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9 File No.: 102417

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

9 BWP Media USA Inc. d/b/a Pacific Coast News,
10
11 **Plaintiff,**
12
13 **vs.**
14 Ziff Davis, Inc. and IGN Entertainment, Inc.,
15
16 **Defendants.**

Docket No: 3:13-cv-03629-NC

AMENDED COMPLAINT

JURY TRIAL DEMANDED

17 BWP Media USA Inc. d/b/a Pacific Coast News ("BWP") (hereinafter "*Plaintiff*"), by
18 and through its undersigned counsel, for their Amended Complaint against Defendants Ziff
19 Davis, Inc. and IGN Entertainment, Inc. (hereinafter collectively referred to as "*Defendants*")
20 states and alleges as follows:

21 **INTRODUCTION**

22 1. Plaintiff provides entertainment-related photojournalism goods and services and
23 own the rights to a multitude of photographs featuring celebrities, which it licenses to online and
24 print publications. Plaintiff has obtained U.S. copyright registrations covering many of its
25 photographs, and others are the subject of pending copyright applications.

26 2. Defendants own and operate a website known as www.ign.com (referred to herein
27 as the "*Website*") and without permission or authorization from Plaintiff copied, modified, and
28 displayed Plaintiff's photographs on the Website and engaged in this misconduct knowingly and

1 in violation of the United States copyright laws.

2 **JURISDICTION AND VENUE**

3 3. This Court has subject matter jurisdiction over the federal copyright infringement
4 claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331. The Court has supplemental
5 jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1367(a) in that the
6 state claims are so related to the claims over which the court has original jurisdiction that they
7 form part of the same case or controversy. Additionally, this Court has subject matter
8 jurisdiction over all of the photographs, inclusive of the unregistered images. (*See e.g. Perfect*
9 *10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1154 [9th Cir. 2007]; *Olan Mills, Inc. v. Linn Photo*
10 *Co.*, 23 F.3d 1345, 1349 [8th Cir. 1994]; *Pac. & S. Co., Inc., v. Duncan*, 744 F.2d 1490, 1499 n.
11 17 [11th Cir. 1984]).

12 4. This Court has personal jurisdiction over IGN Entertainment, Inc. because IGN
13 Entertainment, Inc. maintains its principal place of business in California and purposely directs
14 substantial activities at the residents of California by means of the website described herein.
15 This Court also has personal jurisdiction over the Defendants under the applicable long-arm
16 jurisdictional statutes of California.

17 5. This Court has personal jurisdiction over Ziff Davis, Inc. because Ziff Davis, Inc.
18 purposely directs substantial activities at the residents of California by means of the website
19 described herein. This Court also has personal jurisdiction over the Defendants under the
20 applicable long-arm jurisdictional statutes of California.

21 6. Venue is proper under 28 U.S.C. §1391(a)(2) because IGN Entertainment, Inc.
22 does business in this Judicial District and/or because a substantial part of the events or omissions
23 giving rise to the claim occurred in this Judicial District.

24 **PARTIES**

25 7. BWP is a California Corporation and maintains its principal place of business in
26 Los Angeles County, California.

27 8. On information and belief, Defendant, IGN Entertainment, Inc., is a Delaware
28

1 Corporation with a principal place of business in San Francisco County, California and is liable
2 and responsible to Plaintiff based on the facts herein alleged.

3 9. On information and belief, Defendant, Ziff Davis, Inc., is a Delaware Corporation
4 with a principal place of business in New York County, New York and is liable and responsible
5 to Plaintiff based on the facts herein alleged.

6
7 **FACTUAL ALLEGATIONS**

8 10. Plaintiff is the legal and rightful owner of a multitude of photographs which it
9 licenses to online and print publications and has invested significant time and money in building
10 its photograph portfolios.

11 11. Plaintiff has obtained several active and valid copyright registrations with the
12 United States Copyright Office (the “USCO”), which registrations cover many of its photographs
13 and many others are the subject of pending copyright applications.

14 12. Plaintiff’s photographs are original, creative works in which Plaintiff owns
15 protectable copyright interests.

16 13. Defendants are the registered owner and/or operators of the Website and are
17 responsible for its content.

18 14. The Website is monetized in that it contains paid advertisements, and on
19 information and belief, Defendants profit from these activities.

20 15. Without permission or authorization from Plaintiff, Defendants copied and/or
21 displayed two of Plaintiff’s rights protected photographs (hereinafter collectively referred to as
22 “*Photographs*”), as set forth in Exhibit “1” which is annexed hereto and incorporated in its
23 entirety herein, on the Website. (Photograph of Louie Anderson hereinafter referred to as
24 “*Photograph 1*” and photograph of Michael Cera and Jason Bateman hereinafter referred to as
25 “*Photograph 2*”).

26 16. On information and belief, the Photographs were copied and displayed without
27 license or permission, thereby infringing on the Plaintiff's Copyrights (hereinafter collectively
28 referred to as the “*Infringements*”).

1 17. As is set forth more fully in Exhibit “1”, each listed infringement contains the
2 URL (“*Uniform Resource Locator*”) for a fixed tangible medium of expression that was
3 sufficiently permanent or stable to permit it to be communicated for a period of more than
4 transitory duration and constitutes a specific item of infringement. (*See 17 U.S.C. §106(5);*
5 *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 [9th Cir. 2007]).

6 18. On or about October 4, 2013, Defendants were put on notice that the Photographs
7 were unlawfully displayed on the Website, in violation of Plaintiff’s copyrights.

8 19. Defendants hyperlinked the two Photographs onto the Website from infringing
9 third party sites not authorized to copy, store or display the Photographs. Photograph 1 was
10 hyperlinked onto Defendants’ Website from <http://i.dailymail.co.uk>; Photograph 2 was
11 hyperlinked onto Defendants’ Website from <http://img.ibtimes.com> (hereinafter collectively
12 referred to as the “*Third Party Infringers*”).

13 20. Plaintiff has not licensed the right to use the Photographs to Defendants or the
14 Third Party Infringers, nor has Plaintiff assigned any of its exclusive rights in the Photographs to
15 Defendants or the Third Party Infringers.

16 21. Without a valid license or permission or authorization from Plaintiff, the Third
17 Party Infringers unlawfully copied, modified and displayed Plaintiff’s Photographs in violation
18 of the United States copyright laws.

19 22. The Photographs remained on Defendants’ Website for several months after
20 Plaintiff notified Defendants that the Photographs were unlawfully displayed on their Website in
21 violation of Plaintiff’s copyrights.

22 23. As of the date of this Amended Complaint, Photograph 2 remains on the Website.

23 24. Defendants with actual and/or “red flag” knowledge, failed to promptly remove
24 the Photographs from their website, thereby causing and materially contributing to the
25 Infringements. (*See 17 U.S.C. §512(c)(1)(A)(i)*).

26 25. Defendants were aware of facts or circumstances from which the determination
27 regarding the Infringements was apparent. Based on the totality of the circumstances, Defendants
28

1 cannot claim that they were not aware of the infringing activities, including the specific
2 Infringements which form the basis of this complaint, on the Website since such a claim would
3 amount to only willful blindness to the Infringements on the part of Defendants.

4 26. On information and belief, Defendants engaged in the Infringements knowingly
5 and in violation of applicable United States Copyright Laws.

6 27. On information and belief, Defendants have received a financial benefit directly
7 attributable to the Infringements. Specifically, by way of the Infringements, the Website had
8 increased traffic to the and, in turn, realized an increase their advertising revenues. (*See 17*
9 *U.S.C. §512(c)(1)(B)*).

10 28. On information and belief, a large number of people have viewed the unlawful
11 copies of the Photographs on the Website.

12 29. On information and belief, Defendants at all times had the ability to stop the
13 reproduction and display of Plaintiff's copyrighted material.

14 30. Finally, Defendant failed to comply with the provisions of 17 U.S.C
15 §512(i)(1)(A), by not having adopted and reasonably implemented a policy that provides for the
16 for the termination of subscribers and account holders who are repeat infringers.

17 **FIRST COUNT**
18 ***(Contributory Copyright Infringement)***

19 31. Plaintiff incorporates, as though fully set forth herein, each and every allegation
20 contained in the preceding paragraphs, as though set forth in full herein.

21 32. Defendants' hyperlinked the Photographs from the Third Party Infringers, onto
22 their Website.

23 33. Without permission or authorization from Plaintiff and in willful violation of its
24 rights under 17 U.S.C. §106, the Third Party Infringers improperly and illegally copied,
25 reproduced and/or distributed the Photographs copyrighted by Plaintiff.

26 34. Defendants are liable as contributory infringers since they had actual and/or
27 constructive knowledge of the Third Party Infringers' infringing conduct and induced, caused
28 and/or materially contributed to that conduct. (*See e.g., Perfect 10, Inc. v. Amazon.com, Inc.*,
508 F.3d. 1146, 1171 [9th Cir. 2007]; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545
U.S. 913, 929-30 [2005]; *A&M Records, Inc. v. Napster, Inc.* 239 F.3d 1004, 1019 [9th Cir.

1 2001]; *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 [1984]).

2 35. For example, Defendants have caused enabled, facilitated and materially
3 contributed to the infringement complained of herein by, illegally copying, reproducing and/or
4 publicly displaying the Photographs on their Website and have directly and indirectly promoted
5 the infringement and refused to exercise their ability to stop the infringement made possible by
6 their distribution.

7 36. Defendants' infringement is and has been willful, intentional, purposeful, and in
8 disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs

9 37. As a direct and proximate result of Defendants' misconduct, Plaintiff has been
10 substantially harmed in an amount to be proven at trial.

11 **SECOND COUNT**

12 *(Attorney Fees and Costs Pursuant to 17 U.S.C. §505)*

13 38. Plaintiff incorporates, as though fully set forth herein, each and every allegation
14 contained in the preceding paragraphs, as though set forth in full herein.

15 39. Plaintiff requests, pursuant to 17 U.S.C. §505, its attorney fees and costs for the
16 prosecution of this action.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

19 1. That the Court enter a judgment finding that Defendants have contributorily
20 infringed in violation of Plaintiff's rights to the Photographs in violation of 17 U.S.C. §501 et
21 seq. and award damages and monetary relief as follows:

22 a. Statutory damages against Defendants pursuant to 17 U.S.C. §504(c) of
23 \$150,000 per infringement or in the alternative Plaintiff's actual damages and
24 the disgorgement of Defendants' wrongful profits in an amount to be proven at
25 trial; and

26 b. Plaintiff's attorneys' fees pursuant to 17 U.S.C. §505; and

27 b. Plaintiff's costs; and

28 2. Such other relief that the Court determines is just and proper.

1 DATED: January 2, 2014

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10 **REQUEST FOR JURY TRIAL**

11 Plaintiff hereby demands a trial of this action by jury.

12 DATED: January 2, 2014

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