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

13 MAVRIX PHOTOGRAPHS LLC, a
California limited liability company,

14 Plaintiff,

15 v.

16 LIVEJOURNAL, INC.; and DOES 1-10,
inclusive,

17 Defendants.
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Case No.: SACV13-00517 CJC (JPRx)

**SUPPLEMENTAL FIRST
AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff, Mavrix Photographs LLC, complains against Defendant, LiveJournal, Inc.,
2 a California corporation, and DOES 1-10 (collectively, “Defendants”) as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil action against Defendants for copyright infringement under the
5 Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction under
6 28 U.S.C. § 1331, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a) and (b).

7 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28
8 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the Defendants may be
9 found and transact business in this Judicial District, and the injury suffered by Plaintiff took
10 place in this Judicial District. Defendants are subject to the general and specific personal
11 jurisdiction of this Court because of their contacts with the State of California.

12 **PARTIES**

13 3. Plaintiff Mavrix Photographs LLC (“Mavrix”) is a California limited liability
14 company incorporated and existing under the laws of California, with its principal place of
15 business located in Orange County, California.

16 4. Defendant LiveJournal, Inc. (“LiveJournal”) is incorporated under the laws of
17 California, with its principle place of business in San Francisco, California.

18 5. The true names or capacities, whether individual, corporate or otherwise, of
19 the Defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff,
20 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
21 Court to amend this Complaint and insert the true names and capacities of said Defendants
22 when the same have been ascertained.

23 **FACTS COMMON TO ALL COUNTS**

24 6. Mavrix owns by way of assignment the copyrights to certain photos owned by
25 Mavrix Photo, Inc. (MPI) a prominent celebrity photography agency that licenses its
26 photographs to its end customers: the world’s leading newspapers, television programs and
27 magazines, like the Daily Mail of London, People, or US Weekly.

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1 7. LiveJournal owns and operates the website
2 www.ohnotheydidnt.LiveJournal.com (the Website). The Website is also known as “oh no
3 they didn’t” or “ONTD” for short, riffing of course on the behavior of celebrities and
4 interest in celebrity culture. LiveJournal has obtained federal trademark registrations on
5 ONTD and Oh No They Didn’t.

6 8. The Website and LiveJournal make money based upon an ad revenue business
7 model. The Website is one of the largest Websites in the world in terms of traffic.
8 According to the recognized internet rankings organization, CubeStat, the Website receives
9 9.8 million page views per day with almost \$30,000 a day in ad revenue generated from the
10 page views and ranking 102 out of the many millions of websites in existence. Defendant
11 has driven massive traffic to its website in part due to the presence of the sought after and
12 searched-for celebrity images, the copyrights to which are owned by third parties (not
13 Defendant or, to Defendants’ knowledge and awareness, Defendants’ users who upload the
14 images and other content). All of this traffic translates to significant advertising revenue.
15 As such, content websites may effectively monetize the content on their websites by
16 securing eyeballs on the sites which translates to ad revenue. Consequently, the
17 Defendants are able to, and do have, in effect a national online photo library located at the
18 www.ohnotheydidnt.LiveJournal.com website, which generates massive revenue for
19 Defendant all by the posting of content, none of which on information and belief is owned
20 or licensed by Defendant.

21 9. ONTD! is operated by a LiveJournal employee who works full-time for
22 LiveJournal out of its San Francisco office. LiveJournal identifies the employee, Brendan
23 Delzer, as an employee on the LiveJournal.com website. Mr. Delzer is the person who sifts
24 through hundreds of submissions per day to choose which ones to post on the site. He
25 claims to have a hand in each of the articles that is posted on the site daily.

26 10. Mr. Delzer’s comments are supported by the rules section of ONTD!, which
27 makes clear that ONTD!’s moderators comb the site to delete content that is not fresh,
28 interesting, or otherwise in conformance with the site’s rules, as well as to ban those who

1 post such items. For example, the rules say posters will be banned for racism and other
2 forms of discrimination, and posts will be removed if the material has already been posted.
3 They further state that material without a direct source will be rejected, posts with hotlinks
4 will be rejected, and spam will be deleted and will get the user banned. They also say that
5 interpersonal conflict will result in a ban, and violation of the other rules – of which there
6 are many – can result in a ban.

7 11. The site rules also give very clear direction to users as to what can and cannot
8 be posted, and those requirements virtually guarantee that users will post infringing
9 material. ONTD! tells its users, “Don’t be lazy with your posts. Include the article and
10 picture(s) in your posts...do not simply refer us off to another site for the goods.” In other
11 words, users are not permitted merely to discuss celebrity events on ONTD!. Mentioning,
12 for example, that Britney Spears is recording an album is, in ONTD!’s view, “lazy.” It is
13 also “lazy” and therefore against the site’s rules to provide a link to an article on another
14 website discussing Ms. Spears or another celebrity. What ONTD! demands from its users
15 is that they copy entire articles and accompanying pictures appearing on other websites and
16 paste them in-full onto ONTD!. Requiring users to copy other people’s articles in full is
17 virtually certain to involve the users and ONTD! in copyright infringement.

18 12. LiveJournal receives frequent complains about the infringing nature of the
19 material on its website. It even has a short list of websites that users should not take
20 material from – because those websites have so frequently complained about ONTD!’s
21 infringement – leaving every other website as fair game for ONTD!’s infringement.

22 13. Thus, ONTD!’s business model is based on encouraging users to upload
23 material that is almost certain to infringe others’ copyrights, its rules state that ONTD! will
24 delete material that does not conform to the (copyright-infringing-requiring) policies, a
25 LiveJournal employee enforces these rules and otherwise controls the content on the site,
26 sifting through user submissions and picking the material that can stay and the material that
27 cannot. There is no material that appears on ONTD!’s site without LiveJournal’s specific
28 knowledge and volition. Despite having no permission, consent, or license to do so,

1 LiveJournal has (a) reproduced, publicly distributed and publicly displayed, (b) made
2 available for download, copy, reproduction, and display, and (c) provided a service and the
3 means, encouragement, and facilitation of and for the upload, download, display, and
4 reproduction of certain original celebrity photographs of Mavrix including the following:

5 a. Nine photographs of pop superstar Katy Perry in the Bahamas. True
6 and correct copies of the Photos and their infringement by Defendants are attached as
7 Exhibit 1.

8 b. Seven photographs of pop superstar Katy Perry in a colorful rooftop
9 photo shoot. True and correct copies of the Photos and their infringement by Defendants
10 are attached as Exhibit 2.

11 c. Four photographs of pregnant pop superstar Beyonce. True and correct
12 copies of the Photos and their infringement by Defendants are attached as Exhibit 3.

13 d. Five photographs of Kate Hudson in Miami. True and correct copies of
14 the Photos and their infringement by Defendants are attached as Exhibit 4.

15 e. Eleven photographs of Kathy Griffin in Miami. True and correct copies
16 of the Photos and their infringement by Defendants are attached as Exhibit 5.

17 f. Two photographs of a pregnant Kim Kardashian. True and correct
18 copies of the Photos and their infringement by Defendants are attached as Exhibit 6

19 g. Two photographs of Joe Simpson. True and correct copies of the
20 Photos and their infringement by Defendants are attached as Exhibit 8.

21 h. Collectively, the 40 photographs referenced in paragraphs a-f above are
22 referred to as "Photos."

23 14. MPI filed for copyright registration of all the above Photos within 90 days of
24 their authorship and first publication. The copyright registration certificates are attached
25 hereto as Exhibit 7.

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FIRST CLAIM FOR RELIEF

(Copyright Infringement, 17 U.S.C. § 501 Against all Defendants)

15. Mavrix incorporates hereby reference the allegations in paragraphs 1 through 14 above.

16. Mavrix is the owner of all rights, title, and interest in the copyrights to the Photos, which substantially consist of material wholly original and which are copyright subject matter under the laws of the United States.

17. The Photos were timely registered with the United States Copyright Office.

18. Defendants have directly, vicariously, contributorily and/or by inducement infringed Mavrix's copyrights by reproducing, displaying, distributing, and utilizing the Photos for purposes of trade violation of 17 U.S.C. § 501 *et seq.*

19. All of the Defendants' acts are and were performed without permission, license, or consent of Mavrix.

20. Mavrix has identified at least 20 instances of infringement on the Website by way of unlawful reproduction and display of the Photos (as well as the unlawful facilitation of other's reproduction of the Photos). If other infringements are discovered in this case, then they will be identified in discovery and the pleadings will thus conform to the evidence adduced at trial.

21. As a result of the acts of Defendants alleged herein, Mavrix has suffered damage.

22. Defendants have willfully infringed, and unless enjoined, will continue to infringe Mavrix's copyrights by knowingly reproducing, displaying, distributing, and utilizing the Photos by, among other things, virtue of Defendants' employees' creation of the Website and establishment and continual moderation and management of the Website's rules that expressly request, encourage and foster infringement by, among other things, specifically asking people to upload third party copyrighted celebrity-based content and third-party copyrighted celebrity photographs from content owners' websites and other sources around the internet. Defendants had specific knowledge that the Photos were on its

1 website – after all, LiveJournal’s employee had seen and approved them, as his job duties
2 required – and Defendants had overwhelming circumstantial evidence to believe that the
3 pictures were the work of professional photographers and, therefore, were posted in
4 violation of the Copyright Act.

5 23. The wrongful acts of Defendants have caused, and are causing, injury to
6 Mavrix, which damage cannot be accurately computed, and unless this Court restrains
7 Defendants from further commission of said acts, Mavrix will suffer irreparable injury, for
8 all of which it is without an adequate remedy at law. Accordingly, Mavrix seeks a
9 declaration that Defendants are infringing Mavrix’s copyrights and an order under 17
10 U.S.C. § 502 enjoining Defendants from any further infringement.

11 24. In light of the willful nature of the copyright infringement, Mavrix is also
12 entitled to an award of statutory damages and its attorney’s fees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests judgment against Defendants as follows:

15 1. The Defendants, and their officers, agents, servants, employees, and
16 representatives, and all persons in active concert or participation with them, be permanently
17 enjoined from copying, reproducing, displaying, promoting, advertising, distributing, or
18 selling, or any other form of dealing or transaction in, any and all Photos of Mavrix.

19 2. An accounting be made for all profits, income, receipts or other benefit
20 derived by Defendants from the unlawful reproduction, copying, display, promotion,
21 distribution, or sale of products and services, or other media, either now known or hereafter
22 devised, that improperly or unlawfully infringes upon Plaintiff’s copyrights pursuant to 17
23 U.S.C. §§ 504 (a)(1) & (b).

24 3. Actual damages for copyright infringement pursuant to 17 U.S.C. §§ 504
25 (a)(1) & (b).

26 4. Statutory damages for copyright infringement, including willful infringement,
27 in accordance with 17 U.S.C. §§ 504(a)(2) & (c) and for costs, interest and reasonable
28 attorney’s fees pursuant to 17 U.S.C. § 505.

1 5. That Plaintiff be awarded any such other and further relief as the Court may
2 deem just and appropriate.

3
4 Dated: July 9, 2014

ONE LLP

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6 Bv: /s/ Peter R. Afrasiabi
7 Peter R. Afrasiabi
8 Attorneys for Plaintiff,
9 Mavrix Photographs LLC
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DEMAND FOR JURY TRIAL

Plaintiff Mavrix hereby demands trial by jury of all issues so triable under the law.

Dated: July 9, 2014

ONE LLP

Bv: /s/ Peter R. Afrasiabi
Peter R. Afrasiabi
Attorneys for Plaintiff,
Mavrix Photographs LLC

General Information

Court	United States District Court for the Central District of California; United States District Court for the Central District of California
Nature of Suit	Property Rights - Copyrights[820]
Docket Number	8:13-cv-00517