

1 Stephen M. Doniger (SBN 179314)
 stephen@donigerlawfirm.com
 2 Scott Alan Burroughs (SBN 235718)
 scott@donigerlawfirm.com
 3 Trevor W. Barrett (SBN 287174)
 tbarrett@donigerlawfirm.com
 4 DONIGER / BURROUGHS
 5 603 Rose Avenue
 6 Venice, California 90291
 7 Telephone: (310) 590-1820
 Attorneys for Plaintiff
 8 ROBIN BAIN

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

11 ROBIN BAIN, an Individual,
 12
 13 Plaintiff,
 14
 15 v.
 16 FILM INDEPENDENT, INC., a
 California Corporation, doing business as
 17 the "LA Film Festival"; LA MEDIA
 18 WORKS, CORP., a business entity of
 unknown form; JESSICA HAID a.k.a.
 19 "Jessica Cesaro", an Individual; and
 20 DOES 1-10,
 21 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT
3. VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT (17 U.S.C. §1202)
4. CONVERSION

Jury Trial Demanded

22
 23 Plaintiff, Robin Bain ("Bain"), by and through her undersigned attorneys,
 24 hereby prays to this honorable Court for relief based on the following:
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1 **JURISDICTION AND VENUE**

2 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§ 101,
3 *et seq.*

4 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
5 1338 (a) and (b).

6 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
7 1400(a) in that this is the judicial district in which a substantial part of the acts and
8 omissions giving rise to the claims occurred.

9 **PARTIES**

10 4. Robin Bain is an individual residing in the state of California in the United
11 States.

12 5. Plaintiff is informed and believes and thereon alleges that Defendant FILM
13 INDEPENDENT, INC. doing business as “LA Film Festival” (“LA FF”) is a
14 California corporation, with its principal place of business located at 5760 Wilshire
15 Blvd., Los Angeles, California 90036.

16 6. Plaintiff is informed and believes and thereon alleges that Defendant L.A.
17 MEDIA WORKS, CORP (“LA MEDIA”) is a business entity of unknown form, with
18 a principal place of business located at 8033 Sunset Blvd. #973, Los Angeles,
19 California 90046.

20 7. Plaintiff is informed and believes and thereon alleges that Defendant Jessica
21 Haid a.k.a “Jessica Cesaro” (“CESARO”) is an individual residing in the State of
22 California.

23 8. Defendants DOES 1 through 10, inclusive, are other parties not yet
24 identified who have infringed Plaintiff’s copyrights, have contributed to the
25 infringement of Plaintiff’s copyrights, or have engaged in one or more of the
26 wrongful practices alleged herein. The true names, whether corporate, individual or
27 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
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1 which therefore sue said Defendants by such fictitious names, and will seek leave to
2 amend this Complaint to show their true names and capacities when same have been
3 ascertained.

4 9. Plaintiff is informed and believes and thereon alleges that at all times
5 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
6 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
7 at all times acting within the scope of such agency, affiliation, alter-ego relationship
8 and/or employment; and actively participated in or subsequently ratified and adopted,
9 or both, each and all of the acts or conduct alleged, with full knowledge of all the
10 facts and circumstances, including, but not limited to, full knowledge of each and
11 every violation of Plaintiff's rights and the damages to Plaintiff proximately caused
12 thereby.

13 **FACTUAL ALLEGATIONS**

14 10. This action arises from the exploitation of scenes ("Infringing Scenes")
15 from Ms. Bain's copyrighted and unreleased film *Nowhereland* ("The Film") by
16 Defendants.

17 11. On two separate occasions, December 14, 2015 and February 5, 2016, Ms.
18 Bain submitted her watermarked and unreleased film *Nowhereland* to LA FF for
19 consideration under the terms of LA FF's submission process, which did not provide
20 any further transfer or disclosure rights.

21 12. On December 27, 2016, CESARO, who is an actress in the film
22 *Nowhereland*, requested Ms. Bain release to her scenes from the film to add to her
23 personal actress demo reel. Ms. Bain unequivocally informed CESARO that she
24 could not fulfill the request. CESARO then responded stating she understood.

25 13. Following this discussion, sometime in late 2016 or early 2017, CESARO
26 obtained a private, watermarked copy of The Film from an employee and/or agent of
27 LA FF. This obtainment was without the knowledge or permission of Plaintiff.

1 14. On or before February 28, 2017, CESARO then distributed that private
2 copy of The Film to LA MEDIA, which subsequently removed the watermark from
3 The Film and then posted and published the Infringing Scenes from The Film on the
4 LA MEDIA's website for public viewing. The Infringing Scenes included a
5 significant amount of unreleased footage from The Film, which taken together
6 encompassed the heart of The Film, as well as revealed the ending to The Film.

7 15. Moreover, LA MEDIA added unauthorized music to the Infringing Scenes
8 that have no connection to The Film, creating an unauthorized derivative work.

9 16. On January 16, 2018, counsel for Ms. Bain sent a demand letter to all
10 Defendants. Defendants have failed to adequately respond.

11 **FIRST CLAIM FOR RELIEF**

12 (For Copyright Infringement – Against all Defendants, and Each)

13 17. Bain repeats, re-alleges, and incorporates herein by reference as though
14 fully set forth, the allegations contained in the preceding paragraphs of this
15 Complaint.

16 18. Bain has registered The Film with the copyright office under Registration
17 Number PAu 3-850-168.

18 19. Bain is informed and believes and thereon alleges that Defendants, and
19 each of them, had access to The Film through her submissions to the LAFF.
20 Additionally, access is also established by the striking similarity of The Film and the
21 Infringing Scenes.

22 20. Bain is further informed and believes and thereon alleges that certain
23 Defendants have an ongoing business relationship with one or more of the other
24 Defendants, and that those parties conspired to traffic in the Infringing Scenes.

25 21. Bain is informed and believes and thereon alleges that, without Plaintiff's
26 authorization, Defendants, and each of them, distributed, marketed, and published
27

1 the Infringing Scenes bearing footage that is identical to, or substantially similar to,
2 The Film.

3 22. Bain is informed and believes and thereon alleges that Defendants, and
4 each of them, infringed Bain's copyrights by creating the Infringing Scenes from
5 The Film and then marketing, distributing, and publishing the Infringing Scenes to
6 the public.

7 23. Defendants, and each of them, infringed Bain's rights by copying The
8 Film, and publishing the Infringing Scenes, without Bain's authorization or consent.

9 24. Due to Defendants', and each of their, acts of infringement, Bain has
10 suffered actual, general and special damages in an amount to be established at trial.

11 25. Due to Defendants' acts of copyright infringement as alleged herein,
12 Defendants, and each of them, have obtained direct and indirect profits they would
13 not otherwise have realized but for their infringement of Bain's rights in The Film.
14 As such, Bain is entitled to disgorgement of Defendants' profits directly and
15 indirectly attributable to Defendants' infringement of his rights in The Film in an
16 amount to be established at trial.

17 26. Bain is informed and believes and thereon alleges that Defendants, and
18 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
19 subjecting Defendants, and each of them, to enhanced statutory damages, claims for
20 costs and attorneys' fees, and/or a preclusion from deducting certain costs when
21 calculating disgorgeable profits.

22 **SECOND CLAIM FOR RELIEF**

23 (For Vicarious and/or Contributory Copyright Infringement – Against all Defendants,
24 and Each)

25 27. Bain repeats, re-alleges, and incorporates herein by reference as though
26 fully set forth, the allegations contained in the preceding paragraphs of this
27 Complaint.

1 28. Bain is informed and believes and thereon alleges that Defendants
2 knowingly induced, participated in, aided and abetted in and profited from the illegal
3 reproduction, distribution, and publication of The Film as alleged hereinabove.
4 Specifically, LAFF unlawfully provided CESARO a copy of The Film, who then
5 provided the copy to LA MEDIA. Subsequently, LA MEDIA published the
6 Infringing Scenes to the public. And, Defendants, and each of them, realized profits
7 through their respective obtainment, distribution, and publication of the Infringing
8 Scenes.

9 29. Bain is informed and believes and thereon alleges that Defendants, and
10 each of them, are vicariously liable for the infringement alleged herein because they
11 had the right and ability to supervise the infringing conduct and because they had a
12 direct financial interest in the infringing conduct. Specifically, each Defendant in the
13 involved in the infringement had the ability to oversee the publication and
14 distribution of the Infringing Scenes. And, Defendants, and each of them, realized
15 profits through their respective obtainment, distribution, and publication of the
16 Infringing Scenes.

17 30. By reason of Defendants', and each of their, acts of contributory and
18 vicarious infringement as alleged above, Bain has suffered and will continue to
19 suffer substantial damages to her business in an amount to be established at trial, as
20 well as additional actual, general and special damages in an amount to be established
21 at trial.

22 31. Due to Defendants' acts of copyright infringement as alleged herein,
23 Defendants, and each of them, have obtained direct and indirect profits they would
24 not otherwise have realized but for their infringement of Bain's rights in The Film.
25 As such, Bain is entitled to disgorgement of Defendants' profits directly and
26 indirectly attributable to Defendants' infringement of her rights in The Film, in an
27 amount to be established at trial.

1 32. Bain is informed and believes and thereon alleges that Defendants, and
2 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
3 subjecting Defendants, and each of them, to enhanced statutory damages, claims for
4 costs and attorneys' fees, and/or a preclusion from deducting certain costs when
5 calculating disgorgeable profits.

6 **THIRD CLAIM FOR RELIEF**

7 (For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –
8 Against all Defendants, and Each))

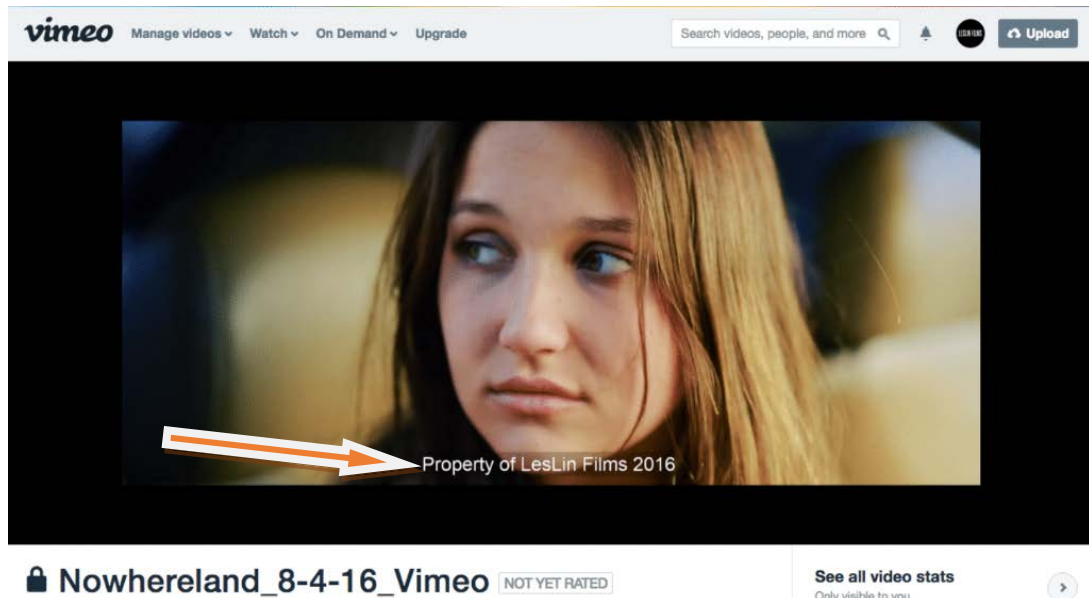
9 33. Bain repeats, re-alleges, and incorporates herein by reference as though
10 fully set forth, the allegations contained in the preceding paragraphs of this
11 Complaint.

12 34. Bain is informed and believes and thereon alleges that Defendants, and
13 each of them, violated 17 U.S.C. §1202 by intentionally removing and/or altering the
14 copyright management information on the copy of at least one Infringing Scenes
15 (“Mislabelled Copy”), and distributing the Mislabelled Copy with knowledge that the
16 copyright management information had been removed or altered without authority of
17 the copyright owner or the law, and distributing and publicly displaying the
18 Mislabelled Copy, knowing that copyright management information had been
19 removed or altered without authority of the copyright owner or the law, and
20 knowing, or, with respect to civil remedies under section 1203, having reasonable
21 grounds to know, that the conduct would induce, enable, facilitate, or conceal an
22 infringement of any right under this title.

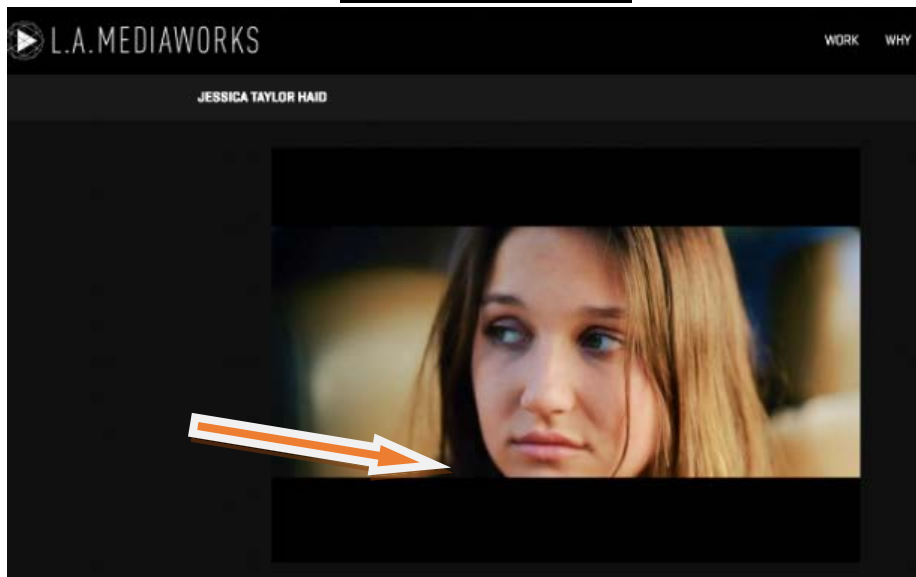
23 35. A non-inclusive example of the removal of Bain's watermark can be seen
24 in the comparison below:

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The Film:



Infringing Scenes:



36. Bain is informed and believes and thereon alleges that Defendants, and each of them, knowingly removed and altered the copyright management information on the Mislabeled Copy.

37. The above conduct is in violation of the Digital Millennium Copyright Act and exposes Defendants, and each of them, to additional and enhanced common

1 law and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203
2 and other applicable law.

3 38. Bain is informed and believes and thereon alleges that Defendants, and
4 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
5 and Plaintiff resultantly seeks enhanced damage and penalties.

6 **FOURTH CLAIM FOR RELIEF**

7 (For Conversion Against All Defendants)

8 39. Bain repeats, re-alleges, and incorporates herein by reference as though
9 fully set forth, the allegations contained in the preceding paragraphs of this
10 Complaint.

11 40. Bain is informed and believes and thereon alleges that LA FF took
12 possession of The Film after Bain's private submission, and unlawfully distributed a
13 copy of The Film to CESARO.

14 41. Bain is further informed and believes and thereon alleges that CESARO
15 took the unlawful copy of The Film and provided the copy to LA MEDIA, who
16 subsequently published and distributed the scenes accumulating to a substantial
17 amount of The Film to the public.

18 42. Bain is informed and believes and thereon alleges that Defendants, and
19 each of their, conduct as alleged herein was fraudulent, willful, reckless, and/or with
20 knowledge or gross negligence.

21 43. The above-referenced conduct caused and continues to cause Bain
22 substantial damages, and given the fraudulent conduct involved in the conversion,
23 subjects the Defendants to punitive damages.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for judgment as follows:

26 **Against All Defendants**

27 With Respect to Each Claim for Relief

- 1 a. That Defendants, their affiliates, agents, and employees be enjoined
- 2 from infringing Plaintiff's copyrights in and to the The Film.
- 3 b. Granting an injunction permanently restraining and enjoining
- 4 Defendants, their officers, agents, employees and attorneys, and all those
- 5 persons or entities in active concert or participation with them, or any of
- 6 them, from further infringing Plaintiff's copyrights in and to The Film.
- 7 c. For a constructive trust to be entered over any scenes, recordings,
- 8 reproductions, files, online programs, and other material in connection
- 9 with The Film, and all revenues resulting from the exploitation of same,
- 10 for the benefit of Plaintiff.
- 11 d. That Plaintiff be awarded all profits of Defendants, and each, plus all
- 12 losses of Plaintiff, plus any other monetary advantage gained by the
- 13 Defendants through their infringement, the exact sum to be proven at the
- 14 time of trial.
- 15 e. That Defendants pay damages equal to Plaintiff's actual damages and
- 16 lost profits, including without limitation for the value of the property at
- 17 the time of conversion in an amount to be set forth at trial.
- 18 f. That Plaintiff be awarded statutory damages and attorneys fees as
- 19 available under 17 USC 505 and 17 USC 1203.
- 20 g. That Defendants pay the prejudgment interest at the legal rate on the
- 21 value of the converted property pursuant to Civil Code Section 3336.
- 22 h. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 23 i. That Plaintiff be awarded the costs of this action; and
- 24 j. That Plaintiff be awarded such further legal and equitable relief as the
- 25 Court deems proper.
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A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND
CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

Respectfully submitted,

Dated: May 16, 2018 By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
ROBIN BAIN