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10 JIM MARSHALL PHOTOGRAPHY LLC

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 JIM MARSHALL PHOTOGRAPHY LLC, a
14 California limited liability company,

15 Plaintiff,

16 vs.

17 LOS ANGELES TIMES
18 COMMUNICATIONS LLC, a Delaware
19 limited liability company; and APPLE INC., a
20 Delaware corporation,

21 Defendants.

Case No. 3:21-cv-1138

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

22 Plaintiff, Jim Marshall Photography LLC (“Marshall” or “Plaintiff”), for his complaint
23 against Defendants, Los Angeles Times Communications LLC (“LA Times”) and Apple, Inc.
24 (“Apple”) (collectively, “Defendants”), alleges:

JURISDICTION AND VENUE

- 25 1. Marshall’s claims arise under the copyright laws of the United States, 17 U.S.C. 101
26 *et. seq.*, (hereinafter the Copyright Act.).
27 2. Subject matter and personal jurisdiction is vested in this Court pursuant to 28 U.S.C.
1338. Additionally, this Court has subject matter jurisdiction under 28 U.S.C. 1331 inasmuch as

1 proper pursuant to 28 U.S.C. 1400(a) and 28 U.S.C. 1391(b) and (c). Defendant LA Times
2 conducts substantial business and is found in this judicial district. Apple is headquartered in
3 Cupertino, California, and the harm caused to Plaintiff occurred in this judicial district.

4 **INTRADISTRICT ASSIGNMENT**

5 3. Intradistrict assignment is appropriate under local Rule 3-2(c) because this is an Intellectual
6 Property Action.

7 **THE PARTIES**

8 4. Plaintiff Jim Marshall Photography LLC, based in San Francisco, California, is a limited
9 liability company organized and existing under the laws of the State of California. It is the
10 successor to Jim Marshall, the renowned photographer of countless photographic works of art,
11 who frequently evoked and captured in treasured images, as none others could, the human side of
12 iconic figures in jazz and rock music, most of which are from fifty or more years ago.

13 5. Defendant Los Angeles Times Communications LLC is a limited liability company
14 organized and existing under the laws of the State of Delaware and is the owner of the print and
15 digital media business that publishes the *Los Angeles Times*.

16 6. Defendant Apple Inc. is a corporation organized and existing under the laws of the State of
17 Delaware. Apple is a diversified technology company that, relevant to this case, conducts a
18 subscription media-distribution business called Apple News.
19

20 **INTRODUCTORY FACTS**

21 7. Jim Marshall, Plaintiff's predecessor in interest took is the author (photographer) of a
22 famous image of Janis Joplin backstage at Winterland in San Francisco in 1968, lying on her side
23 and smiling, with one hand on hip and the other holding a bottle of Southern Comfort. Plaintiff, at
24 all times relevant herein, has been and is now the sole owner and proprietor of all right, title and
25 interest in and to the copyright in the subject image of Joplin ("Plaintiff's Work") at issue in this
26 matter.
27

1 laws governing federal copyright applicable to Plaintiff's Work and registered the copyrights with
2 the Register of Copyrights at the U.S. Copyright Office. The photograph was first published in the
3 book *Not Fade Away* and is covered by the registration therefor, bearing certificate number TX 6-
4 031-402, issued in 2004.

5 9. On October 2, 2020, the 50th anniversary of the death of Janis Joplin, Defendant LA Times
6 published an article entitled "Column: Janis Joplin died 50 years ago. Here's why her loss still
7 resonates today." Accompanying the article was a prominently-presented image of Plaintiff's
8 Work.

9
10 10. Thereafter the article, featuring Plaintiff's Work, was distributed and redistributed by
11 Apple in connection with its Apple News service. However, Apple did not just redistribute the
12 article; Apple used Plaintiff's Work for the purpose of promoting, advertising, and selling
13 subscriptions to its Apple News service that includes the *Los Angeles Times* whose name and
14 suggested availability in the Apple News service appeared in a banner across the top of the screen.
15 The overwhelming and attention-grabbing power of the ad was the "in your face" display of
16 Plaintiff's Work to its iPhone users, countless millions of whom were not Apple News subscribers
17 but were the intended targets of the ad. After taking in the alluring and richly expressive
18 photograph, viewers were then presented a call to action to accept this commercial proposition:
19

20 **This story requires a**
21 **subscription to Apple News+.**

22 The ad then offered one month free service, to be followed by a monthly subscription price.
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11. Plaintiff has only licensed Plaintiff’s Work for limited editorial uses. It has never been licensed for advertising purposes at any price. Without Plaintiff’s permission, Plaintiff’s Work was reproduced, distributed, and/or displayed by Defendants in print and digital versions of the LA Times, for promotions of Apple News as described above, and likely by other means not yet discovered by Plaintiff.

12. In October 2020 Plaintiff’s attorney sent a formal letter identifying the infringements and seeking resolution for the unauthorized use. No resolution was accomplished.

CAUSES OF ACTION

COUNT I – NON-WILLFUL COPYRIGHT INFRINGEMENT

13. Plaintiff re-alleges and incorporates paragraphs 1 – 12 above as if recited *verbatim*.

14. Defendants have non-willfully infringed the copyright in Plaintiff’s Work by scanning, copying, reproducing, distributing, displaying, publishing and/or otherwise using, unauthorized copies of said photograph in violation of Title 17.

1 Work, while Plaintiff has suffered and will continue to suffer monetary damages, irreparable injury
2 to his business, reputation, and goodwill, and dilution in the marketplace; therefore, Plaintiff is
3 entitled to injunctive relief, damages, and other relief set forth in the Title 17.

4 **COUNT II – RECKLESS/WILLFUL COPYRIGHT INFRINGEMENT**

5 16. Plaintiff re-alleges and incorporates paragraphs 1 – 15 above as if recited *verbatim*.

6 17. Alternatively, Defendants have recklessly/willfully infringed Plaintiff’s copyright in
7 and to Plaintiff’s Work by scanning, copying, reproducing, distributing, displaying, publishing
8 and/or otherwise using, unauthorized copies of said photograph for commercial purposes that they
9 in good faith could not have believed were granted by the copyright holder in violation of Title 17.

10 Wherefore, Plaintiff prays for judgment as follows:

11 a. That Defendants, their agents, employees and/or servants be enjoined *pendente lite* and
12 permanently from infringing Plaintiff’s copyrights in any manner whatsoever, and from
13 publishing through any visual media, and from selling, marketing or otherwise distributing the
14 Work, and from using it in marketing or advertising;

15 b. That Defendants be required to deliver up, under oath, for impounding during the
16 pendency of this action, and for destruction thereafter, all images of the Work that infringe
17 Plaintiff’s copyrights, and all prints, film negatives, magnetic tapes, digitally scanned and/or
18 stored images, and all other articles by means of which such infringing copies may be
19 reproduced, which are in the possession or under the direct or indirect control of Infringers;

20 c. That Defendants provide an accounting of all gains, profits and advantages derived by
21 him as a result of the willful and unlawful acts of copyright infringement above-described;

22 d. That Defendants be ordered to pay over to Plaintiff his actual damages sustained, in
23 addition to all their profits attributable to the infringements, and which are not taken into account
24 in computing Plaintiff’s actual damages incurred as a result of Defendants’ copyright
25 infringements described herein, pursuant to 17 U.S.C. § 504(b);

26 e. In the alternative, and at Plaintiff’s election after verdict, that Defendants be ordered
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