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

Zuma Press, Inc.,

Plaintiff,

v.

PLEX, INC.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Zuma Press, Inc. (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against defendant PLEX, INC. (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §501.

2. Plaintiff herein employs photographers to create photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.

3. One such photographer, Jose Perez Gegundez created a photograph of

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1 actress Cuca Escribano (the “*Photograph*”) in which Plaintiff owns the rights and
2 licenses for various uses including online and print publications.

3 4. Defendant is a media streaming company which owns and operates a
4 website at domain watch.plex.tv (the “*Website*”).

5 5. Defendant, without permission or authorization from Plaintiff, actively
6 copied and/or displayed the Photograph on the Website and engaged in this
7 misconduct knowingly and in violation of the United States copyright laws.

8 **PARTIES**

9 6. Plaintiff Zuma Press, Inc. is a California corporation and maintains a
10 principal place of business in Orange County, California.

11 7. Upon information and belief, Defendant PLEX, INC., is a Delaware
12 corporation with a principal place of business at 449 North Santa Cruz Avenue, Los
13 Gatos in Santa Clara County, California.

14 **JURISDICTION AND VENUE**

15 8. This Court has subject matter jurisdiction over the federal copyright
16 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

17 9. This Court has personal jurisdiction over Defendant because it
18 maintains its principal place of business in California.

19 10. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
20 business in this Judicial District and/or because a substantial part of the events or
21 omissions giving rise to the claim occurred in this Judicial District.

22 **FACTS COMMON TO ALL CLAIMS**

23 **A. Plaintiff's Copyright Ownership**

24 11. Jose Perez Gegundez (“Gegundez”) is a professional photographer by
25 trade that is the legal and rightful owner of certain photographs by which Gegundez
26 has provided an exclusive license to Plaintiff to distribute, display, and sublicense
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1 his photographs.

2 12. Gegundez has invested significant time and money in building
3 Plaintiff's photograph portfolio.

4 13. Gegundez has obtained active and valid copyright registrations from
5 the United States Copyright Office (the "USCO") which cover many of Gegundez's
6 photographs while many others are the subject of pending copyright applications.

7 14. Gegundez's photographs are original, creative works in which
8 Gegundez owns protectable copyright interests.

9 15. On January 25, 2020, Gegundez first published the Photograph. A copy
10 of the Photograph is attached hereto as Exhibit 1.

11 16. In creating the Photograph, Gegundez personally selected the subject
12 matter, timing, lighting, angle, perspective, depth, lens and camera equipment used
13 to capture the image.

14 17. On February 18, 2020, the Photograph was registered by the USCO
15 under Registration No. VA 2-198-187.

16 18. Gegundez created the Photograph with the intention of it being used
17 commercially and for the purpose of display and/or public distribution.

18 19. Plaintiff is, by de facto, afforded reasonable copyright interests
19 regarding Gegundez's photographs through the virtue of written agreements and
20 exclusive licenses.

21 **B. Defendant's Infringing Activity**

22 20. Defendant is the registered owner of the Website and is responsible for
23 its content.

24 21. Defendant is the operator of the Website and is responsible for its
25 content.

26 22. The Website is a key component of Defendant's popular and lucrative
27 commercial enterprise.
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1 23. The Website is monetized in that it contains paid advertisements and
2 subscription services, and upon information and belief, Defendant profits from these
3 activities.

4 24. Defendant displayed the Photograph on the Website as part of an actor
5 biography page at URL <https://watch.plex.tv/person/cuca-escribano>. A copy of a
6 screengrab of the Website including the Photograph is attached hereto as Exhibit 2.

7 25. The Photograph was stored at URL:
8 [https://images.plex.tv/photo?size=medium-](https://images.plex.tv/photo?size=medium-360&scale=1&url=https%3A%2F%2Fmetadata-static.plex.tv%2Fpeople%2F5d7768887a53e9001e6d1d4f.jpg)
9 [360&scale=1&url=https%3A%2F%2Fmetadata-](https://images.plex.tv/photo?size=medium-360&scale=1&url=https%3A%2F%2Fmetadata-static.plex.tv%2Fpeople%2F5d7768887a53e9001e6d1d4f.jpg)
10 [static.plex.tv%2Fpeople%2F5d7768887a53e9001e6d1d4f.jpg](https://images.plex.tv/photo?size=medium-360&scale=1&url=https%3A%2F%2Fmetadata-static.plex.tv%2Fpeople%2F5d7768887a53e9001e6d1d4f.jpg).

11 26. Without permission or authorization from Plaintiff, Defendant
12 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on
13 the Website.

14 27. Plaintiff first observed and actually discovered the Infringement on
15 April 9, 2022.

16 28. Upon information and belief, the Photograph was copied and displayed
17 by Defendant without license or permission, thereby infringing on Plaintiff's
18 copyrights in and to the Photograph (hereinafter the unauthorized use set forth above
19 is referred to as the "*Infringement*").

20 29. The Infringement includes a URL ("*Uniform Resource Locator*") for a
21 fixed tangible medium of expression that was sufficiently permanent or stable to
22 permit it to be communicated for a period of more than a transitory duration and
23 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

24 30. The Infringement is an exact copy of Plaintiff's original image that was
25 directly copied and displayed by Defendant on the Website.

26 31. Upon information and belief, Defendant takes an active and pervasive
27 role in the content posted on its Website, including, but not limited to copying,
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1 posting, selecting, commenting on and/or displaying images including but not
2 limited to Plaintiff's Photograph.

3 32. Upon information and belief, the Photograph was willfully and
4 volitionally posted to the Website by Defendant.

5 33. Upon information and belief, Defendant was aware of facts or
6 circumstances from which the determination regarding the Infringement was
7 apparent. Defendant cannot claim that it was not aware of the infringing activities,
8 including the specific Infringement which form the basis of this complaint, since
9 such a claim would amount to only willful blindness to the Infringement on the part
10 of Defendant.

11 34. Upon information and belief, Defendant engaged in the Infringement
12 knowingly and in violation of applicable United States copyright laws.

13 35. Upon information and belief, Defendant has the legal right and ability
14 to control and limit the infringing activities on its Website and exercised and/or had
15 the right and ability to exercise such right.

16 36. Upon information and belief, Defendant monitors the content on its
17 Website.

18 37. Upon information and belief, Defendant has received a financial benefit
19 directly attributable to the Infringement.

20 38. Upon information and belief, the Infringement increased traffic to the
21 Website and, in turn, caused Defendant to realize an increase its advertising revenues
22 and/or subscription sales.

23 39. Upon information and belief, a large number of people have viewed the
24 unlawful copies of the Photograph on the Website.

25 40. Upon information and belief, Defendant at all times had the ability to
26 stop the reproduction and display of Plaintiff's copyrighted material.

27 41. Plaintiff created the Photograph with the intention of it being used
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1 commercially and for the purpose of display and/or public distribution.

2 42. Defendant's use of the Photograph harmed the actual market for the
3 Photograph.

4 43. Defendant's use of the Photograph, if widespread, would harm
5 Plaintiff's potential market for the Photograph.

6 44. On March 2, 2023, Plaintiff, via counsel, served a letter by electronic
7 mail to Defendant seeking to address the complaints contained herein concerning
8 Defendant's infringement of Plaintiff's rights-protected works, to no avail.

9 45. Despite Plaintiff's efforts and willingness to address Defendant's
10 infringing activity, Defendant has forced Plaintiff to seek redress via judicial
11 intervention for Defendant's infringing activity.

12 46. As a result of Defendant's misconduct, Plaintiff has been substantially
13 harmed.

14 **FIRST COUNT**

15 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

16 47. Plaintiff repeats and incorporates by reference the allegations contained
17 in the preceding paragraphs, as though set forth in full herein.

18 48. The Photograph is an original, creative work in which Plaintiff owns a
19 valid copyright.

20 49. The Photograph is properly registered with the USCO and Plaintiff has
21 complied with all statutory formalities under the Copyright Act and under
22 regulations published by the USCO.

23 50. Plaintiff has not granted Defendant a license or the right to use the
24 Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in
25 the copyright to Defendant.

26 51. Without permission or authorization from Plaintiff and in willful
27 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
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1 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
2 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
3 copyrights.

4 52. Defendant's reproduction of the Photograph and display of the
5 Photograph constitutes willful copyright infringement.

6 53. Upon information and belief, Defendant willfully infringed upon
7 Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
8 Defendant used, published, communicated, posted, publicized, and otherwise held
9 out to the public for commercial benefit, Plaintiff's original and unique Photograph
10 without Plaintiff's consent or authority, by using it on the Website.

11 54. As a result of Defendant's violations of Title 17 of the U.S. Code,
12 Plaintiff is entitled to any an award of actual damages and disgorgement of all of
13 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
14 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
15 statutory damages against each Defendant for each infringement pursuant to 17
16 U.S.C. § 504(c).

17 55. As a result of the Defendant's violations of Title 17 of the U.S. Code,
18 the court in its discretion may allow the recovery of full costs as well as reasonable
19 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

20 56. As a result of Defendant's violations of Title 17 of the U.S. Code,
21 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
22 copyright pursuant to 17 U.S.C. § 502.

23 **JURY DEMAND**

24 57. Plaintiff hereby demands a trial of this action by jury.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

27 That the Court enters a judgment finding that Defendant has infringed on
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1 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and
2 therefore award damages and monetary relief as follows:

- 3 a. finding that Defendant infringed Plaintiff's copyright interest in
4 and to the Photograph by copying and displaying it without a
5 license or consent;
- 6 b. for an award of actual damages and disgorgement of all of
7 Defendant's profits attributable to the infringements as provided
8 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
9 alternative, at Plaintiff's election, an award for statutory damages
10 against each Defendant for each infringement pursuant to 17
11 U.S.C. § 504(c), whichever is larger;
- 12 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
13 from any infringing use of any of Plaintiff's works;
- 14 d. for costs of litigation and reasonable attorney's fees against
15 Defendant pursuant to 17 U.S.C. § 505;
- 16 e. for pre-judgment interest as permitted by law; and
17 f. for any other relief the Court deems just and proper.

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19 DATED: August 1, 2023

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