

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DANIELLE FLEMING,  
AUSTIN FLEMING,  
AND SOLD IN A SNAP LLC

Plaintiffs

V.

CIVIL ACTION NO. 3:21-cv-01364

VERIZON MEDIA INC. D/B/A  
YAHOO! A/K/A YAHOO! SPORTS  
A/K/A YAHOO! LIFE A/K/A  
YAHOO! NEWS AND  
OATH INC. D/B/A YAHOO! A/K/A  
YAHOO! SPORTS A/K/A  
YAHOO! LIFE A/K/A  
YAHOO! NEWS AND  
KELSEY CLARK

Defendants

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs Danielle Fleming, Austin Fleming, and Sold in a Snap LLC (hereinafter sometimes referred to collectively as "Plaintiffs"), by and through their below-identified attorneys, complain of Verizon Media Inc. d/b/a Yahoo! a/k/a Yahoo! Sports a/k/a Yahoo! Life a/k/a Yahoo! News (referred to herein as "Verizon"), Oath Inc. d/b/a Yahoo! a/k/a Yahoo! Sports a/k/a Yahoo! Life a/k/a Yahoo! News (referred to herein as "Oath"), and Kelsey Clark (referred to herein as "Clark"). Verizon, Oath, and Clark are sometimes jointly referred to herein as "Defendants". Plaintiffs hereby bring this action against Defendants for copyright infringement under Section 501 of the Copyright Act. For such cause of action, Plaintiffs would show the Court the following:

### JURISDICTION AND VENUE

1. This action arises under the Copyright Act, 17 U.S.C. § 101, *et. seq.* The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1131 and 1338(a).

2. This Court has personal jurisdiction over the Defendants Verizon and Oath because Defendants reside in and/or transact business in Texas on a regular and ongoing basis, including in this District. Plaintiffs are informed and believe and thereon allege that the Court has jurisdiction over Clark because she was an employee or agent of the Defendants in the course and scope of her employment or agency for Defendants Verizon and Oath at all relevant times, and it could reasonably anticipated that her alleged acts would have an effect in this District and Division.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c) and 28 U.S.C. § 1400(a).

### THE PARTIES

4. Plaintiffs Danielle Fleming and Austin Fleming are professional photographers that reside in Waco, Texas. Danielle Fleming and Austin Fleming are sometimes referred to jointly herein as the “Flemings”.

5. Plaintiff Sold in a Snap LLC is a Texas Limited Liability Company with its principal office located at 462 Shiloh Trail, China Spring, Texas 76633. Sold in a Snap LLC is sometimes referred to herein as “Snap”.

6. Plaintiffs are informed and believe and thereon allege that Defendants Verizon and Oath are both Delaware Corporations that are registered to do business in Texas, both maintain a registered agent for service of process in this District and Division, both routinely transact business within this District and Division, and they share

an office in this District and Division which is located at 1680 N. Glenville Drive, Suite 100, Richardson, Texas 75081. As such, Defendants Verizon and Oath “may be found” in this District and Division. Both Defendants Verizon and Oath may each be served with process in care of their registered agent in this state: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

7. Plaintiffs are informed and believe and thereon allege that Defendant Clark was an employee or agent of Defendants and in the course and scope of her employment of agency for Defendants at all relevant times. Defendant Clark resides at 2050 9<sup>th</sup> St., Detroit, Michigan 48216 and me served by personal service at that address.

#### STATEMENT OF FACTS

8. The Flemings are a husband and wife professional photography team. Their livelihood depends upon the money they make from their photography. In June, 2018 the Flemings authored at least sixty eight (68) individual photographs (the “Cherry Creek Photos”) that were primarily photographs of a residence located at 1649 Cherry Creek Drive, Woodway, Texas 76712 (the “Faceless Bunker Home”).<sup>1</sup> Some of the Cherry Creek Photos are of various rooms and various features inside the Faceless Bunker Home, some are photos of various external views of the Faceless Bunker Home taken from various vantage points and with varying lighting, and some are photographs of nearby attractions such as a nearby natural spring and Lake Waco.

9. All of the Cherry Creek Photos were individually copyright registered by the United States Copyright Office by no later than September 13, 2018, which was within three months of their initial publication. A listing of the Cherry Creek Photos by

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<sup>1</sup> Woodway, Texas is a suburb of Waco, Texas.

number, along with the respective copyright registration numbers and author for each photograph, is provided as Exhibit 1 to this Complaint.

10. The Cherry Creek Photos were made available to a real estate agent that was a customer of Snap for use by that customer in the customer's own marketing activities regarding the Faceless Bunker Home. Plaintiffs retained all copyrights in and to the Cherry Creek Photos at the time that they were provided to the customer. At the time the Cherry Creek Photos were provided to the customer, all of the photos authored by Danielle Fleming contained copyright management information embedded in the digital photo identifying the author/rightsholder concerning the copyrights in and to the Cherry Creek Photos. The Cherry Creek Photos were uploaded to the local MLS used by real estate agents who are members of the Waco Association of Realtors.

#### DEFENDANTS' INFRINGING ACTIVITIES

11. Unfortunately, and without Plaintiffs' prior permission or authorization, a number of the Cherry Creek Photos were obtained by Defendants through the Internet and were subsequently used and published by the Defendants (the "Infringed Photos") without attribution to Plaintiffs or the real estate agent(s) that were Plaintiffs' customer.

12. On June 22, 2018, Defendants published at least eight (8) of the Infringed Photos on their Yahoo! Sports website in an article written by Defendant Clark, with the publication in question being located at <https://sports.yahoo.com/live-chip-joanna-gaines-designed-163000316.html>. A copy of a portion of this publication by Defendants is shown in Exhibit 2 filed herewith. The eight Infringed Photos that appear in the June 22, 2018 article by Defendant Clark that was published by Defendants Verizon and Oath are identified by the following U.S. Copyright Registration Numbers: VA 2-118-572; VA 2-

118-554; VA 2-118-564; VA 2-118-560; VA 2-118-561; VA 2-118-548; VA 2-118-562; VA 2-118-543. The Yahoo! Sports website is geared towards sports and issues connected to or related to various sports.

13. Also on June 22, 2018, Defendants separately used and published the same eight (8) Infringed Photos on their Yahoo! Life website which is located at <https://www.yahoo.com/lifestyle/live-chip-joanna-gaines-designed-163000010.html>. A copy of a portion of this publication is shown in Exhibit 3 filed herewith. As can be seen from reviewing Exhibit 3, the article is essentially the same article authored by Defendant Clark, but it was published using a different website and/or different URL that is geared towards lifestyle issues and not sports.

14. On or about June 28, 2018, Defendants Verizon and Oath separately published a different article on one of their Yahoo! News websites that included nine (9) of the Infringed Photos on their website that is located at the following URL: <https://sg.news.yahoo.com/fixer-uppers-faceless-bunker-home-152200943.html>. A copy of this publication (with advertisements and unrelated hyperlinks redacted) is shown in Exhibit 4 filed herewith. The nine Infringed Photos that appear in the June 28, 2018 article that was published by Defendants Verizon and Oath are identified by the following U.S. Copyright Registration Numbers: VA 2-118-949; VA 2-118-952; VA 2-118-965; VA 2-118-558; VA 2-118-964; VA 2-118-961; VA 2-118-938; VA 2-118-548; VA 2-118-934. Out of the nine Infringed Photos published in the June 28, 2018 article, it appears that only one of the Infringed Photos was previously included in the June 22, 2018 article authored by Defendant Clark that was published by Defendants Verizon and Oath.

15. All three of the articles in question, including the total of sixteen (16) distinct Infringed Photos, remain on display on Defendants' various websites / URLs shown above despite the fact that the Faceless Bunker Home was taken off the market several times during the time period between June 22, 2018 and the present date. Moreover, all of the Infringed Photos have continued to be used and displayed by Defendants through the present date despite the fact that the Faceless Bunker Home was sold on or about December 21, 2020 and has not been on the market since that time.

16. Plaintiffs are informed and believe and thereon allege that Defendants have profited during the period of June 22, 2018 through the present date from their continued use and publications of the sixteen Infringed Photos, including but not limited to obtaining advertising revenue from various third parties that advertise on or in connection with the websites/URLs that are listed above.

ALLEGATIONS COMMON TO ALL DEFENDANTS

17. Defendants had no license to use any of the Infringed Photos.

18. Defendants did not remit any license fee to use any of the Infringed Photos.

19. Defendants took no steps or actions to inquire into obtaining, or to comply with, any license to use the Infringed Photos.

20. The Infringed Photos were originally provided to Snap's customer with copyright management information embedded within the individual photographs authored by Danielle Fleming. It appears that such copyright management information was removed or altered prior to Defendants' use of the photographs, but it is unclear at this time if the Defendants are responsible for such acts. If they were, such acts may

constitute actionable removal, alteration, or destruction of copyright management information.

21. Defendants did not provide any attribution or credit to Plaintiffs for their uses of the Infringed Photos. Defendants did not list Plaintiffs' customer or provide any information regarding the real estate listing in connection with their infringing use of the Infringed Photos.

### CAUSES OF ACTION

#### COUNT I

#### COPYRIGHT INFRINGEMENT (17 U.S.C. §501)

22. Plaintiffs re-allege and incorporate by reference the preceding Paragraphs 1 - 21.

23. Defendants' conduct is in violation of the U.S. Copyright Act, other applicable laws, and Plaintiffs' exclusive rights in and to the Infringed Photos.

24. Defendants' past and present copyright infringements regarding the Infringed Photos was and is willful.

25. Plaintiffs are entitled to injunctive relief, including but not limited to an injunction restraining Defendants and their officers, agents, representatives, employees, and all other persons acting in concert with Defendants, from infringing Plaintiffs' copyrights in and to the Infringed Photos and from engaging in any further acts that are in violation of the U.S. Copyright Act, all other applicable laws, and Plaintiffs' exclusive rights.

26. As a result of Defendants' multiple and ongoing copyright infringements, Plaintiffs have suffered actual damages. Pursuant to 17 U.S.C. §504(b), Plaintiffs are

entitled to recover from Defendants the actual damages that have been sustained as a result of Defendants' multiple copyright infringements, including without limitation, any and all gains, profits, and advantages of the Defendants, and all lost profits of the Plaintiffs. Plaintiffs also seek an award of their attorney's fees, post judgment and pre judgment interest, costs of court, and all other economic damages of any type or kind that are recoverable for copyright infringement.

27. Alternatively, Plaintiffs may elect to recover statutory damages from Defendants pursuant to 17 U.S.C. §504(c) for each of Defendants' infringements regarding each of the Infringed Photos in an amount of at least \$750 and up to \$30,000 for each violation of 17 U.S.C. §501. To the extent the Court determines the infringements were committed willfully, the Court may increase the award to a sum of not more than \$150,000 per infringement.

#### JURY DEMAND

28. Plaintiffs hereby demand a trial by jury on all issues which are triable.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. That Defendants be held liable for copyright infringement, under the Copyright Act 17 U.S.C. § 501 *et seq.*;
2. That an accounting be ordered of all of the profits realized by Defendants, or others acting in concert or participation with them, from Defendants' unauthorized use and publications of the Infringed Photos and therefore infringements of Plaintiffs' copyrights;

3. That, with regard to the first Count above, Plaintiffs be awarded either: A) Plaintiffs' actual damages and all of Defendants' gains, profits, and advantages derived from their acts of infringement and other unlawful conduct; or B) alternatively, statutory damages of at least \$750 and up to \$30,000 for each instance of copyright infringement per Infringed Photo pursuant to 17 U.S.C. § 504(c)(1).

4. That Defendants' unlawful conduct be deemed willful violations of Plaintiffs' intellectual property rights;

5. For exemplary damages based on based on Defendants' willful infringement;

6. That the Court declare this an exceptional case;

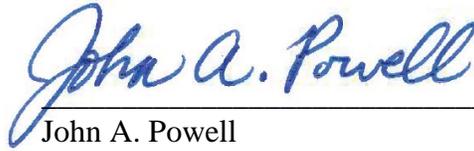
7. That, to the extent applicable under law, Plaintiffs be awarded maximum statutory damages for violations of the Copyright Act of not less than \$150,000 for each act of copyright infringement pursuant to 17 U.S.C. § 504(c)(2);

8. That, to the extent applicable under law, Plaintiffs recover their reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505;

9. That Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused by Defendants;

10. That Plaintiffs be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,



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