite 400, Seattle, Washington 98104, and also having offices at 75 Varick Street, New York, New York 10013, and owns and/or is operated under common control with Defendant License Compliance Services, Inc., and Defendant Picscout, Inc.

37. Defendant Picscout, Inc. is a corporation organized and existing under the laws of Delaware. Defendant Picscout has offices at Columbia Center, 701 Fifth Avenue, 42th Floor, Suite 4272, Seattle, WA 98104, and is owned by and/or operated under common control with Defendant Getty Images (US), Inc.

38. Defendant License Compliance Services, Inc., is a corporation organized and existing under the laws of Delaware, having its principal place of business at 701 Fifth Avenue,



Suite 4200, Seattle, Washington 98104, and is owned by and operated under common control with Defendant Getty Images (US), Inc.

39. Defendant Alamy, Inc., is a corporation organized and existing under the laws of New York, having its principal place of business at 20 Jay Street, Suite 848, Brooklyn, New York 11201, and owns, is owned by, and/or is operated under common control with Defendant Alamy, Ltd.

40. Defendant Alamy, Ltd., is a limited company organized and existing under the laws of the United Kingdom, having its principal place of business at 6 – 8 West Central, 127 Olympic Avenue, Milton Park, Abingdon, Oxon, OX14 4SA, United Kingdom, and also having offices at 20 Jay Street, Suite 848, Brooklyn, New York 11201, and owns, is owned by, and/or is operated under common control with Defendant Alamy, Inc.

41. Defendants John Does 1 to 100 are unnamed, as yet unidentified parties acting in active concert or participation with the named Defendants as part of this course of conduct.

42. Ms. Highsmith reserves the right to further amend this First Amended Complaint to include any and all other corporations, business entities, or persons affiliated in any way with Defendants which are or may be responsible for or involved with the wrongful conduct alleged herein.

#### **JURISDICTION AND VENUE**

43. Defendant Getty has actively contracted to supply goods and/or services in the State of New York, and within this Judicial District, and actively conducts business directly and through its representatives in the State of New York, and within this Judicial District, in connection with the matters giving rise to this action. This Court, therefore, has personal jurisdiction over Getty, and its wholly-owned subsidiaries/alter-egos Picscout and LCS.

44. Defendants Picscout and LCS have actively contracted to supply goods and/or services in the State of New York, and within this Judicial District, and actively conduct business directly and through their representatives in the State of New York, and within this Judicial District, in connection with the matters giving rise to this action.

45. Defendant Alamy, Inc., has actively contracted to supply goods and/or services in the State of New York, and within this Judicial District, and actively conducts business directly and through its representatives in the State of New York, and within this Judicial District, in connection with the matters giving rise to this action. This Court, therefore, has personal jurisdiction over Alamy, Inc.

46. Defendant Alamy, Ltd., has actively contracted to supply goods and/or services in the State of New York, and within this Judicial District, and actively conducts business directly and through its representatives in the State of New York, and within this Judicial District, in connection with the matters giving rise to this action. This Court, therefore, has personal jurisdiction over Alamy, Ltd.

47. Jurisdiction over the subject matter of this action arises under 28 U.S.C. § 1331, and under the copyright laws of the United States, Title 17 of the United States Code, including but not necessarily limited to 17 U.S.C. § 1203.

48. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400.

**FACTUAL ALLEGATIONS**

**I. PLAINTIFF CAROL HIGHSMITH.**

**a. Carol M. Highsmith is a Distinguished American Photographer.**

49. Ms. Highsmith has taken photographs in all 50 States, the District of Columbia, and Puerto Rico.

50. As described in detail below, Ms. Highsmith's work has been featured in more than 50 books, as well as in movies and television programs, and on U.S. postage stamps.

**b. Ms. Highsmith Has Graciously Made Her Work Available to the Public to Reproduce and Display for Free through the Library of Congress.**

51. Since approximately 1988, Ms. Highsmith has made her photographs available to the public for free through the U.S. Library of Congress, thereby exercising her exclusive rights under 17 U.S.C. § 106 to distribute copies of her copyrighted work to the public by sale or other transfer of ownership, and to authorize (and/or set the terms for) others to do so.

52. At no time did Ms. Highsmith intend to abandon her rights in her photographs, including any rights of attribution or rights to control the terms of use for her photographs, nor was it ever her intent to enable third parties to purport to sell licenses for her photographs, or send threatening letters to people who used her photos.

53. At all times relevant to this lawsuit, Ms. Highsmith's intent has been that the public should be able to reproduce and display her work for free, with proper accreditation given to her and proper reference made to the Library collection.

54. The agreement that Ms. Highsmith signed with the Library in November 1991 specifically addressed attribution and distribution issues.

55. A true and correct copy of the “**Instrument of Gift**” that Ms. Highsmith signed on November 17, 1991, is attached hereto as **Exhibit I**. Ms. Highsmith was not represented by counsel in the preparation or execution of this document.

56. The Instrument of Gift expressly requires the Library of Congress to request attribution to the Carol M. Highsmith Archive, and explicitly places restrictions on how copies from the Archive are distributed. See id.

57. Ms. Highsmith’s work, including but not limited to the Highsmith Photos at issue in this case, is available on the Library website together with the copyright management information for each work, including information identifying Ms. Highsmith as the author of each work, providing the date of each work, providing the title of each work, and identifying Ms. Highsmith as the copyright owner who stipulated the terms and conditions of using the work, namely, that the public may reproduce and display the work for free.

58. One example of copyright management information provided in connection with a Highsmith Photo on the Library website is attached hereto as **Exhibit J**.

59. Ms. Highsmith deposits Highsmith Photos with the Library as high-resolution digital images submitted together with the aforementioned information.

60. The Highsmith Photos are archived, indexed, and catalogued at the Library, including without limitation each image being given a unique catalogue number, with all of the images made searchable and easily available to the public, for free, on the Library’s website.

61. C. Ford Peatross, the Director of the Library’s Center for Architecture, Design and Engineering in the Prints and Photographs Division, stated in a press release in December 2007 about Ms. Highsmith, that “[t]he donation of her photographs is one of the greatest acts of generosity in the history of the Library.”

**c. Ms. Highsmith and Her Work Are Held in the Highest Esteem.**

62. Ms. Highsmith and her work have been widely recognized and praised, earning her and her work distinguished reputations of the highest caliber.

63. For example, Ms. Highsmith's collection at the Library is featured in the top 6 collections out of 15 million images in the Prints & Photographs archive, alongside Civil War master photographer Mathew Brady, Depression and Dust Bowl photojournalist Dorothea Lange, and the Historic American Buildings Survey. Ms. Highsmith is the only living person so honored.

64. Additionally, Ms. Highsmith and her work have been featured and praised in publications by some of the most highly regarded international media organizations, including newspaper, magazine, and television coverage by *The Washington Post*, *The New York Times*, *The Washington Post Magazine*, *Time*, *Life*, *Smithsonian*, and CBS News.

65. Jeremy Adamson, Director of Collections and Services for the U.S. Library of Congress, has said the following of Ms. Highsmith and her work:

Highsmith's color images are certainly of the highest technical and artistic quality. But more importantly, she has the uncanny ability to identify, focus on and capture for posterity the essential features of our social landscape and physical environment, both natural and man-made. A photograph by Carol Highsmith is a document of rare precision and beauty, revealing with exacting clarity the look and feel of people and places across our great nation.

66. The United States Postal Service ("USPS") has twice chosen Ms. Highsmith's photographs for stamps, namely, these two iconic images:



**Fig. 1**



**Fig. 2**

67. Figure 1 is an iconic color photograph that Ms. Highsmith took of the Jefferson Memorial, which the USPS chose in 2002 to feature on a USPS Priority Mail stamp, approximately 100 million copies of which were produced.

68. Figure 2 is an iconic black-and-white photograph that Ms. Highsmith took of the statue of Abraham Lincoln in the Lincoln Memorial, which the USPS chose in 2013 to feature on a USPS 20-cent stamp.

## **II. PLAINTIFF THIS IS AMERICA!, INC.**

69. In 2011, Ms. Highsmith founded the nonprofit foundation This is America!, Inc., with a mission of producing a nationwide visual study of the United States of America in the early 21<sup>st</sup> Century. (See [www.thisisamericafoundation.org](http://www.thisisamericafoundation.org))

70. The Foundation seeks generous donations from individuals and organizations to further Ms. Highsmith's work.

71. The Foundation received 501(c)(3) tax-exempt status from the Internal Revenue Service in 2013.

72. The photograph at issue in the Defendants' letter to the Foundation is one of Ms. Highsmith's own original works of authorship, and the Foundation unquestionably had the right to use Ms. Highsmith's own photographs without obtaining a license from Defendant Alamy.

### III. DEFENDANT GETTY'S CONDUCT.

#### a. Defendant Getty Images is a \$3.3 Billion Company Whose Primary Business is Buying and Selling Copyright Licenses for Photographs, Videos, Music, and Other Media.

73. Getty is a Seattle-based stock photo company last purchased by the world's largest private equity firm, The Carlyle Group, for \$3.3 billion in 2012.

74. Getty describes itself as follows on its website:

Getty Images is among the world's leading creators and distributors of award-winning still imagery, video, music and multimedia products, as well as other forms of premium digital content, available through its trusted house of brands, including iStock© and Thinkstock©. / With its advanced search and image recognition technology, Getty Images serves business customers in more than 100 countries and is the first place creative and media professionals turn to discover, purchase and manage images and other digital content. Its best-in-class photographers and imagery help customers produce inspiring work which appears every day in the world's most influential newspapers, magazines, advertising campaigns, films, television programs, books and online media. / Mark Getty and Jonathan Klein founded Getty Images in 1995 with the goal of turning a disjointed and fragmented stock photography market into a thriving, modernized industry able to meet the changing needs of visual communicators. It was the first company to license imagery via the web, moving the entire industry online.<sup>1</sup>

75. Getty further describes itself as follows on its website:

Getty Images has a vast and growing network of exclusive commercial and distribution partnerships with the world's most prestigious media, publishing and entertainment companies, as well as with the most prominent sports governing bodies across the globe. After 12 years of trading publicly on the NASDAQ and the NYSE, Jonathan [Klein] successfully took Getty Images private in July 2008, in partnership with Hellman & Friedman, in a \$2.4 billion transaction. In October 2012, the management team, led by Jonathan, together with the Getty family and The Carlyle Group, acquired Getty Images for \$3.3 billion.<sup>2</sup>

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<sup>1</sup> <http://press.gettyimages.com/about-us/>

<sup>2</sup> <http://press.gettyimages.com/executives/jonathan-klein/>

76. In a press release issued on April 27, 2016,<sup>3</sup> Getty stated, in relevant part:

Because image consumption is immediate, once an image is displayed in high-resolution, large format, there is little impetus to view the image on the original source site....

Getty Images' General Counsel, Yoko Miyashita says: "Getty Images represents over 200,000 photojournalists, content creators and artists around the world who rely on us to protect their ability to be compensated for their work. Google's behavior is adversely affecting not only our contributors, but the lives and livelihoods of artists around the world – present and future. By standing in the way of a fair marketplace for images, Google is threatening innovation, and jeopardizing artists' ability to fund the creation of important future works. Artists need to earn a living in order to sustain creativity and licensing is paramount to this; however, this cannot happen if Google is siphoning traffic and creating an environment where it can claim the profits from individuals' creations as its own."

Miyashita continues: "Getty Images believes that images have the power to move the world by spurring action and driving change. It is key that these issues with Google are addressed and that the dominant search engine in Europe leads users to legitimate sources for imagery, rather than creating an environment that benefits Google alone. A fair marketplace will allow photographers to continue to capture the groundbreaking imagery that informs and impacts the world every day."

Getty Images firmly supports a more image-rich, digital world, but one that recognizes and remunerates the content creators who create this imagery. In 2014, Getty Images launched its embed tool, which revolutionized the visual content industry by making imagery available for easy, legal sharing at no cost for non-commercial use. This embed functionality provides consumers with an easy, legal alternative to the "right click," an alternative that ensures the content creator is appropriately credited for their work and that the image is clearly traceable to Getty Images in the event that a user wishes to license the image for a commercial purpose."

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<sup>3</sup> <http://press.gettyimages.com/getty-images-files-competition-law-complaint-against-google/>



**b. Getty Was Listing Ms. Highsmith's Work on Its Commercial Website Without Her Permission, Misrepresenting the Author and Copyright Owner of Her Work, and Selling "Licenses" for Her Work Despite Having No Right to Do So.**

77. Getty has placed photographs authored by Ms. Highsmith (each a "**Highsmith Photo**"; collectively, "**Highsmith Photos**") on Getty's website – more than 18,000 of them.

78. Getty has no contract or other agreement with Ms. Highsmith or the Foundation related to the Highsmith Photos and has not otherwise obtained any license, permission, or other grant of rights in the Highsmith Photos from Ms. Highsmith or the Foundation (other than the right to reproduce and/or display them for free, with proper attribution, which she has granted to everyone).

79. For each Highsmith Photo appearing on the Getty website, Getty makes the image available on multiple pages on its website with materially false information regarding:

- (a) the name and other identifying information about the author of the Highsmith Photo;
- (b) the name of and other identifying information about the copyright owner of the Highsmith Photo; and
- (c) the terms and conditions for use of the Highsmith Photo.

80. For example, without limitation, Getty on its website identifies the Highsmith Photos on some pages as being, "By: Buyenlarge," without any credit given to Ms. Highsmith, and on other pages with the identifier, "Credit: Buyenlarge/Contributor," together with a description of the work stating the title (or, in some instances, partial title), followed by, "*(Photo by Carol M. Highsmith/Buyenlarge/Getty Images)*." (emphasis added).

81. Like Getty, Buyenlarge has no contract or other agreement with Ms. Highsmith or the Foundation related to the Highsmith Photos and has not otherwise obtained any license, permission, or other grant of rights in the Highsmith Photos from Ms. Highsmith or the

Foundation (other than the right to reproduce and/or display them for free, with proper attribution, which she has granted to everyone).

82. Nowhere on its website does Getty identify Ms. Highsmith as the sole author of the Highsmith Photos.

83. Likewise, nowhere on its website does Getty identify Ms. Highsmith as the copyright owner of the work.

84. Instead, Getty misrepresents the terms and conditions of using the Highsmith Photos by falsely claiming a user must buy a copyright license from Getty in order to have the right to use the Highsmith Photos.

85. For example, without limitation, Getty offers for sale on its website copyright licenses for using Highsmith Photos, with “Standard editorial rights” packages starting at \$175.00 USD for a small size up to \$575.00 USD for a large size, and with “Custom rights” also offered.

86. Getty also identifies the “License type” as “Rights managed.” When the link next to “Rights managed” text is clicked, Getty’s website explains the term as follows: “Rights-managed products are licensed with restrictions on usage, such as limitations on size, placement, duration of use and geographic distribution. You will be asked to submit information concerning your intended use of the product, which will determine the scope of usage rights granted.”

87. Getty has also published a “Copyright FAQs” page on its website. On this page, Getty states that “all the images we represent require an appropriate license for their use” and that “Customers are not permitted to use imagery for any purpose without agreeing to a license.” (See <http://stories.gettyimages.com/copyright-faqs/>)

88. Nowhere on its website does Getty identify the Highsmith Photos as being available to the public to reproduce and display for free, through the Library website.

89. One example of a Highsmith Photo listing on Getty's website is attached hereto as **Exhibit K**.

90. Getty has unjustly profited by selling copyright licenses for use of Highsmith Photos despite Ms. Highsmith having made the Highsmith Photos available through the Library for the public to reproduce and display, for free.

91. For example, a Google search of "Highsmith Buyenlarge" reveals numerous articles by numerous national and international media organizations containing copies of Highsmith Photos credited as, **"By Carol M. Highsmith/Buyenlarge/Getty Images."** (emphasis added).

92. Some of these media organizations are the same ones that have featured stories about Ms. Highsmith and her work.

#### **IV. DEFENDANT ALAMY'S CONDUCT.**

##### **a. Alamy is a Competitor of Defendant Getty Whose Primary Business is Also Buying and Selling Copyright Licenses for Photographs, Videos, and other Media.**

93. Alamy is a UK-based company founded in 1999 that sells copyright licenses for, as its website says, "over 75 million high quality stock images, vectors and videos from Alamy, the world's largest stock photo collection."<sup>4</sup>

94. Alamy invites contributors to upload photographs to its website, for which it them offers commercial copyright licenses in exchange for the payment of money.

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<sup>4</sup> <http://www.alamy.com/>

95. Alamy's website proclaims a "Fair and equitable approach to photographers,"

stating:

In the beginning, building a substantial bank of diverse photography was the biggest hurdle to cross. Alamy bucked the trend by offering a groundbreaking approach to photographer commissions with returns ranging from 85–65%. Over the years commission splits across the industry have migrated further in favour of the agency, but Alamy has maintained a fair and equitable approach and commission is now 50/50 across the board.<sup>5</sup>

96. Alamy's website also proclaims "Unprecedented Growth," stating:

Alamy packaged digital photography in a way that grabbed the market's attention, and allied with the equitable approach to its photographers the company reached its first million images in just over 4 years and became profitable in 5 years. And now, fourteen years after it was founded, Alamy has the largest online collection of images and video clips. As a new player on the block, Alamy didn't have a multimillion dollar legacy of non-digital images that it had to deal with. So from the outset the company was lean and agile and able to make the most of the advantages offered to it from new and emerging technology. Indeed, Alamy has used technology to great effect to drive the market forward.<sup>6</sup>

**b. Alamy Was Listing Ms. Highsmith's Work on its Website Without Her Permission, Misrepresenting the Author and Copyright Owner of Her Work, and Selling "Licenses" for Her Work, Despite Having No Right to Do So.**

97. Alamy has placed Highsmith Photos on Alamy's website – at least 500 of them.

98. Alamy has no contract or other agreement with Ms. Highsmith or the Foundation related to the Highsmith Photos and has not otherwise obtained any license, permission, or other grant of rights in the Highsmith Photos from Ms. Highsmith or the Foundation.

99. For each Highsmith Photo appearing on Alamy's website, Alamy made the image available with false information regarding:

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<sup>5</sup> <http://www.alamy.com/about-alamy/our-story.asp>

<sup>6</sup> Id.

- (a) the name and other identifying information about the author of the Highsmith Photo;
- (b) the name of and other identifying information about the copyright owner of the Highsmith Photo; and
- (c) the terms and conditions for use of the Highsmith Photo.

100. For example, on many pages on its website, Alamy has made the Highsmith Photos available with no reference whatsoever to Ms. Highsmith as either the author or the copyright owner of the work, thus distributing false author and/or copyright owner information.

101. For further example, on other pages on its website, Alamy placed underneath the Highsmith Photos false copyright ownership claims, such as, without limitation, “© Everett Collection Inc / Alamy Stock Photo.”

102. Nowhere on its website did Alamy identify Ms. Highsmith as the copyright owner of the work or provide any information about her donation to the public.

103. Alamy also offered for sale on its website copyright licenses for using the Highsmith Photos, for example, with a “Presentation” license starting at \$14.99, an “Editorial website” license starting at \$24.99, and a “Magazines, newsletters and books” license starting at \$69.99. Alamy also offers other “rights-managed” licenses for the Highsmith Photos.

104. Nowhere on its website did Alamy identify the Highsmith Photos as being available to the public to reproduce and display for free through the Library website.

105. One example of a listing for Highsmith Photo on Alamy’s website is attached hereto as **Exhibit L**.

106. Alamy has unjustly profited by selling copyright licenses for use of Highsmith Photos despite Ms. Highsmith having made the Highsmith Photos available through the Library for the public to reproduce and display, for free.

**V. DEFENDANTS LCS' AND PICSCOUT'S CONDUCT.**

**a. Getty Owns and/or Operates Defendants LCS and Picscout, Who Were Authorized by Alamy to Send Threatening Letters to "Unlicensed" Users of Ms. Highsmith's Images.**

107. Defendants LCS and Picscout are in the copyright enforcement business.

108. LCS and Picscout use computer programs and other means to "scrape" the internet to locate and identify allegedly infringing uses of images for which their clients sell copyright licenses.

109. LCS and Picscout then send threatening letters to the allegedly infringing users, including demanding payment of settlements to avoid a lawsuit being filed.

110. The letter that Ms. Highsmith received from the Defendants listed "License Compliance Services, Inc." as the sender in the address block, but demanded that payment be made to "License Compliance Services/Picscout Inc."

111. Additionally, the letter that Ms. Highsmith and the Foundation received on December 14, 2015, was sent before License Compliance Services, Inc. was registered to do business in the State of Washington, which occurred in March 2016.

112. Both License Compliance Services, Inc., and Picscout, Inc., are wholly-owned subsidiaries/alter-egos of Getty. Any reference in this Complaint to LCS should be interpreted to include Getty and Picscout, as appropriate.

113. Getty and/or Alamy use Defendant LCS as their agent for certain copyright enforcement actions, including having LCS take actions such as those described in the preceding paragraphs on behalf of Getty and/or Alamy, including with respect to the Highsmith Photos.

114. On behalf of its clients, including Alamy and Getty, LCS uses the aforesaid information that it gathers in order to contact, via letter and/or email, allegedly infringing users of images for which LCS's clients, including Alamy and Getty, sell copyright licenses.

115. Getty has authorized LCS to identify allegedly infringing uses of the Highsmith Photos for which Getty is selling copyright licenses.

116. LCS has contacted such allegedly infringing users, falsely claiming these users have infringed Getty's copyrights and demanding payment of a settlement to Getty to avoid being sued.

117. Alamy has authorized LCS to identify allegedly infringing uses of the Highsmith Photos for which Alamy is selling copyright licenses.

118. For example, attached as **Exhibit M** is a copy of a threatening letter sent by Defendants to a third party located in Pennsylvania, alleging infringement of a Highsmith Photo.

119. The recipient of the letter attached as Exhibit M was clearly just one intended victim of the Defendants' fraudulent misrepresentations.

120. LCS has contacted such allegedly infringing users, falsely claiming these users have infringed Alamy's copyrights and demanding payment of a settlement to Alamy to avoid being sued.

121. The letters and/or emails sent by LCS to allegedly infringing users of Highsmith's Photos threaten the recipient, stating that he/she must pay LCS's client, even if the user did not know that such use was allegedly infringing, and even if the user ceases and desists or even has already ceased and desisted from the allegedly infringing use.

**b. Defendant Getty/LCS, On Behalf of Alamy, Sent a Threatening Letter to the *This is America!, Inc.*, Ms. Highsmith’s Own Non-Profit Foundation, for Using a Highsmith Photo Without Buying a License from Defendant Alamy.**

122. Most egregiously, on or about December 14, 2015, Getty/LCS sent a threatening communication (attached hereto as **Exhibit A**) purportedly on behalf of Alamy of the type described above to Plaintiff *This is America!* (the “**Letter**”), regarding its use of the image depicted in Figure 3, which Alamy had posted on its website and for which it was purporting to sell copyright licenses:



**Fig. 3**

123. The Letter stated as follows: “We have seen that an image or image(s) represented by Alamy has been used for online use by your company. According to Alamy’s records your company doesn’t have a **valid license for use of the image(s)**.” (emphasis in original).

124. The Letter went on to state as follows: “Although this infringement might have been unintentional, use of an image without a valid license is considered copyright infringement



in violation of the Copyright Act, Title 17, United States Code. This copyright law entitles Alamy to seek compensation for any license infringement.”

125. The Letter demanded a settlement payment of \$120.00.

126. The Letter’s originating address block purports to be sent on behalf of “License Compliance Services, Inc. on behalf of Alamy” located at Columbia Center, 701 Fifth Avenue, 42th Floor, Suite 4272, Seattle, WA 98104, but demands that payment be sent to “License Compliance Services/Picscout Inc.” at the same address.

127. According to the Washington Secretary of State records, License Compliance Services, Inc. was not registered to do business in Washington until three months after the Letter was sent.

128. The Letter is signed by “License Compliance Services/LCS@LCS.global.”

129. The Whois information for LCS.global indicates that the domain is registered by License Compliance Services, Inc., but gives the registrant’s address as 605 5th Avenue South, Suite 400, Seattle, WA, 98104 – which is Defendant Getty’s corporate address.

130. This same mailing address is given in the Registrant, Administrator, and Technical contact information for LCS.global.

131. The email address given under the Registrant, Administrator and Technical contact information is lcs@lcservices-inc.com. The Whois information for lcservices-inc.com indicates that the domain is registered by Getty Images (US), Inc., at 605 5th Avenue South, Suite 400, Seattle, WA, 98104, who can be contact by email at dnsadmin@gettyimages.com.

132. In the “Frequently Asked Questions” section of the Letter, the answer to the question “What if I didn’t know?” includes the following language: “You may have employed a third party, former worker or intern to design and develop your company’s site. However, the

liability of any infringement ultimately falls on the company (the end user) who hired that party, employee or intern.” The answer to the question “What if I simply remove the image?” includes the following language: “While we appreciate the effort of removing the material in question from your site, we still need compensation. Your company has benefited by using our imagery without our permission. As the unauthorized use has already occurred, payment for that benefit is necessary.” (emphasis added).

133. Ms. Highsmith was shocked to receive such a threatening communication from Defendant Getty/LCS, because *This is America!* is the non-profit foundation that she formed in 2011 to support her *This is America!* Project, the photograph at issue is one of Ms. Highsmith’s own original works of authorship, and *This is America!* unquestionably had the right to use Ms. Highsmith’s own photographs without obtaining a license from Defendant Alamy.

134. On December 23, 2015, Ms. Highsmith called Getty/LCS at the telephone number given in the Letter to discuss her receipt of the Letter addressed to the Foundation.

135. During that telephone conversation, which lasted approximately 27 minutes, Ms. Highsmith identified herself as the author of the photograph in question, and as a representative of the Foundation.

136. Ms. Highsmith also told the representative of Getty/LCS about the fact that she had donated her photographs to the Library of Congress and made them available to the public to reproduce and display for free, and asked for written verification that they would not pursue any further action against her or the Foundation.

137. On December 29, 2015, Ms. Highsmith received an email from Getty/LCS acknowledging that “after further review” it had “closed [the] case” against her and the

Foundation, thereby implicitly acknowledging the correctness and propriety of her position.

See Exhibit N.

138. Ms. Highsmith's aforesaid discussions with Getty/LCS gave the Defendants actual and/or constructive knowledge, notice, and/or reason to know or believe that Getty's, LCS's, Picscout's, and Alamy's uses of the Highsmith Photos in this manner was improper and unlawful.

139. Moreover, after this lawsuit was filed, Getty issued a press release on its website in which it admitted that Getty/LCS spoke with Ms. Highsmith and, thereafter, Getty/LCS told its client, Alamy, that Getty/LCS would not further pursue an infringement claim related to a Highsmith Photo; specifically, Getty's press release stated the following:

LCS works on behalf of content creators and distributors to protect them against the unauthorized use of their work. In this instance, LCS pursued an infringement on behalf of its customer, Alamy. Any enquiries regarding that matter should be directed to Alamy; **however, as soon as the plaintiff contacted LCS, LCS acted swiftly to cease its pursuit with respect to the image provided by Alamy and notified Alamy it would not pursue this content.**" (emphasis added) (See <http://press.gettyimages.com/statement-regarding-highsmith-claim/>, attached as Exhibit H).

140. Despite the Defendants' actual and/or constructive knowledge, notice, and/or reason to know or believe that their uses of the Highsmith Photos were improper and illegal, the Defendants nonetheless continued their improper and illegal actions with respect to the Highsmith Photos as alleged hereinabove.

141. The fact that the Defendants have continued to purport to sell licenses to the Highsmith Photos means, at a minimum, that the Defendants' actions are intentional.

142. Indeed, for example, even after Getty/LCS acknowledged in December 2015 that it "closed [the] case" regarding the above-discussed image, and despite Getty/LCS admitting it

notified its customer, Alamy, that it would not further pursue its infringement claim, *Alamy and Getty continued to display the above photograph on their websites and continued to purport to sell copyright licenses for it, despite knowing that that they have no right to do so, until this lawsuit was commenced.*

**c. LCS's Knowledge and Intent Can and Should Be Imputed to Getty and Alamy.**

143. Getty owns, controls, operates, or is under common ownership, operation, and/or control with Defendants LCS and Picscout.

144. For example, three of the four "Governing Persons" of LCS listed on the Washington Secretary of State website are: Preston Graham, Director, Vice President; Kjehe Kellough, Director, Vice President; and Elizabeth A. Vaughan, Vice President, Secretary.

145. These same executives of LCS also hold executive positions with Defendant Getty, namely: Preston Graham is Senior Director, Finance & Controller for Getty; Kjehe Kellough is Corporate Counsel for Getty; and Elizabeth A. "Lizanne" Vaughan is Vice President, Corporate Counsel for Getty.

146. Furthermore, the Whois data for LCS.global lists Getty's corporate address as the Registrant, Administrative contact, and Technical contact, and the Whois data for lcservices-inc.com indicates it is registered by Getty Images (US), Inc.

147. Because of the common ownership and/or control of LCS, Picscout, and Getty as described hereinabove, and because of the agency relationship between the Defendants described hereinabove, any knowledge, recklessness, willful blindness, and/or intent of LCS and/or Picscout can and should be imputed to Getty.

148. Moreover, Defendant LCS was not registered to do business in the State of Washington as of the date Ms. Highsmith received the Letter, or as of the date of her telephone

call to Getty/LCS. Finally, the facts show that threatening letters were sent from one corporation (LCS) demanding payment be made to a different corporation (Picscout), wherein one of those companies (LCS) has an email address domain that is registered by Getty and a website domain that is registered to Getty's corporate address. Therefore, at all times relevant to this lawsuit, LCS should be considered a general partner, agent, and/or fictitious name of Getty, and all knowledge and intent on the part of LCS can and should be imputed to Getty and/or is the knowledge and intent of Getty.

149. Because of the apparent and/or actual agency relationship between Alamy, Picscout, and LCS, as described hereinabove, including specifically as to the Highsmith Photo as to which LCS sent Ms. Highsmith and the Foundation a settlement demand, any knowledge, willful blindness, and/or intent of LCS or Picscout can and should be imputed to Alamy.

**VI. THE DEFENDANTS' WRONGFUL CONDUCT HAS INJURED THE PLAINTIFFS AND THE PUBLIC, AND WILL CONTINUE TO DO SO UNLESS BROUGHT TO A HALT BY THIS COURT.**

150. The Defendants' actions as described hereinabove have injured Ms. Highsmith and the Foundation, including but not limited to injuring Ms. Highsmith's personal and professional reputation; harming the value of Ms. Highsmith's past and future work; infringing upon Ms. Highsmith's rights in her name and/or likeness; and infringing upon Ms. Highsmith's exercise of her exclusive rights under 17 U.S.C. § 106 with respect to the Highsmith Photos.

151. Such conduct similarly harms the Foundation, including but not limited to harming its efforts to seek and receive generous contributions from individuals and organizations.

152. The economic damage that Ms. Highsmith and the Foundation have suffered also includes, without limitation, any and all revenue received by the Defendants based on purported

licenses sold for the Highsmith Photos. These funds represent money that Ms. Highsmith and the Foundation could have received had they attempted to monetize Ms. Highsmith's photos through the Defendants.

153. The injury to Ms. Highsmith's and the Foundation's reputation has been even more severe.

154. There is at least one example of a recipient of a threatening letter for use of a Highsmith Photo researching the issue and determining that Ms. Highsmith had made her photos freely available and free to use through the Library website.

155. Therefore, anyone who sees the Highsmith Photos and knows or learns of her gift to the Library is likely to believe her to be a hypocrite, which has a chilling effect on her and the Foundation's ability to raise the funds needed to continue her visual study of the United States.

156. Furthermore, when the Foundation is likely to be seen as a beneficiary or endorser of Getty's commercial, for profit "licensing" scheme, it puts the Foundation's 501(c)(3) tax-exempt status in jeopardy.

**VII. OTHER INDIVIDUALS, COMPANIES, AND ORGANIZATIONS, INCLUDING THOSE REGULARLY DEALING IN COPYRIGHTS, ROUTINELY ASK FOR MS. HIGHSMITH'S PERMISSION BEFORE USING HIGHSMITH PHOTOS COMMERCIALY.**

157. Unlike the Defendants, other individuals, companies, and organizations routinely contact Ms. Highsmith to request her permission to use Highsmith Photos in a commercial manner, including businesses regularly dealing in copyrights.

158. For example, in 2013, third party Knight Takes King Productions, LLC, sought and obtained Ms. Highsmith's permission to use – for free – two of her photographs that they

had found in Ms. Highsmith's collection at the Library as background, non-featured wall dressing for a set for the series *House of Cards*. See Exhibit O.

159. For further example, having previously sought and obtained Ms. Highsmith's permission in 2014 to use – for free – two of her photographs that are part of her collection at the Library in the major motion picture *Batman v. Superman*, third party Warner Bros. Pictures, a division of WB Studio Enterprises Inc., on behalf of Dena Films, Ltd., in June 2016 sought Ms. Highsmith's permission to use – for free – four of her photographs that they had found in Ms. Highsmith's Library collection as background set dressing for a major motion picture currently under development. See Exhibit P.

160. As yet another example, in 2006, third party Universal Network Television sought and obtained Ms. Highsmith's permission to use – for free – Ms. Highsmith's photographs of the Fulton Steamboat, to be used in connection with the television program "*The Office*". See Exhibit Q.

**VIII. FINAL JUDGMENT HAS BEEN ENTERED AGAINST GETTY WITHIN THE LAST 3 YEARS FOR ANOTHER VIOLATION OF 17 U.S.C. § 1202(a).**

161. In 2014, a final judgment was entered against Defendant Getty for violating 17 U.S.C. § 1202(a) in the lawsuit styled *Agence France Presse v. Morel v. Getty Images (US), Inc., et al.*, Civil Action No. 10-cv-2730, U.S. Dist. Lexis 112436; 42 Media L. Rep. 2229; 111 U.S.P.Q.2D (BNA) 2017 (S.D.N.Y. Aug. 13, 2014) (referred to herein as *Morel v. Getty*).

162. After the jury's verdict was rendered in *Morel v. Getty*, Getty's General Counsel stated publicly: "At Getty Images, we're very interested in the proper attribution of all of our images, and we've spent the last three years improving our systems and our processes to prevent this type of error from happening again... We have a lot of images coming in every single day,

and we've learned a lot from this case.” (<http://www.bjp-online.com/2013/11/getty-images-disappointed-at-1-2m-morel-verdict/>)

**COUNT I:**

**DEFENDANT GETTY'S INTENTIONAL VIOLATIONS OF  
THE DIGITAL MILLENNIUM COPYRIGHT ACT**

**(17 U.S.C. § 1202)**

**(ASSERTED BY MS. HIGHSMITH ONLY)**

163. The Plaintiffs hereby adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

164. The Highsmith Photos are original works of authorship subject to the full protection of the United States copyright laws.

165. Ms. Highsmith is the sole and exclusive owner of all rights, title, and interest in and to the copyrights in the Highsmith Photos, subject to licenses Ms. Highsmith has given to others, including without limitation the non-exclusive, free license Ms. Highsmith has given to the public to reproduce and display the Highsmith Photos.

166. The Highsmith Photos contain copyright management information as defined in, at least, 17 U.S.C. § 1202(c)(1)-(3), (6), including: the title and other information identifying the work; the name of, and other identifying information about, the author of the work; the name of, and other identifying information about, the copyright owner of the work; and the terms and conditions for use of the work.

167. By way of example and not limitation, on the main photo page for each of the Highsmith Photos on the Library website, the Library website provides information that includes but is not necessarily limited to the following: (a) Ms. Highsmith's title for the work; (b) an identification of "Carol M. Highsmith" as the author or creator of the work; (c) a proper



credit line to use with the work referencing the Library of Congress collection in which the work appears; (d) in some instances, a citation to the work in MLA, Chicago, and/or AP formats; (e) a link to the Highsmith collection main page, which provides information indicating Ms. Highsmith's intention that the public be given free access to her collection; (f) in many if not all instances, a rights advisory indicating "No known restrictions on publication," signifying Ms. Highsmith's intention that her images may be used by the public for free without purchasing a license; and (g) in many if not all instances, one or more statements that, "Rights assessment is your responsibility," and/or a statement that, "The Library of Congress generally does not own rights to material in its collections and, therefore, cannot grant or deny permission to publish or otherwise distribute the material."

168. In violation of 17 U.S.C. § 1202(a), Defendant Getty, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, has provided copyright management information for the Highsmith Photos that is false.

169. In violation of 17 U.S.C. § 1202(a), Defendant Getty, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, has distributed copyright management information for the Highsmith Photos that is false.

170. In violation of 17 U.S.C. § 1202(b), Defendant Getty, without the authority of the copyright owner or the law, intentionally removed or altered copyright management information for the Highsmith Photos, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of a right under Title 17 of the United States Code.

171. In violation of 17 U.S.C. § 1202(b), Defendant Getty, without the authority of the copyright owner or the law, has distributed copyright management information for the

Highsmith Photos knowing that said copyright management information has been removed or altered without authority of the copyright owner or the law, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

172. In violation of 17 U.S.C. § 1202(b), Defendant Getty, without the authority of the copyright owner or the law, has distributed copies of the Highsmith Photos knowing that the copyright management information for said Highsmith Photos has been removed or altered without authority of the copyright owner or the law, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

173. Getty has violated 17 U.S.C. § 1202 with respect to thousands of Highsmith Photos, at a minimum.

174. For example, without limitation, a search of “Carol Highsmith” on Getty’s website returns 18,752 results, and upon information and belief each of those results is a Highsmith Photo as to which Getty has violated 17 U.S.C. § 1202.

175. For example, as shown in the photo taken from Defendant Getty’s website in Figure 4, Getty provides a false watermark over the image falsely claiming that Getty has some kind of ownership interest in the photograph:



**Fig. 4**

176. Getty also provides the following examples of false copyright management information: “Credit: Buyenlarge/Contributor” and “Photo by Carol M. Highsmith/Buyenlarge/Getty Images”.

177. In fact, Getty explicitly requires its purported “licensees” to credit Getty when they use Highsmith Photos, with the contractual penalty for not doing so being 100% of the purported “License Fee” paid by the “licensee.” (See [www.gettyimages.com/Corporate/LicenseAgreements.aspx](http://www.gettyimages.com/Corporate/LicenseAgreements.aspx), Getty Images Rights Managed License Agreement at Section 3.3).

178. Neither Buyenlarge nor Getty had any involvement whatsoever with the making of the Highsmith Photos.

179. Getty has also misrepresented the terms of use of the Highsmith Photos, which is another example of providing false copyright management information.

180. Ms. Highsmith has given the Highsmith Photos to the public to reproduce and display, for free, yet Getty is claiming the public must buy an expensive copyright license from it to reproduce and display the Highsmith Photos.

181. The infringement that has been induced, enabled, facilitated, or concealed under the statute is, at a minimum, an infringement of Ms. Highsmith's exclusive right under the preamble to 17 U.S.C. 106 to authorize (or set the terms for) the reproduction and distribution of copies of her works, as well as her exclusive right under 17 U.S.C. 106(3) to "distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership."

182. The conduct of Getty is intentional, at a minimum, because despite Ms. Highsmith's telephone call to Getty (and/or Getty's agent), and despite Getty/LCS admittedly notifying its customer, Alamy, that it would not further pursue an infringement claim on a Highsmith Photo after said telephone call, Getty continued to purport to sell licenses to the Highsmith Photo she was accused of infringing, along with all of her other photos found on Getty's website, long after they had actual notice that their purported sales were unauthorized.

183. At no time following Ms. Highsmith's telephone call did Getty or its agent reach out to Ms. Highsmith to attempt to correct the situation.

184. Ms. Highsmith is a "person injured" by Getty's violations of Section 1202, thereby qualifying her as a person who may bring a civil action for such violations under Section 1203.

185. Getty's violations of 17 U.S.C. § 1202 entitle Ms. Highsmith to recover, among other things, and if she so elects as provided in 17 U.S.C. § 1203(c)(3)(B), "an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000."

186. When Getty is found to have committed one violation of 17 U.S.C. § 1202 for each of the 18,755 results of a search for “Carol M. Highsmith” on Getty’s website, Ms. Highsmith would be entitled to recover, among other things, and if she so elects, aggregate statutory damages against Getty of not less than forty-six million, eight hundred eighty-seven thousand five hundred dollars **(\$46,887,500)** and not more than four hundred sixty-eight million, eight hundred seventy-five thousand dollars **(\$468,875,000)**.

187. Additionally, because Getty has already had a final judgment entered against it in the past three years in the *Morel v. Getty* case, the Court may treble the statutory damages in this case.

**COUNT II:**

**DEFENDANT ALAMY’S VIOLATIONS OF  
THE DIGITAL MILLENNIUM COPYRIGHT ACT**

**(17 U.S.C. § 1202)**

**(ASSERTED BY MS. HIGHSMITH ONLY)**

188. The Plaintiffs hereby incorporate and adopt by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

189. In violation of 17 U.S.C. § 1202(a), Defendant Alamy, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, has provided copyright management information for the Highsmith Photos that is false.

190. In violation of 17 U.S.C. § 1202(a), Defendant Alamy, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, has distributed copyright management information for the Highsmith Photos that is false.

191. In violation of 17 U.S.C. § 1202(b), Defendant Alamy, without the authority of the copyright owner or the law, intentionally removed or altered copyright management

information for the Highsmith Photos, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

192. In violation of 17 U.S.C. § 1202(b), Defendant Alamy, without the authority of the copyright owner or the law, has distributed copyright management information for the Highsmith Photos knowing that said copyright management information has been removed or altered without authority of the copyright owner or the law, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

193. In violation of 17 U.S.C. § 1202(b), Defendant Alamy, without the authority of the copyright owner or the law, has distributed copies of the Highsmith Photos, knowing that the copyright management information for said Highsmith Photos has been removed or altered without authority of the copyright owner or the law, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

194. Defendant Alamy has violated 17 U.S.C. § 1202 with respect to at least 500 Highsmith Photos.

195. For example, many Highsmith Photos at Alamy are credited to “The Protected Art Archive” or “Everett Collection Inc.,” and upon information and belief many of those photos are Highsmith Photos as to which Alamy has violated 17 U.S.C. § 1202.

196. Many of the Highsmith Photos found on the Defendant Alamy’s website do not mention Ms. Highsmith at all.

197. Moreover, all of the Highsmith Photos found on the Defendant Alamy's website bear watermarks, as shown in Figure 5, that falsely suggest Defendant Alamy as the owner of the image.



**Fig. 5**

198. Defendant Alamy has also misrepresented the terms of use of the Highsmith Photos, which is another example of providing false copyright management information. Ms. Highsmith has given the Highsmith Photos to the public to use for free, yet Alamy is claiming the public must buy an expensive copyright license from it to reproduce and display the Highsmith Photos.

199. The infringement that has been induced, enabled, facilitated, or concealed under the statute is, at a minimum, an infringement of Ms. Highsmith's exclusive right under the preamble to 17 U.S.C. 106 to authorize (or set the terms for) the reproduction and distribution



of copies of her works, as well as her exclusive right under 17 U.S.C. 106(3) to “distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership.”

200. The conduct of Defendant Alamy is intentional, at a minimum, because despite Ms. Highsmith’s telephone call to Alamy’s agent, and despite Getty/LCS’s admitted notification to Alamy that it would not further pursue an infringement claim on a Highsmith Photo after said telephone call, Alamy continued to purport to sell licenses to the Highsmith Photo she was accused of infringing, along with all of her other photos found on Alamy’s website, long after they received actual notice they the purported sales were unauthorized.

201. At no time following Ms. Highsmith’s telephone call did Alamy or its agent reach out to Ms. Highsmith to attempt to correct the situation.

202. Ms. Highsmith is a “person injured” by Alamy’s violations of Section 1202, thereby qualifying her as a person who may bring a civil action for such violations under Section 1203.

203. Alamy’s violations of 17 U.S.C. § 1202 entitle Ms. Highsmith to recover, among other things, and if she so elects as provided in 17 U.S.C. § 1203(c)(3)(B), “an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.”

204. Alamy has committed at least one violation of Section 1202 per Highsmith Photo that is available on its website.

205. Thus, for example, without limitation, when Alamy is found to have committed one violation of 17 U.S.C. § 1202 for each of the approximately 500 Highsmith Photos (at a minimum) on Alamy’s website, Ms. Highsmith would be entitled to recover, among other things, and if she so elects, aggregate statutory damages against Alamy of not less than one



million two hundred fifty thousand dollars (**\$1,250,000**) and not more than twelve million five hundred thousand dollars (**\$12,500,000**).

**COUNT III:**

**DEFENDANT LCS/PICSCOUT'S VIOLATIONS OF  
THE DIGITAL MILLENNIUM COPYRIGHT ACT**

**(17 U.S.C. § 1202)**

**(ASSERTED BY MS. HIGHSMITH ONLY)**

206. The Plaintiffs hereby adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

207. In violation of 17 U.S.C. § 1202(a), Defendants LCS and Picscout, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, have provided copyright management information for the Highsmith Photos that is false.

208. In violation of 17 U.S.C. § 1202(a), Defendants LCS and Picscout, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, have distributed copyright management information for the Highsmith Photos that is false.

209. In violation of 17 U.S.C. § 1202(b), Defendants LCS and Picscout, without the authority of the copyright owner or the law, intentionally removed or altered copyright management information for the Highsmith Photos, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

210. In violation of 17 U.S.C. § 1202(b), Defendants LCS and Picscout, without the authority of the copyright owner or the law, have distributed or imported for distribution copyright management information for the Highsmith Photos knowing that said copyright management information has been removed or altered without authority of the copyright owner

or the law, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

211. In violation of 17 U.S.C. § 1202(b), Defendants LCS and Picscout, without the authority of the copyright owner or the law, has distributed copies of the Highsmith Photos knowing that the copyright management information for said Highsmith Photos has been removed or altered without authority of the copyright owner or the law, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate, or conceal an infringement of any right under Title 17 of the United States Code.

212. Defendants LCS/Picscout's intentional falsification, modification, or removal of copyright management information occurs when Defendant LCS/Picscout sends letters representing that it is authorized by the copyright owner to threaten copyright infringement, and fails to credit Ms. Highsmith as the author or copyright owner.

213. The conduct of Defendant LCS/Picscout is also intentional, at a minimum, because despite Ms. Highsmith's telephone call to LCS/Picscout, which Getty admits LCS/Picscout received, and despite Getty/LCS's admission that LCS/Picscout found it improper to continue pursuing an infringement claim on a Highsmith Photo and notified its client, Alamy, that it would not do so, LCS/Picscout continued to pursue infringement claims regarding other Highsmith Photos.

214. The infringement that has been induced, enabled, facilitated, or concealed under the statute is, at a minimum, an infringement of Ms. Highsmith's exclusive right under the preamble to 17 U.S.C. 106 to authorize that copies of her work be made and distributed, as well as her exclusive right under 17 U.S.C. 106(3) to "distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership."

215. Ms. Highsmith is a “person injured” by Defendant LCS/Picscout’s violations of Section 1202, thereby qualifying her as a person who may bring a civil action for such violations under Section 1203.

216. It is unknown at this time how many threatening letters Defendants LCS and Picscout have sent to individuals falsely alleging copyright infringement for Highsmith Photos.

217. Defendants LCS and Picscout have committed at least one violation of Section 1202 in each such letter that has been sent.

**COUNT IV:**

**DEFENDANT GETTY’S VIOLATIONS OF  
THE LANHAM ACT**

**FALSE ADVERTISING AND UNFAIR COMPETITION IN VIOLATION  
OF SECTION 43(A) OF THE LANHAM ACT**

**(15 U.S.C. § 1125(A))**

**(ASSERTED BY BOTH PLAINTIFFS)**

218. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

219. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) provides, in relevant part:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—(1)(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (1)(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

220. By making unauthorized use, in interstate commerce, of Ms. Carol M. Highsmith's name in connection with charging money for purported licenses to her photos, and by holding itself out falsely as the agent of Ms. Highsmith and the Foundation, Getty has used "false statement(s) of fact" and/or "misleading statement(s) of fact" that are likely to cause confusion, mistake, or deception as to the affiliation or connection of Getty with Ms. Highsmith and the Foundation, and as to the sponsorship, association, or approval of Getty's services with Ms. Highsmith and the Foundation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

221. For example, in some places on its website, Getty describes Highsmith Photos as "Photo by Carol M. Highsmith/Buyenlarge/Getty Images." There is no affiliation whatsoever between Ms. Highsmith and the Foundation, on the one hand, and either Buyenlarge or Getty Images, on the other hand, and Ms. Highsmith and the Foundation clearly do not approve of or sponsor Buyenlarge's or Getty's goods, services, or commercial activities with respect to her photos.

222. Additionally, the United States Supreme Court in *Dastar v. Twentieth Century Fox Film* held that misrepresenting the nature, qualities or characteristics of work may give rise

to a cause of action under the Lanham Act. *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37-38 (2003).

223. By advertising and promoting a “rights managed” license fee for Highsmith Photos, Getty has misrepresented the nature, characteristics, or qualities of the Highsmith Photos, including without limitation because Getty has no exclusive rights in or to the Highsmith Photos and, therefore, has nothing to “license” to its users.

224. The purported “rights managed” license that Getty has been advertising and promoting for Highsmith Photos does not differ in any way from “rights managed” licenses offered by Getty for photos for which Getty does possess rights that can be licensed.

225. Therefore, Getty’s users will be under the mistaken belief that they need a license from Getty to reproduce and distribute the Highsmith Photos.

226. Getty’s wrongful acts will continue unless and until enjoined by this Court. For example, Getty’s public statement on this case refers to a blog post authored by counsel for Defendant Alamy and LCS, Nancy Wolff, who argues that it is not “improper to call the fee charged to use a public domain image a ‘license.’” (See <http://blog.digitalmedialicensing.org/?p=3444>).

227. Getty’s acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

228. Ms. Highsmith and the Foundation have no adequate remedy at law and are thus damaged in an amount yet to be determined.

229. Getty’s egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT V:**

**DEFENDANT LCS'/PICSCOUT'S VIOLATIONS OF  
THE LANHAM ACT**

**FALSE ADVERTISING AND UNFAIR COMPETITION IN VIOLATION  
OF SECTION 43(A) OF THE LANHAM ACT**

**(15 U.S.C. § 1125(A))**

**(ASSERTED BY BOTH PLAINTIFFS)**

230. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

231. By making unauthorized use, in interstate commerce, of Ms. Highsmith's photographs, and by holding itself out falsely as the agent(s) of Ms. Highsmith, License Compliance Services, Inc., and Picscout, Inc., have used "false statement(s) of fact" and/or "misleading statement(s) of fact" that are likely to cause confusion, mistake, or deception as to the affiliation or connection of LCS/Picscout with Ms. Highsmith and the Foundation and as to the sponsorship, association, or approval of LCS's/Picscout's services with Ms. Highsmith and the Foundation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

232. Additionally, by asserting claims of copyright infringement for use of the Highsmith Photos and demanding settlements of such claims and/or licensing fees for Highsmith Photos, LCS and Picscout have misrepresented the nature, characteristics, or qualities of the Highsmith Photos, including without limitation because neither LCS/Picscout nor its/their clients has any exclusive rights in or to the Highsmith Photos and, therefore, no copyrights to be infringed, no non-frivolous copyright infringement claims to settle, and nothing to "license" to anyone.

233. LCS'/Picscout's wrongful acts will continue unless and until enjoined by this Court.

234. LCS's/Picscout's acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

235. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

236. LCS's/Picscout's egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT VI:**

**DEFENDANT ALAMY INC.'S VIOLATIONS OF  
THE LANHAM ACT**

**FALSE ADVERTISING AND UNFAIR COMPETITION IN VIOLATION  
OF SECTION 43(A) OF THE LANHAM ACT**

**(15 U.S.C. § 1125(A))**

**(ASSERTED BY BOTH PLAINTIFFS)**

237. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

238. By making unauthorized use, in interstate commerce, of Ms. Highsmith's photographs, and by holding itself out falsely as the agent of Ms. Highsmith, Defendant Alamy, Inc., has used "false statement(s) of fact" and/or "misleading statement(s) of fact" that are likely to cause confusion, mistake, or deception as to the affiliation or connection of Alamy, Inc., with Ms. Highsmith and the Foundation, and as to the origin, sponsorship, association, or approval of Alamy Inc.'s services with Ms. Highsmith and the Foundation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

239. Additionally, by advertising and promoting a “rights managed” license fee for Highsmith Photos, Alamy, Inc. has misrepresented the nature, characteristics, or qualities of the Highsmith Photos, including without limitation because Alamy, Inc., has no exclusive rights in or to the Highsmith Photos and, therefore, has nothing to “license” to its users.

240. The purported “rights managed” license that Alamy, Inc., has been advertising and promoting for Highsmith Photos does not differ in any meaningful way from “rights managed” licenses offered by Alamy, Inc., for photos for which Alamy, Inc., does possess rights that can be licensed.

241. Therefore, Alamy, Inc.’s users will be under the mistaken belief that they need a license from Alamy, Inc., to reproduce and distribute the Highsmith Photos.

242. Alamy Inc.’s wrongful acts will continue unless and until enjoined by this Court. For example, Getty’s public statement on this case refers to a blog post authored by counsel for Defendant Alamy and LCS, Nancy Wolff, who argues that it is not “improper to call the fee charged to use a public domain image a ‘license’.” (See <http://blog.digitalmedialicensing.org/?p=3444>).

243. Alamy, Inc.’s acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

244. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

245. Alamy, Inc.’s egregious conduct is willful and intentional, warranting the imposition of enhanced damages.



**COUNT VII:**

**DEFENDANT ALAMY LTD.'S VIOLATIONS OF  
THE LANHAM ACT**

**FALSE ADVERTISING AND UNFAIR COMPETITION IN VIOLATION  
OF SECTION 43(A) OF THE LANHAM ACT**

**(15 U.S.C. § 1125(A))**

**(ASSERTED BY BOTH PLAINTIFFS)**

246. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

247. By making unauthorized use, in interstate commerce, of Ms. Highsmith's photographs, and by holding itself out falsely as the agent of Ms. Highsmith, Defendant Alamy, Ltd. has used "false statement(s) of fact" and/or "misleading statement(s) of fact" that are likely to cause confusion, mistake or deception as to the affiliation or connection of Alamy Ltd. with Ms. Highsmith and the Foundation and as to the origin, sponsorship, association or approval of Alamy Ltd.'s services with Ms. Highsmith and the Foundation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

248. Additionally, by advertising and promoting a "rights managed" license fee for Highsmith Photos, Alamy, Ltd. has misrepresented the nature, characteristics, or qualities of the Highsmith Photos, including without limitation because Alamy, Ltd. has no exclusive rights in or to the Highsmith Photos and, therefore, has nothing to "license" to its users.

249. The purported "rights managed" license that Alamy, Ltd., has been advertising and promoting for Highsmith Photos does not differ in any meaningful way from "rights managed" licenses offered by Alamy, Ltd., for photos for which Alamy, Ltd., does possess rights that can be licensed.

250. Therefore, Alamy, Ltd.'s users will be under the mistaken belief that they need a license from Alamy, Ltd., to reproduce and distribute the Highsmith Photos.

251. Alamy Ltd.'s wrongful acts will continue unless and until enjoined by this Court. For example, Getty's public statement on this case refers to a blog post authored by counsel for Defendant Alamy and LCS, Nancy Wolff, who argues that it is not "improper to call the fee charged to use a public domain image a 'license'." (See <http://blog.digitalmedialicensing.org/?p=3444>).

252. Alamy, Ltd.'s acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

253. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

254. Alamy, Ltd.'s egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT VIII:**

**DEFENDANT GETTY'S INTENTIONAL VIOLATION OF  
THE NEW YORK GENERAL BUSINESS LAWS**

**N.Y. GENERAL BUSINESS LAW SECTION 349**

**(ASSERTED BY BOTH PLAINTIFFS)**

255. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

256. New York General Business Law Section 349 provides that:

(a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

257. Any person injured by reason of a violation of Section 349 may bring a civil action to enjoin such actions and recover actual damages.

258. By making unauthorized use within the State of New York of Ms. Highsmith's name, by holding itself out falsely as the agent of the Ms. Highsmith, by charging licensing fees for Highsmith Photos when no license is needed, and by collecting settlements of copyright infringement claims for Highsmith Photos when it had no right to assert such claims, Defendant Getty Images (US) Inc. has engaged in deceptive acts or practices in the conduct of its business in this state.

259. Getty's wrongful acts will continue unless and until enjoined by this Court.

260. Getty's acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

261. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

262. Getty's egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT IX:**

**DEFENDANT LCS'/PICSCOUT'S**  
**INTENTIONAL VIOLATIONS OF**  
**THE NEW YORK GENERAL BUSINESS LAWS**  
**N.Y. GENERAL BUSINESS LAW SECTION 349**

**(ASSERTED BY BOTH PLAINTIFFS)**

263. The Plaintiffs adopt and incorporates by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

264. By holding themselves out falsely as the agent of the Ms. Highsmith, by charging licensing fees for Highsmith Photos when no license is needed, and by collecting settlements of copyright infringement claims for Highsmith Photos when it had no right to

assert such claims, Defendants LCS and Picscout have engaged in deceptive acts or practices in the conduct of their businesses in this state.

265. LCS's and Picscout's wrongful acts will continue unless and until enjoined by this Court.

266. LCS's and Picscout's acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

267. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

268. LCS's and Picscout's egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT X:**

**DEFENDANT ALAMY, INC.'S AND ALAMY, LTD.'S**  
**INTENTIONAL VIOLATIONS OF**  
**THE NEW YORK GENERAL BUSINESS LAWS**  
**N.Y. GENERAL BUSINESS LAW SECTION 349**

**(ASSERTED BY BOTH PLAINTIFFS)**

269. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

270. By holding themselves out falsely as the agent of the Ms. Highsmith, by charging licensing fees for Highsmith Photos when no license is needed, and by collecting settlements of copyright infringement claims for Highsmith Photos when it had no right to assert such claims, Defendants Alamy, Inc. and Alamy, Ltd. have engaged in deceptive acts or practices in the conduct of their businesses in this state.

271. Alamy, Inc.'s and Alamy, Ltd.'s wrongful acts will continue unless and until enjoined by this Court.

272. Alamy, Inc.'s and Alamy, Ltd.'s acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

273. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

274. Alamy, Inc.'s and Alamy, Ltd.'s egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT XI:**

**DEFENDANT GETTY'S INTENTIONAL VIOLATIONS OF  
THE NEW YORK COMMON LAW ON UNFAIR COMPETITION**

**(ASSERTED BY BOTH PLAINTIFFS)**

275. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

276. To prevail in an unfair competition case under New York common law, the plaintiff may prove either: (1) that the defendant's activities have caused confusion with, or have been mistaken for, the plaintiff's activities in the mind of the public, or are likely to cause such confusion or mistake; or (2) that the defendant has acted unfairly in some manner. Furthermore, the key to stating a non-statutory, common law claim of unfair competition is that the defendant charged with actionable conduct displayed some element of bad faith in misappropriating the plaintiff's labor, skill, expenditures, proprietary information or trade secrets. *Cold Spring Harbor Construction, Inc. v. Cold Spring Builders, Inc.*, 2014 NY Slip Op. 51688(U).

277. As described in detail above, Getty has misappropriated Ms. Highsmith's labor, skill, and expenditures in bad faith and for its own gain. Getty has also caused confusion as to the association or relationship between Getty, on the one hand, and Ms. Highsmith and the Foundation, on the other hand, and done so unfairly despite their objections.

278. Getty's acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

279. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

280. Getty's egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT XII:**

**DEFENDANT LCS'/PICSCOUT'S INTENTIONAL VIOLATIONS OF  
THE NEW YORK COMMON LAW ON UNFAIR COMPETITION**

**(ASSERTED BY BOTH PLAINTIFFS)**

281. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

282. As described in detail above, LCS/Picscout has misappropriated Ms. Highsmith's labor, skill, and expenditures in bad faith and for its own gain. LCS/Picscout has also caused confusion as to the association or relationship between LCS/Picscout, on the one hand, and Ms. Highsmith and the Foundation, on the other hand, and done so unfairly despite their objections.

283. LCS/Picscout's acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

284. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

285. LCS/Picscout's egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**COUNT XIII:**

**DEFENDANT ALAMY INC.'S AND ALAMY, LTD.'S INTENTIONAL VIOLATIONS OF  
THE NEW YORK COMMON LAW ON UNFAIR COMPETITION**

**(ASSERTED BY BOTH PLAINTIFFS)**

286. The Plaintiffs adopt and incorporate by reference all allegations set forth in all paragraphs hereinabove as if fully restated in this paragraph.

287. As described in detail above, Alamy, Inc. and Alamy, Ltd. have misappropriated Ms. Highsmith's labor, skill, and expenditures in bad faith and for its/their own gain. Alamy, Inc. and Alamy, Ltd. has also caused confusion as to the association or relationship between Alamy, Inc. and Alamy, Ltd., on the one hand, and Ms. Highsmith and the Foundation, on the other hand, and done so unfairly despite their objections.

288. Alamy, Inc.'s and Alamy, Ltd.'s acts have caused and will continue to cause economic damages and irreparable injury to Ms. Highsmith and the Foundation.

289. The Plaintiffs have no adequate remedy at law and are thus damaged in an amount yet to be determined.

290. Alamy, Inc.'s and Alamy, Ltd.'s egregious conduct is willful and intentional, warranting the imposition of enhanced damages.

**PRAYER FOR RELIEF**

For the reasons set forth above, the Plaintiffs Carol M. Highsmith and This is America!, Inc. respectfully request that the Court enter judgment for Ms. Highsmith and the Foundation, and against Defendants, as follows:

- a. Awarding Ms. Highsmith preliminary and permanent injunctive relief under 17 U.S.C. § 1203(b)(1) requiring Defendant Getty Images (US), Inc., to cease and desist from all actions alleged herein to violate 17 U.S.C. §§ 1202(a) and/or 1202(b);
- b. Awarding Ms. Highsmith preliminary and permanent injunctive relief under 17 U.S.C. § 1203(b)(1) requiring Defendants License Compliance Services, Inc., and Picscout, Inc. to cease and desist from all actions alleged herein to violate 17 U.S.C. §§ 1202(a) and/or 1202(b);
- c. Awarding Ms. Highsmith preliminary and permanent injunctive relief under 17 U.S.C. § 1203(b)(1) requiring Defendant Alamy, Ltd., to cease and desist from all actions alleged herein to violate 17 U.S.C. §§ 1202(a) and/or 1202(b);
- d. Awarding Ms. Highsmith damages under 17 U.S.C. §§ 1203(b)(3), (c)(1), (c)(2), and/or (c)(3)(B), including actual damages or, alternatively, statutory damages, if statutory damages are elected by Ms. Highsmith before judgment as provided in 17 U.S.C. § 1203(c)(3)(B), against Defendant Getty Images (US), Inc., for each of its violations of 17 U.S.C. §§ 1202(a) and/or (b);
- e. Pursuant to 17 U.S.C. § 1203(c)(4), increasing up to triple, as the Court considers just, the award of actual damages or, alternatively, statutory



damages to Ms. Highsmith against Getty Images (US), Inc., because within the last 3 years a final judgment was entered against Getty Images (US), Inc. in the *Morel v. Getty* case for another violation of 17 U.S.C. § 1202;

- f. Awarding Ms. Highsmith damages under 17 U.S.C. §§ 1203(b)(3), (c)(1), (c)(2), and/or (c)(3)(B), including actual damages or, alternatively, statutory damages, if statutory damages are elected by Ms. Highsmith before judgment is entered as provided in 17 U.S.C. § 1203(c)(3)(B), against Defendants License Compliance Services, Inc. and Picscout, Inc., for each of its violations of 17 U.S.C. §§ 1202(a) and (b);
- g. Awarding Ms. Highsmith damages under 17 U.S.C. §§ 1203(b)(3), (c)(1), (c)(2), and/or (c)(3)(B), including actual damages or, alternatively, statutory damages, if statutory damages are elected by Ms. Highsmith before judgment is entered, as provided in 17 U.S.C. § 1203(c)(3)(B), against Defendant Alamy, Ltd., for each of its violations of 17 U.S.C. §§ 1202(a) and (b);
- h. Awarding Ms. Highsmith costs under 17 U.S.C. § 1203(b)(4) against Defendant Getty Images (US), Inc.;
- i. Awarding Ms. Highsmith costs under 17 U.S.C. § 1203(b)(4) against Defendants License Compliance Services, Inc. and Picscout, Inc.;
- j. Awarding Ms. Highsmith costs under 17 U.S.C. § 1203(b)(4) against Defendant Alamy, Ltd.;
- k. Awarding Ms. Highsmith reasonable and necessary attorney's fees under 17 U.S.C. § 1203(b)(5) against Defendant Getty Images (US), Inc.;

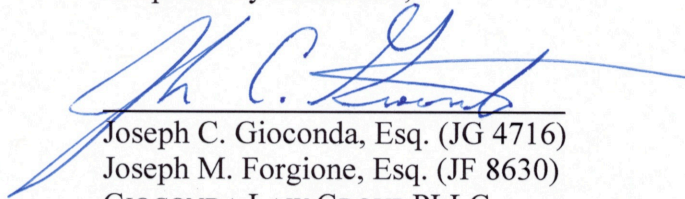
- l. Awarding Ms. Highsmith reasonable and necessary attorney's fees under 17 U.S.C. § 1203(b)(5) against Defendants License Compliance Services, Inc. and Picscout, Inc.;
- m. Awarding Ms. Highsmith reasonable and necessary attorney's fees under 17 U.S.C. § 1203(b)(5) against Defendant Alamy, Ltd.;
- n. Ordering under 17 U.S.C. § 1203(b)(6) the remedial modification or the destruction of any device or product involved in Getty Images (US), Inc.'s violations of 17 U.S.C. §§ 1202(a) and/or 1202(b) that is in the custody or control of Getty Images (US), Inc.;
- o. Ordering under 17 U.S.C. § 1203(b)(6) the remedial modification or the destruction of any device or product involved in License Compliance Services, Inc.'s or Picscout, Inc.'s violations of 17 U.S.C. §§ 1202(a) and/or 1202(b) that is in the custody or control of License Compliance Services, Inc.;
- p. Ordering under 17 U.S.C. § 1203(b)(6) the remedial modification or the destruction of any device or product involved in Alamy, Ltd.'s violations of 17 U.S.C. §§ 1202(a) and/or 1202(b) that is in the custody or control of Alamy, Ltd.;
- q. Awarding the Plaintiffs the Defendants' profits and all damages sustained by the Plaintiffs under 35 U.S.C. § 1117;
- r. Awarding the Plaintiffs all actual damages sustained by the Plaintiffs, treble damages, as well as their reasonable attorneys' fees, under New York General Business Law Section 349;

- s. Awarding the Plaintiffs all actual damages sustained by the Plaintiffs, as well as exemplary and punitive damages, under the New York Common Law on Unfair Competition;
- t. Awarding the Plaintiffs all available pre-judgment and post-judgment interest on all amounts of any judgment; and
- u. Awarding the Plaintiffs all other relief to which they may be justly entitled.

**A TRIAL BY JURY IS HEREBY DEMANDED.**

August 17, 2016

Respectfully Submitted,



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*Attorneys for Plaintiffs*  
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*and This Is America!, Inc.*



**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2016, I electronically transmitted the attached FIRST AMENDED COMPLAINT to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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