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NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SICRE, YEPIZ, CELAYA Y  
ASOCIADOS S.C.

Plaintiff,

vs.

YOUTUBE, INC., YOUTUBE, LLC, and  
HECTOR MANUEL GALINDO  
ALCARES,

Defendants.

CASE NO. **CV. 12 4295**

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
DAMAGES**

**EMC**

**DEMAND FOR JURY TRIAL**

Date Filed:

Trial Date: TBD

Plaintiff Sicre, Yepiz, Celaya y Asociados S.C. ("Plaintiff") by and for their  
Complaint against Defendants YouTube, Inc. and YouTube, LLC (collectively,  
"YouTube," which also refers to the YouTube.com website), and Hector Manuel  
Galindo Alcares ("Alcares") (all collectively, "Defendants"), aver as follows:

**NATURE OF ACTION**

1. Plaintiff brings this action to stop the willful copyright infringement of  
Defendant YouTube and Alcares. Defendants are profiting from the unlawful

1 reproduction and distribution of "Pepe El Toro" ("Plaintiff's work") without license  
2 from Plaintiffs.

3 2. Since its founding in February 2005, YouTube has become one of the most  
4 popular websites for viewing, uploading, and sharing video clips.

5 3. YouTube's popularity is in no doubt largely based on the large amounts of  
6 misappropriated copyrighted material that pervades the site.

7 4. YouTube permits, encourages, and enables users to view, upload, and share  
8 copyrighted materials because such copyrighted materials increase YouTube site  
9 traffic, leading to revenue.

10 5. YouTube directly profits from the unlawful uploading, viewing, and sharing  
11 of copyrighted materials, including the uploading Plaintiff's work by Alcares, on the  
12 YouTube website.

13 6. YouTube has allowed the unlawful uploading (by Alcares), viewing, and  
14 sharing of Plaintiff's work on the YouTube website.

15 7. Defendants' willful conduct has caused irreparable harm to Plaintiff, and  
16 without judicial intervention, Plaintiff will continue to suffer irreparable harm by  
17 Defendants.

18 8. For the foregoing reasons, and the reasons set forth below, Plaintiff seeks  
19 injunctive and other equitable relief and damages.

20  
21 **JURISDICTION AND VENUE**

22 9. This Court has subject matter jurisdiction over this action, which arises under  
23 the Copyright Act, 17 U.S.C. § 101 *et seq.*, pursuant to 28 U.S.C. §§ 1331 and  
24 1338(a).

25 10. This Court has personal jurisdiction over YouTube because each YouTube's  
26 principal place of business is located in this Judicial District.

1 11. This Court has personal jurisdiction over Alcares because Alcares has  
2 consented, in his counter-notification, to the jurisdiction of the Federal District Court  
3 where YouTube is located.

4 12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and  
5 1400(a) because YouTube's principal place of business is located in this Judicial  
6 District.

7 **THE PARTIES**

8 13. Plaintiff, Sicre, Yepiz, Celaya y Asociados S.C. is a Mexican Civil Company  
9 (Sociedad Civil) with its principal place of business at Tamaulipas No. 144a,  
10 Hermosillo, Sonora, Mexico.

11 14. Sicre, Yepiz, Celaya y Asociados is authorized to defend the copyright against  
12 the unauthorized use of materials registered under the name Producciones Rodríguez  
13 Hermanos S.A. ("Producciones Rodríguez Hermanos").

14 15. Defendant YouTube, Inc. is a corporation organized and existing under the  
15 laws of the State of Delaware with its principal place of business at 1000 Cherry  
16 Avenue, San Bruno, California and in this Judicial District.

17 16. Defendant YouTube, LLC is a limited liability company organized and  
18 existing under the laws of the State of Delaware and with its principal place of  
19 business at 1000 Cherry Avenue, San Bruno, California and in this Judicial District.

20 17. Alcares is a citizen of Mexico, whose stated address is Polonia 830, DF,  
21 10373 Mexico City, Mexico.

22  
23 **FACTUAL ALLEGATIONS**

24 18. YouTube is a popular website that allows its users to upload videos, music,  
25 sounds, and other materials, all of which can then be viewed or shared by its users.  
26 Since being founded in February 2005, YouTube has reached incredible popularity,  
27 with over 2 billion views a day. While the site is free to access and upload content,  
28

1 YouTube generates revenue through such streams as the placement of  
2 advertisements on top of videos being displayed and the running advertisements  
3 before the users' desired video is displayed.

4 19. YouTube is widely used for the purpose of viewing and sharing commercial  
5 content, including music, music videos, concerts, sporting events, television  
6 programs, movies, artistic works, and other content.

7 20. The copyright for the production "Pepe El Toro" is registered under the laws  
8 of Mexico and listed in the Public Registry of Author's Rights (Registro Público del  
9 Derecho del Autor) in the name of Producciones Rodríguez Hermanos. Such  
10 registration was certified on June 24, 1956.

11 21. Plaintiff will apply for a copyright in the United States for "Pepe El Toro."

12 22. Plaintiff is authorized to defend the copyright against the unauthorized  
13 use of materials registered under the name Producciones Rodríguez Hermanos.

14 23. A copy of "Pepe El Toro" was uploaded to YouTube by Alcares, under the  
15 username "eldescensurador," on April 11, 2012.

16 24. Producciones Rodríguez Hermanos was made aware of the upload of "Pepe El  
17 Toro".

18 25. Thereafter, Producciones Rodríguez Hermanos filed a complaint with  
19 Defendants in accordance with the United States Digital Millennium Copyright Act  
20 ("DMCA") § 17 U.S.C. 512.

21 26. Based on the DMCA Notice, Defendant YouTube removed "Pepe El Toro"  
22 from the YouTube website.

23 27. On April 16, 2012, Alcares filed a counter-notification, contesting his  
24 infringement of Plaintiff's work.

25 28. Defendants subsequently re-inserted the "Pepe El Toro" video on its YouTube  
26 site.

27

28

1 29. Defendants' acts have caused substantial and irreparable harm to Plaintiff.  
2 Defendants' acts have caused Plaintiff to (1) lose the ability to control the delivery,  
3 manner, and means by which its work is disseminated to the public; (2) directly and  
4 indirectly lose revenue as a result of unauthorized views on YouTube replacing sales  
5 through authorized channels; and (3) suffer from a tarnishing of Plaintiff's reputation  
6 as a result of "Pepe El Toro" being used to convey a political message Plaintiff may  
7 not support.

8 30. Defendants' acts are causing irreparable injury to Plaintiff that cannot be fully  
9 compensated or measured in money damages and will continue unless enjoined by  
10 this Court.

11  
12 **FIRST CLAIM FOR RELIEF**  
**(Direct Copyright Infringement—Against All Defendants)**

13 31. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the  
14 allegations contained in paragraphs 1 through 30 above.

15 32. Defendants' enumerated conduct is a direct copyright infringement of the  
16 Protected Work.

17 33. The foregoing acts of infringement by Defendants are willful, intentional, and  
18 purposeful and in disregard and of indifference to the rights of Plaintiff.

19 34. The foregoing acts constitute direct infringement of the exclusive rights in  
20 Plaintiff's work.

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22 **SECOND CLAIM FOR RELIEF**  
**(Contributory Copyright Infringement—Against Defendant YouTube)**

23 35. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the  
24 allegations contained in paragraphs 1 through 30 above.

25 36. YouTube has substantially contributed to the copyright infringement of  
26 Plaintiff's work by providing the site, means, and facilities for the copyright  
27 infringement of Plaintiff's work that has resulted from an unauthorized copy of  
28

1 Plaintiff's work being uploaded to YouTube, images from Plaintiff's work being  
2 displayed on YouTube, and every time a user views, shares, copies, or otherwise  
3 transmits such work. YouTube encourages, makes possible, and facilitates each  
4 infringement.

5 37. YouTube has actual and constructive knowledge of the infringing activities  
6 alleged herein.

7 38. The foregoing acts of infringement by YouTube are willful, intentional, and  
8 purposeful and in disregard and of indifference to the rights of Plaintiff.

9 39. YouTube's acts and conduct, as alleged above in this Complaint, constitute  
10 contributory copyright infringement.

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12 **THIRD CLAIM FOR RELIEF**  
**(Vicarious Copyright Infringement—Against Defendant YouTube)**

13 40. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the  
14 allegations contained in paragraphs 1 through 30 above.

15 41. YouTube has the right and ability to control the infringing activities of the  
16 individuals or entities that directly infringed Plaintiff's work.

17 42. YouTube has received direct financial and related benefits from the infringing  
18 activities of the individuals or entities that directly infringe Plaintiff's work.

19 43. The foregoing acts of infringement by YouTube are willful, intentional, and  
20 purposeful and in disregard and of indifference to the rights of Plaintiff.

21 44. YouTube's acts and conduct, as alleged above in this Complaint, constitute  
22 vicarious infringement of the exclusive rights in Plaintiff's work.

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24 **FOURTH CLAIM FOR RELIEF**  
**(Inducing Copyright Infringement—Against Defendant YouTube)**

25 45. Sicre, Yepiz, Celaya y Asociados realleges and incorporates by reference the  
26 allegations contained in paragraphs 1 through 30 above.

1 46. YouTube has infringed Plaintiff's work by inducing others to copy, adapt,  
2 distribute, perform, publicly display, and transmit Plaintiff's work.

3 47. YouTube provides access to their site with the object of promoting its use to  
4 infringe copyright.

5 48. The foregoing acts of infringement by YouTube are willful, intentional, and  
6 purposeful and in disregard and of indifference to the rights of Plaintiff.

7 49. YouTube's acts and conduct, as alleged above in this Complaint, constitute  
8 inducing copyright infringement of Plaintiff's work.

9  
10 **PRAYER**

11 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

12 1. That this Court award Plaintiff injunctive and other equitable relief, in  
13 accordance with the provisions of Rule 65 of the Federal Rules of Civil Procedure,  
14 enjoining Defendants, their officers, agents, servants, employees and attorneys, and  
15 all those in participation with them or any of them who receive actual notice of the  
16 Court's injunctive order:

17 A. From directly or indirectly reproducing, adapting, distributing,  
18 publicly displaying or performing, or otherwise infringing in any manner, any of the  
19 Protected Works, including but not limited to the works identified herein;

20 B. From causing, contributing to, inducing, enabling, facilitating, or  
21 participating in the infringement of the works identified herein;

22 C. Awarding such other equitable relief as will protect Plaintiff's  
23 rights to its copyrighted content and any exclusive rights in sound recordings  
24 protected by state law, including imposing a constructive trust on all the assets of  
25 Defendants, if necessary, to secure to Plaintiffs the benefits that the Constitution and  
26 Congress have promised them;

1           2.     For a declaration that Defendants' YouTube service willfully infringes  
2 Plaintiff's copyrights both directly and secondarily;

3           3.     For statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at  
4 Plaintiff's election, pursuant to 17 U.S.C. § 504(b), for actual damages plus  
5 Defendants' profits from infringement, as will be proven at trial;

6           4.     For Plaintiff's costs, including reasonable attorneys' fees, pursuant to 17  
7 U.S.C. § 505;

8           5.     That this Court find Defendants jointly and severally liable for all  
9 damages awarded;

10          6.     For pre- and post-judgment interest according to law; and

11          7.     For such other and further relief as this Court may deem just and proper.

12  
13                                     Respectfully submitted,

14 DATED: August 08, 2012

MICLEAN GLEASON LLP

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17                                     By 

Anne-Marie Dao

18                                     Attorneys for Plaintiff Sicre, Yepiz, Celaya y  
19                                     Asociados S.C.  
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