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16 Appearance *pro hac vice* (application pending)

17 Attorneys for Plaintiff
18 KRISTEN PIERSON

19 UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA

21 KRISTEN PIERSON,) Case No.:
22 Plaintiff,)
23 vs.) COMPLAINT FOR COPYRIGHT
24 TWITTER, INC.,) INFRINGEMENT
25 Defendant.) DEMAND FOR JURY TRIAL

26 Plaintiff, KRISTEN PIERSON (“Plaintiff” OR “Pierson”), brings this complaint in the United States
27 District Court for the Northern District of California against TWITTER, INC. (“Defendant” or
28 “Twitter”), alleging as follows:

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PARTIES

1. Pierson is an internationally-published photographer specializing in music, portraiture, and commercial photography. A selection of Pierson’s clients include: Alternative Press, Rolling Stone, MSN.com, KERRANG! Magazine, Roadrunner Records, Type 3 Media, Number Magazine, The Providence Phoenix, Limelight Magazine, Three Days Grace, Ten31 Productions, JKB Entertainment Group, Epiphone, Brown/Trinity Rep M.F.A. Acting Class of 2013, Roosters Men's Grooming Center, Options Magazine, and The Quins. Pierson resides in Rhode Island.

2. On information and belief, Twitter is a Foreign Stock Corporation existing under the laws of the state of Delaware, with headquarters in San Francisco, California. Twitter is an online news and social networking service where users post and interact with “Tweets.” Twitter has more than 100 million users who post over 350 million tweets per day.

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).

4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

5. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b), in that Defendant conducts substantial business in the State of California and in this judicial district.

INTRADISTRICT ASSIGNMENT

6. This action arises out of the failure of defendant Twitter to remove in a timely fashion an infringing use of plaintiff Pierson’s copyrighted photograph. Twitter has its headquarters in San Francisco, California, and therefore this matter arises in San Francisco County. However, this is an Intellectual Property Action which, under Northern District of California Local Rule 3-2, is an “excepted categor[y]” that shall be assigned on a district-wide basis.

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2 FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

3 7. Pierson captured the photograph, “Alice in Chains Perform at Lupo’s in Providence, RI on
4 October 31, 2006” (“Copyrighted Photograph”) on November 1, 2006 at Lupo’s Heartbreak Hotel in
5 Providence, Rhode Island. [EXHIBIT 1].

6 8. On or about November 1, 2006, Pierson posted the Copyrighted Photograph on
7 www.type3media.com (Last visited September 22, 2017).

8 9. Pierson deposited copies of the Copyrighted Photograph with the United States Copyright Office
9 and paid the required registration fee in accordance with 17 U.S.C. §§ 408-9, 708.

10 10. Pierson registered Copyrighted Photograph with the United States Copyright Office on February
11 23, 2007 (Registration No.: VAu 735-153). [EXHIBIT 2].

12 11. Twitter operates an Internet-based service that allows its users to send 140-character messages
13 through Twitter’s website and mobile site, client applications, or third-party applications. Twitter calls
14 its 140-character messages “Tweets.” Tweets can contain a link to a video or image that is either hosted
15 on Twitter’s servers, or on third-party servers. Twitter has thousands of users in this District, including
16 individuals, corporations, and government entities. Hundreds of thousands of Tweets are sent to and
17 from this District every month.

18 12. Beginning on or about March 18, 2017, a Twitter user (Karen Juanita, @juanitabaila) (“KJ”)
19 copied and attached the Copyrighted Photograph to a Tweet with the text, “Happy Birthday Jerry
20 Cantrell. My world wouldn’t be the same without you, as I dance to your music just about every day.”

21 13. KJ copied the Copyrighted Photograph without license or permission from Pierson.

22 14. KJ’s Tweet was displayed at the following URL:

23 • www.twitter.com/juanitabaila/status/843233321006120960 (Last visited September 22, 2017)
24 (“Infringing Use”). [EXHIBIT 3].

25 15. The Infringing Use was hosted either on Twitter or on third-party servers.

26 16. As a result of the Infringing Use, the Copyrighted Photograph was copied and posted by Twitter
27 to the following URLs:

28 • www.twitter.com/juanitabaila/status/843233321006120960. [EXHIBIT 4].

1 • www.pbs.twimg.com/media/C7PEO8EX4AQZcZG.jpg. [EXHIBIT 5].

2 17. On information and belief, Twitter can remove each Infringing Use that is hosted on Twitter.
3 Twitter can also disable each Tweet advertising or linking to an Infringing Use, regardless of whether
4 the photograph is hosted on Twitter's servers or on the Twitter user's or third-party servers.

5 18. Twitter has registered an agent with the United States Copyright Office for receipt of Digital
6 Millennium Copyright Act ("DMCA") notices.

7 19. On April 18, 2017, Pierson sent a notice to Twitter's registered agent regarding the Infringing
8 Use. Pierson's notice is titled, "DMCA TAKEDOWN NOTICE for Copyright Infringement (Alice-in-
9 Chains-6)." [EXHIBIT 6].

10 20. On April 26, 2017, Twitter responded to Pierson's notice by email. Twitter's response is titled,
11 "Case# 56943940: DMCA TAKEDOWN NOTICE for Copyright Infringement (Alice-in-Chains-6)
12 [ref:_00DA0K0A8._5004A1CbZny:ref]." [EXHIBIT 7].

13 21. As a result of Twitter's response detailed in Paragraph 19, Pierson relied on Twitter's
14 representation that Twitter would "disable access" to the Infringing Use.

15 22. Pierson never authorized the Infringing Use.

16 23. Twitter did not remove or disable the Infringing Use until July 25, 2017, Ninety (90) days later.

17
18 COUNT I: DIRECT INFRINGEMENT OR IN THE ALTERNATIVE CONTRIBUTORY
19 INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.
20

21 24. Pierson incorporates herein by this reference each and every allegation contained in each
22 paragraph above.

23 25. Pierson is, and at all relevant times has been, the copyright owner or licensee of exclusive rights
24 under United States copyright law with respect to the Copyrighted Photograph, which are the subject of
25 a valid and complete application before the United States Copyright Office for Certificate of Copyright
26 Registration by the Register of Copyrights.

27 26. The Copyrighted photograph is copyrightable subject matter under 17 U.S.C. § 102(a)(5).
28

1 27. Pierson registered the copyright in the Copyrighted Photograph with the United States Copyright
2 Office.

3 28. The exclusive rights granted to Pierson under the Copyright Act are the exclusive rights to
4 reproduce the Copyrighted Photograph, prepare derivative works based on the Copyrighted Photograph,
5 distribute copies of the Copyrighted Photograph, and display the Copyrighted Photograph publicly.

6 29. Without the permission or consent of Pierson, the Copyrighted Photograph was reproduced,
7 derivative works were made from it, copies were distributed of it, and it was displayed on Twitter.

8 30. Pierson's exclusive rights in the Copyrighted Photograph were violated.

9 31. Twitter induced, caused, or materially contributed to the further copyright infringement of the
10 Copyrighted Photograph.

11 32. Twitter had actual knowledge of the direct infringement and contributory infringement. Pierson
12 provided notice to Twitter in compliance with the DMCA, and Twitter failed to expeditiously disable
13 access to or remove the Copyrighted Photograph from their servers.

14 33. Twitter acted willfully.

15 34. Alternatively, Twitter directly infringed Pierson's copyrights by continuing to allow public
16 access to the Copyrighted Photograph on Twitter's server or on servers controlled by Twitter, or through
17 access controlled by Twitter to servers controlled by third parties.

18
19 PRAAYER FOR RELIEF

20 WHEREFORE, Pierson prays for judgment against Twitter as follows:

21 A. Declaring that Twitter's unauthorized conduct violates Pierson's rights under the Federal
22 Copyright Act;

23 B. Immediately and permanently enjoining Twitter, their officers, directors, agents, servants,
24 employees, representatives, attorneys, related companies, successors, assigns, and all others in active
25 concert or participation with them from copying and republishing Pierson's Copyrighted Photograph
26 without consent or otherwise infringing Pierson's copyright or other rights in any manner;

27 C. Ordering Twitter to account to Pierson for all gains, profits, and advantages derived by Twitter
28 by their infringement of Pierson's copyright;

1 D. Awarding Pierson actual damages, pursuant to 17 U.S.C. § 504(b), for Twitter’s copyright
2 infringement in an amount to be determined at trial;

3 E. Alternatively, if Pierson elects, an award of statutory damages, pursuant to 17 U.S.C. § 504, in
4 an amount to be determined at trial;

5 F. A Judgment that Twitter’s infringement was willful and an increased statutory damage award 17
6 U.S.C. § 504(c)(2);

7 G. Awarding Pierson her costs, reasonable attorneys’ fees, and disbursements in this action,
8 pursuant to 17 U.S.C. § 505; and

9 H. Awarding Pierson such other and further relief as is just and proper.

10
11 Dated this 9th day of November, 2017

FARRIMOND LAW OFFICES,
a Professional Corporation

12
13
14 /s/ Randall S. Farrimond
15 RANDALL S. FARRIMOND
16 Attorneys for Plaintiff
17 KRISTEN PIERSON

18
19
20 **JURY DEMAND**

21 Pierson hereby demands a trial by jury on all claims for which there is a right to jury trial.

22
23
24 Dated this 9th day of November, 2017

FARRIMOND LAW OFFICES,
a Professional Corporation

25
26
27 /s/ Randall S. Farrimond
28 RANDALL S. FARRIMOND
Attorneys for Plaintiff
KRISTEN PIERSON

EXHIBITS

EXHIBIT 1

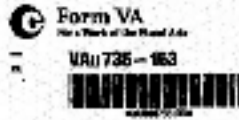


EXHIBIT 2



This Certificate is sent under the seal of the Copyright Office in accordance with Title 17, United States Code, whereby that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
 Register of Copyrights, United States of America



FORMAL DEPOSIT RECEIPT
FEB 23 2007

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

Title of This Work **Photograph Image by Kristen Peterson 82006 to 25007** NATURE OF THIS WORK **Photograph**

Previous or Alternative Title

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the work has appeared. Title of Collection **Work**

If published here published elsewhere: Edition **1** Number **1** Last Date On Page **1**

NAME OF AUTHOR **Kristen A. Peterson** DATE OF BIRTH AND DEATH
 Year Month Day **1972 06 06**

Was this contribution to the work a "work made for hire"? Yes No OR Author's Nationality or Domicile **U.S.A.** Was This Author's Contribution to the Work Anonymous? Yes No
 Pseudonymous? Yes No
 If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate boxes. See instructions.
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

Name of Author **Kristen A. Peterson** Date of Birth and Death
 Year Month Day **1972 06 06**

Was this contribution to the work a "work made for hire"? Yes No OR Author's Nationality or Domicile **U.S.A.** Was This Author's Contribution to the Work Anonymous? Yes No
 Pseudonymous? Yes No
 If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate boxes. See instructions.
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

Year in Which Creation of This Work Was Completed **2007** Date and Place of First Publication of This Particular Work
 Country of Publication **USA** Month Day Year

COPYRIGHT CLAIMANT(S) Name and address must be given once if the claimant is the same as the author given in space 4.
Kristen A. Peterson, 8 Nichols Lane, Coventry, RI 02816

Transfer of Copyright If the claimant is not the author, the transfer of copyright from the author(s) named in space 4, gives a legal indication of how the claimant obtained ownership of copyright.

MORE ON BACK DO NOT WRITE HERE

NOTE
 Under the law, the "author" of a "work made for hire" is generally the employer, not the individual who actually created the work. The copyright in the work may be owned by the employer, not the individual who created the work. If the work is not a "work made for hire," the individual who created the work is the author.

APPLICATION RECEIVED
FEB 23 2007
 TWO DEPOSITS RECEIVED
FEB 23 2007
 FILES RECEIVED

EXAMINED BY JFB FORM 7A

CHECKED BY _____

CORRESPONDENCE

Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTRIBUTION SHEET.

PREVIOUS IDENTIFICATION Has registration for this work, or for an earlier version of this work, already been made to the Copyright Office?

Yes No If your answer is "Yes," give a number corresponding to the registration (Check appropriate box):

a. This is the first published edition of a work previously registered to support that work.

b. This is the first published edition of the work, as shown by space 8 on this application.

c. This is a changed version of the work, as shown by space 8 on this application.

If your answer is "No," give Previous Registration Number: _____ Year of Registration: _____

DERIVATIVE WORKS OR COMPILATION Complete both spaces 8 and 9. Author's derivative work registration only (do not use for a compilation).

a. Preexisting Material. Identify any preexisting work or works that this work is based on or derived from.

b. Material Added to This Work. Give a brief, general statement of the material that has been added to this work and to which copyright is claimed.

DEPOSIT ACCOUNT If an explanation for fee to be charged is a Deposit Account available to the Copyright Office, give name and number of Account Here: _____ Account Number: _____

CONSPICUOUSNESS Give name and address to which correspondence should be addressed by you. (Name Address Apt/Chp/Box/Zip) _____

Kristen A. Pearson, 8 Nichole Lane, Coventry, RI 02816

Area code and telephone number: (401) 399-3220 File number: C 1

E-mail: kristen@kristen.com

Check only one in **Work**

Enter copyright statement

Denial of exclusive right(s)

Discontinued copy of _____ Name of author or other claimant, if name is different from a

of the work identified in this application and the Predecessors' work by you in this application are covered by the best of your knowledge.

Typed or printed name and date. If this application gives date of publication in space 8, do not sign and submit it before that date.

Kristen A. Pearson Date: 2/11/2007

Handwritten signature (X) Kristen A. Pearson Date: 2/11/07

Certificate will be mailed in return envelope to this address:	Name: Kristen A. Pearson	• Complete all necessary steps • Sign your application in space 8 9 1. Application fee 2. Registration fee (may be in check or money order payable to: Office of Copyright) 3. Deposit material Office of Copyright Copyright Office 975 North Capitol Street, NE Washington, DC 20540-0008
	Number/Street: 8 Nichole Lane	
	City/State/Zip: Coventry, RI 02816	

U.S. Copyright Office, 975 North Capitol Street, NE, Washington, DC 20540-0008. For information on a material that is being submitted for copyright registration, contact the Copyright Office at (202) 707-5949. If by any means this form is not in accordance with the application, double check all items before filing.

FORM 7A (7-16) USE PREVIOUS EDITIONS. PUBLIC DOMAIN WORK

EXHIBIT 3

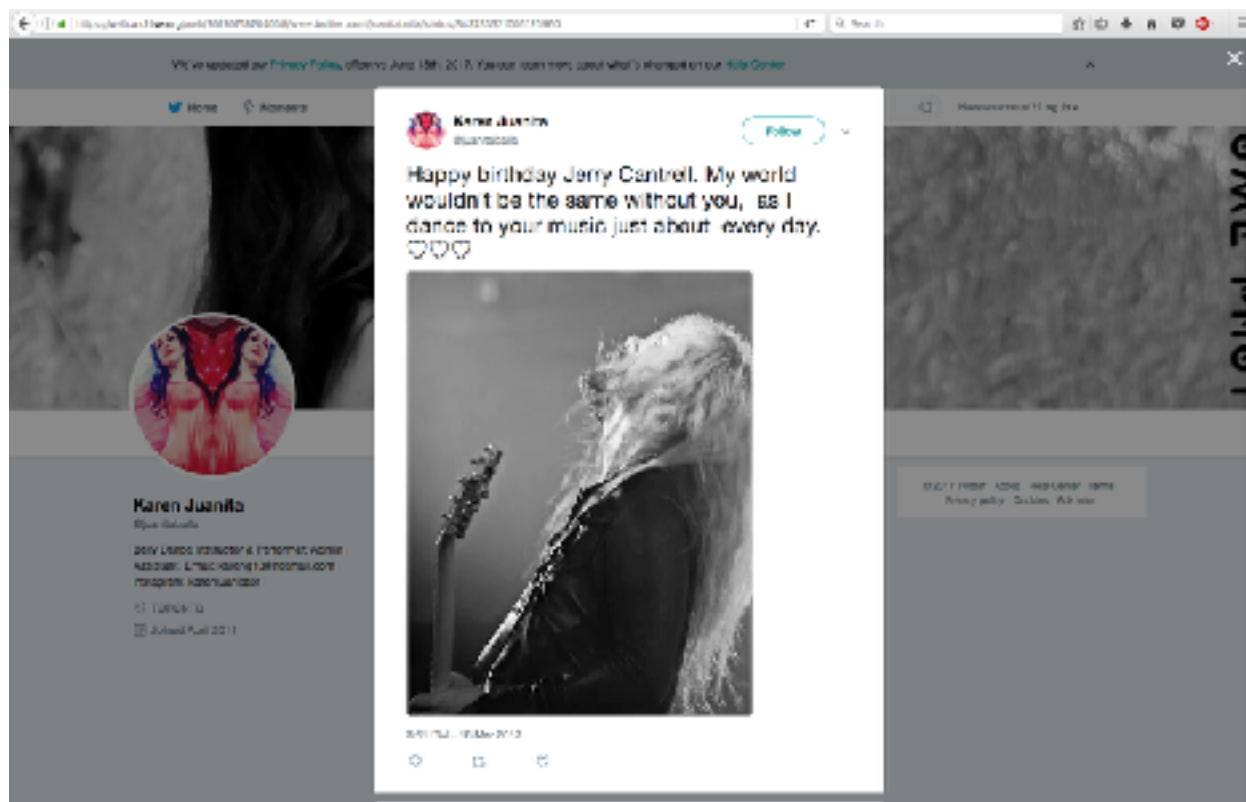


EXHIBIT 4

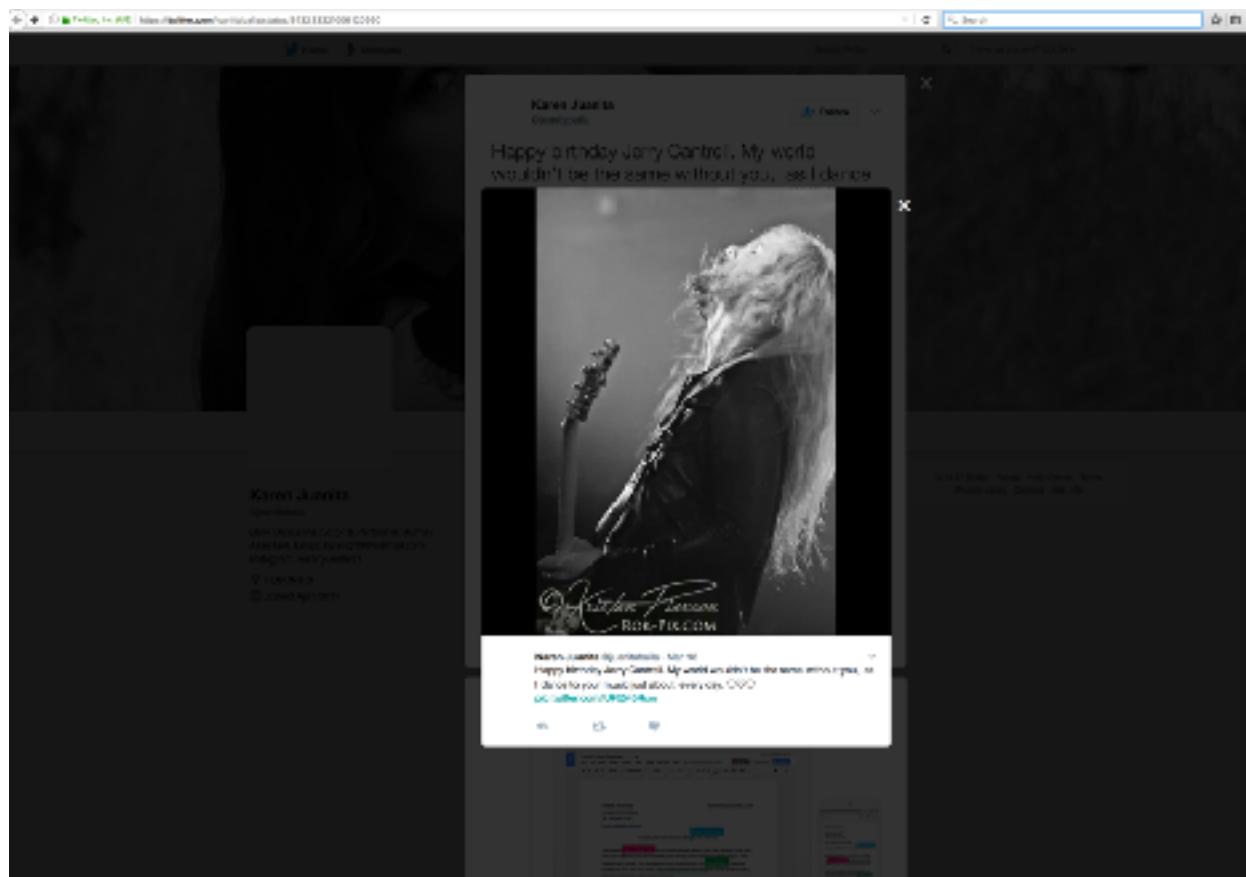


EXHIBIT 5

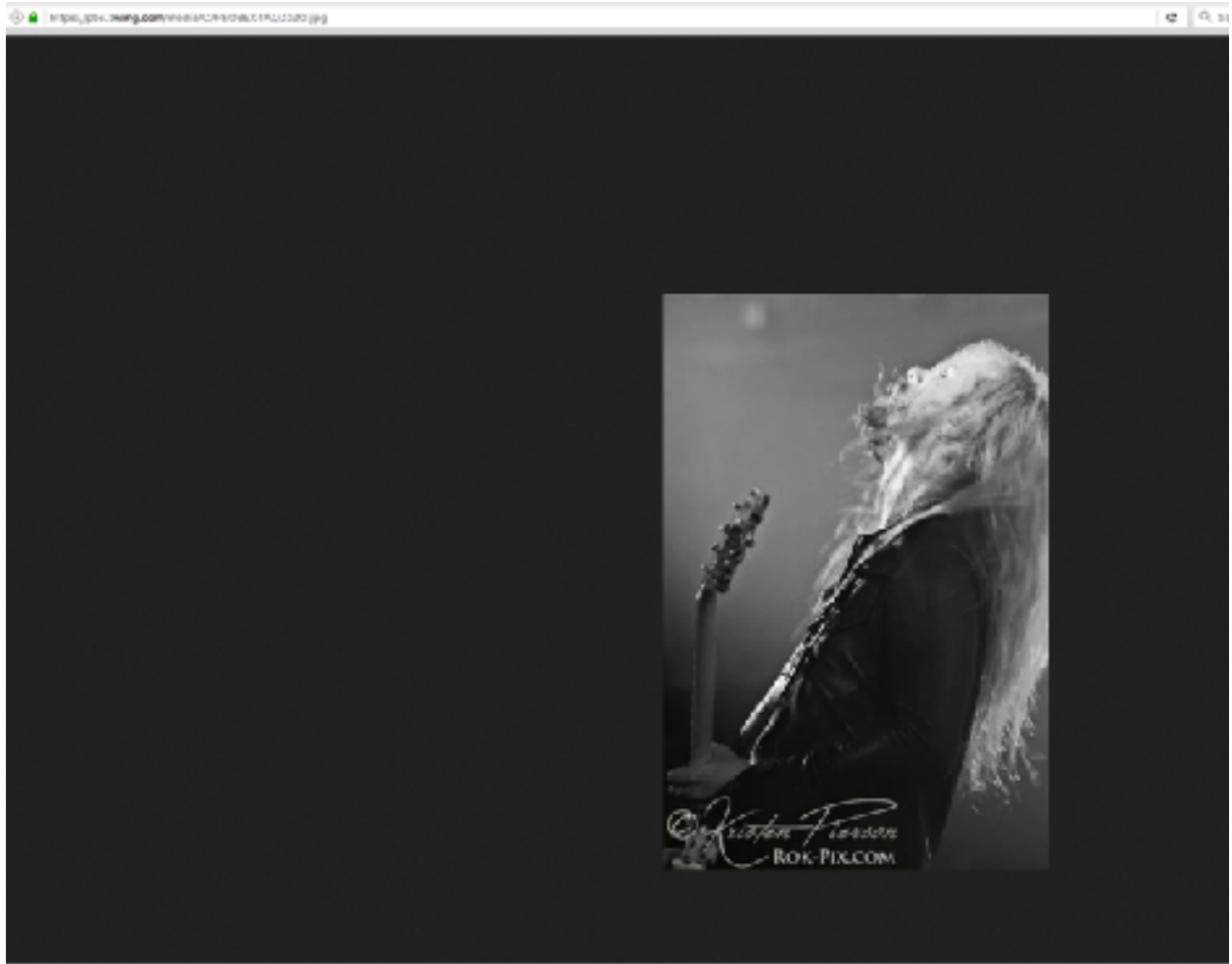


EXHIBIT 6



Kristen Pierson <kristenpierson@gmail.com>

DMCA TAKEDOWN NOTICE for Copyright Infringement (Alice-in-Chains-6)

Kristen Pierson <legal@kristenpierson.com>
To: copyright@twitter.com

Tue, Apr 18, 2017 at 7:51 PM

DMCA TAKEDOWN NOTICE for Copyright Infringement (Alice-in-Chains-6)

My name is Kristen Pierson. I am a photographer who can be reached at:

Kristen Pierson Photography
P.O. Box 97
Coventry, RI 02816
401-484-1606
email: legal@kristenpierson.com

I am the author and copyright owner of the following photograph:



The photograph appears on my website at:

http://kristenpierson.photoshelter.com/gallery-image/Alice-In-Chains-10-31-2006/G0000GGE.uRDyKxc/I0000aaAoo7dUklc/C0000P_cDcsiJ8vo

The copyright for the photograph is registered with the US Copyright office.

The photograph appears without my authorization or authority of the law, and at the following URLs on your servers:

<https://pbs.twimg.com/media/C7PEO8EX4AQZcZG.jpg>

<https://twitter.com/juanitabaila/status/843233321006120960>

These are infringements of my copyrights.

This letter is official notification under the provisions of Section 512 of the Digital Millennium Copyright Act to effect removal of the above-reported infringements. I demand that you immediately remove my photograph from the URLs cited above. Please be advised that law requires you to "expeditiously remove or disable access to" the photograph upon receiving this notice. Noncompliance will result in a loss of immunity for copyright infringement liability under the DMCA.

I have a good faith belief that uses of the photograph in the manner complained of here are not authorized by me (i.e., the copyright owner) or the law. I have a good faith belief that each of the uses does not qualify as Fair Use under 17 USC §107. I swear under penalty of perjury that (1) I am the copyright holder and (2) that the information provided in this notice is accurate to the best of my knowledge.

Please email a prompt response indicating that you have complied with this notice.

Sincerely,
s/Kristen Pierson



EXHIBIT 7



Kristen Pierson <kristenpierson@gmail.com>

Case# 56943940: DMCA TAKEDOWN NOTICE for Copyright Infringement (Alice-in-Chains-6) [ref:_00DA0K0A8._5004A1CbZny:ref]

support@twitter.com <support@twitter.com>
To: "legal@kristenpierson.com" <legal@kristenpierson.com>

Wed, Apr 26, 2017 at 6:03 AM

Hello,

In response to your notice of claimed infringement, we've disabled access to the reported materials on the site. Please note it may take some time for the action to propagate.

Thanks,

Twitter

[Help](#)

Twitter, Inc. 1355 Market Street, Suite 900 San Francisco, CA 94103

ref:_00DA0K0A8._5004A1CbZny:ref