

1 C. YONG JEONG, ESQ. (SBN 255244)
jeong@jeonglikens.com
2 AMY CHOE, ESQ. (SBN 299870)
amy.choe@jeonglikens.com
3 JOHN R. BALDIVIA, ESQ. (SBN 313699)
john.baldivia@jeonglikens.com
4 JEONG & LIKENS, L.C.
5 1055 W. 7TH Street, Suite 2280
Los Angeles, California 90017
6 Tel. 213-688-2001
7 Fax. 213-688-2002

8 Attorneys for Plaintiff, LARRY PHILPOT

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13
14 LARRY PHILPOT, an Individual,
15 Plaintiff,
16 vs.
17 FACBOOK, INC., a Delaware Corporation;
18 and DOES 1-10, inclusive,
19 Defendants.

Case Number: 2:17-cv- 4474

PLAINTIFF’S COMPLAINT FOR:
1. COPYRIGHT INFRINGEMENT
2. VICARIOUS COPYRIGHT
INFRINGEMENT
3. CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

20
21 Plaintiff LARRY PHILPOT (“Plaintiff” or “PHILPOT”) by and through its undersigned
22 attorneys, hereby prays to this honorable Court for relief and remedy based on the following:
23

24 **INTRODUCTION**

25 Plaintiff is a well-known photographer who specializes exclusively in concert photography, and
26 has photographed thousands of musical artists including Chuck Berry, the Lumineers, REO
27 Speedwagon, Hall and Oates, John Mellencamp, Ted Nugent, Sir Paul McCartney, Mumford and
28 Sons, Buddy Guy, and countless other top tier artists. Plaintiff owns these photographs
exclusively earns a living licensing his photographs to businesses and musicians for use by print

1 and electronic publications. Plaintiff's business is predicated on his ownership of these
2 photographs and he spends a considerable amount of time and resources creating top-quality,
3 marketable and aesthetically-appealing photographs. Some examples of Plaintiff's customers
4 include Forbes, AOL, AXS-TV, Berkshire Hathaway, KISS, John Mellencamp, and Willie
5 Nelson. No party is authorized to reproduce, distribute, perform, display, transmit, or prepare
6 derivative works of Plaintiff's photographs without express permission from Plaintiff. This
7 action is brought to recover damages for direct, vicarious and contributory copyright
8 infringement arising out of the misappropriation of Plaintiff's exclusive photographs by the
9 Defendants, and each of them.

10 **JURISDICTION AND VENUE**

- 11 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et seq.*
12 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and (b).
13 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) in that this is
14 the judicial district in which a substantial part of the acts and omissions giving rise to the
15 claims occurred.

16
17 **PARTIES**

- 18 4. Larry Philpot ("Plaintiff") is an Individual and resident of the state of Indiana.
19 5. Plaintiff is informed and believes and thereon alleges that Defendant FACEBOOK, INC.
20 ("FACEBOOK"), is, and at all times herein mentioned was, a limited partnership organized
21 and existing under the laws of Delaware and doing business in California.
22 6. Defendant FACEBOOK, and Defendants DOES 1-10, inclusive, may be collectively referred
23 to as "Defendants."
24 7. Plaintiff is informed and believes and thereon alleges that some of Defendants DOES 1
25 through 3, inclusive, are owners of online websites, which DOE Defendants have
26 reproduced, distributed, performed, displayed, or transmitted Plaintiff's copyrighted
27 photographs (as hereinafter defined) without Plaintiff's knowledge or consent or have
28 contributed to said infringement. The true names, whether corporate, individual or otherwise,

1 and capacities of defendants sued herein as Does 1 through 3 are presently unknown to
2 Plaintiff at this time, and therefore, Plaintiff sues said defendants by such fictitious names.
3 Plaintiff will seek leave to amend this complaint to allege their true names and capacities
4 when the same have been ascertained. Plaintiff is informed and believes, and based thereon
5 alleges, that each of defendants designated as a DOE is responsible in some manner for the
6 events alleged herein and the damages caused thereby.

- 7 8. Defendants DOES 4 through 10, inclusive, are other parties not yet identified who have
8 infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's
9 copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true
10 names, whether corporate, individual or otherwise, and capacities of defendants sued herein
11 as DOES 4 through 10 are presently unknown to Plaintiff at this time, and therefore, Plaintiff
12 sues said defendants by such fictitious names. Plaintiff will seek leave to amend this
13 complaint to allege their true names and capacities when the same have been ascertained.
- 14 9. Plaintiff is informed and believes and thereupon alleges that at all times relevant hereto each
15 of Defendants acted in concert with each other, was the agent, affiliate, officer, director,
16 manager, principal, alter-ego, and/or employee of the remaining defendants and was at all
17 times acting within the scope of such agency, affiliation, alter-ego relationship and/or
18 employment; and actively participated in or subsequently ratified and adopted, or both, each
19 and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances,
20 including without limitation to full knowledge of each and every wrongful conduct and
21 Plaintiff's damages caused therefrom.

22
23 **CLAIMS RELATED TO DESIGN**

- 24 10. Plaintiff is the owner and author of four collections of photographs under titles "2009
25 Musician Photos", "All unpublished photos 2008 to May 2013", "Concert photographs
26 through August 21, 2013", and "Unpublished Photographs through 11.23.13".
- 27 11. Plaintiff applied for a copyright from the United States Copyright Office for the collections
28 of photographs listed above. A true and correct copy of each certificate of registration is

1 attached hereto as Exhibits A through D. True and correct copies of the photographs which
2 are the subject of this complaint are attached hereto as Exhibits E through H (“Subject
3 Photographs”).

4 12. Plaintiff was granted Registration No. VAu 1-132-411 effective on September 5, 2012 for the
5 Subject Photographs registered under title “2009 Musician Photos” (Exhibit E).

6 13. Plaintiff was granted Registration No. VAu 1-164-624 effective on August 21, 2013 for the
7 Subject Photographs registered under title “All unpublished photos 2008 to May 2013”
8 (Exhibit F).

9 14. Plaintiff was granted Registration No. VAu 1-164-648 effective on May 17, 2013 for the
10 Subject Photographs registered under title “Concert photographs through August 21, 2013”
11 (Exhibit G).

12 15. Plaintiff was granted Registration No. VAu 1-182-727 effective on December 9, 2013 for the
13 Subject Photographs registered under title “Unpublished Photographs through 11.23.13”
14 (Exhibit H).

15 16. Plaintiff is informed and believes and thereon alleges that Defendant FACEBOOK violated
16 Plaintiff’s rights under 17 U.S.C. § 106 by improperly using Subject Photographs without
17 Plaintiff’s consent for FACEBOOK’s community pages, redirect links which point to
18 FACEBOOK’s community pages, redirect links which point to third-party online music
19 services, and/or display on FACEBOOK’s open source community. True and correct copies
20 of such community pages, redirect links, and open source communities are attached hereto as
21 Exhibit I.

22 17. Plaintiff is informed and believes and thereon alleges that Defendant FACEBOOK generates
23 revenue as a result of the improper use of Subject Photographs, including but not limited to,
24 collecting advertising revenue on community pages and/or royalty payments for
25 implementation of the redirect links which incorporate Plaintiff’s Subject Photographs.

26 18. At various times Defendant FACEBOOK owned and controlled an online website
27 facebook.com and hhvm.com. Plaintiff’s investigation revealed that the Subject Photographs
28

1 were being distributed, publicly displayed, and publicly digitally performed under the
2 direction of the Defendants, and each of them.

3 19. None of the aforementioned acts by Defendants involving the Subject Photographs were
4 authorized by Plaintiff, and all were in violation of Plaintiff's intellectual property rights.
5

6 **FIRST CLAIM FOR RELIEF**

7 (For Copyright Infringement – Against All Defendants)

8 20. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
9 allegations contained in Paragraphs 1 through 19, inclusive, of this Complaint.

10 21. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
11 accessed the Subject Photographs through authorized or unauthorized reproductions of the
12 Subject Photographs in the possession of Wikimedia and/or DOE Defendants.

13 22. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
14 infringed Plaintiff's copyright by distributing, publicly displaying, and publicly digitally
15 performing the Subject Photographs through online websites, including without limitation,
16 Facebook.com.

17 23. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its
18 business in an amount to be established at trial.

19 24. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages
20 to its business in an amount to be established at trial.

21 25. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of
22 them, have obtained direct and indirect profits they would not otherwise have realized but for
23 their infringement of the Subject Photographs. As such, Plaintiff is entitled to disgorgement
24 of Defendants' profits directly and indirectly attributable to Defendants' infringement of the
25 Subject Photographs in an amount to be established at trial.

26 26. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
27 have committed acts of infringement alleged herein with actual or constructive knowledge of
28 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CLAIM FOR RELIEF

(For Vicarious Copyright Infringement – Against All Defendants)

27. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the allegations contained in Paragraphs 1 through 26 inclusive, of this Complaint.
28. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing product.
29. Plaintiff is informed and believes and thereon alleges that the Defendants had direct financial interest in the infringer’s activity by profiting from featuring the Subject Photographs on Facebook.com, while declining to exercise their right and/or obligation to stop or limit the infringement of the Subject Photographs.
30. By reason of the Defendants’, and each of their, acts of vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to established at trial, as well as additional general and special damages in an amount to be established at trial.
31. Due to Defendants’ acts of vicarious copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would have not otherwise realized but for their infringement of the Subject Photographs. As such, Plaintiff is entitled to disgorgement of Defendants’ profits directly and indirectly attributable to Defendants’ infringement of the Subject Photographs, an amount to be established at trial.
32. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of infringement alleged herein with actual or constructive knowledge of Plaintiff’s rights such that Plaintiff is entitled to a finding of willful infringement.

THIRD CLAIM FOR RELIF

(For Contributory Copyright Infringement – Against All Defendants)

1 33. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
2 allegations contained in Paragraphs 1 through 32 inclusive, of this Complaint.

3 34. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
4 knowingly induced, participated in, aided and abetted in and resultantly profited from the
5 illegal distribution, public display, or public digital performance of the Subject Photographs
6 as alleged herein above.

7 35. By reason of the Defendants', and each of their, acts of contributory copyright infringement
8 as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its
9 business in an amount to established at trial, as well as additional general and special
10 damages in an amount to be established at trial.

11 36. Due to Defendants' acts of contributory copyright infringement as alleged herein,
12 Defendants, and each of them, have obtained direct and indirect profits they would have not
13 otherwise realized bur for their infringement of the Subject Photographs. As such, Plaintiff is
14 entitled to disgorgement of Defendants' profits directly and indirectly attributable to
15 Defendants' infringement of the Subject Photographs, in an amount to be established at trial.

16 37. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
17 have committed acts of infringement alleged herein with actual or constructive knowledge of
18 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

22 **Against All Defendants**

23 With respect to Each Claim for Relief:

- 24 1. That Defendants, their agents and servants be enjoined from infringing Plaintiff's copyrights
25 in any manner;
- 26 2. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, the exact sum
27 to be proven at time of trial, or, if elected before final judgment, statutory damages as
28 available under the Copyright Act, 17 U.S.C. § 101 *et seq.*;

- 1 3. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17 U.S.C.
- 2 § 101 *et seq.*;
- 3 4. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 4 5. That Plaintiff be awarded costs of litigation; and
- 5 6. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

6
7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff hereby demands a trial by jury in this action pursuant to Federal Rule of Civil Procedure
9 38 and the Seventh Amendment of the Constitution.

10
11 Dated: June 15, 2017

Respectfully submitted,

12
13 /s/ C. Yong Jeong
14 C. Yong Jeong, Esq.
15 Attorneys for Plaintiff, LARRY PHILPOT
16
17
18
19
20
21
22
23
24
25
26
27
28