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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 RYAN MCGINNIS

13 Plaintiff,

Case No. _____

14 vs.

15 SOURCE INTERLINK MAGAZINES, LLC,
16 SOURCE INTERLINK MEDIA, LLC,
17 SOURCE INTERLINK COMPANIES, INC.,

18 Defendants

**COMPLAINT FOR COPYRIGHT
19 INFRINGEMENTS AND DMCA
20 VIOLATIONS**

DEMAND FOR JURY TRIAL

21 Plaintiff Ryan McGinnis states his claims against Defendants Source Interlink
22 Magazines, LLC, Source Interlink Media, LLC, and Source Interlink Companies, Inc. as
23 follows:

24 JURISDICTION AND VENUE

- 25 1. This action arises under the Federal Copyright Act of 1976, as amended, 17
26 U.S.C. § 101, *et seq.* Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1338(a).
- 27 2. This Court has personal jurisdiction over Defendants Source Interlink
28 Magazines, LLC, Source Interlink Media, LLC, and Source Interlink
Companies, Inc. by virtue of their presence in this District and for their
transacting, doing, and soliciting business in this District.
3. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (c) and 1400(a).

THE PARTIES TO THIS COMPLAINT

- 1
- 2 4. Plaintiff Ryan McGinnis (“McGinnis”) is an individual who resides, and at all
- 3 times mentioned here did reside, in Nebraska.
- 4 5. Upon information and belief, Defendants Source Interlink Magazines, LLC,
- 5 Source Interlink Media, LLC, and Source Interlink Companies, Inc. (collectively
- 6 “SIM”) are organizations registered to do business in the State of California.
- 7 6. Upon information and belief, Defendants Source Interlink Magazines, LLC, and
- 8 Source Interlink Media, LLC, are divisions of Source Interlink Companies, Inc.
- 9 7. SIM may be served through its agent, Corporation Service Company, at 2730
- 10 Gateway Oaks Drive, Suite 100, Sacramento, California, 95833.

OPERATIVE FACTS

- 11
- 12 8. McGinnis is a full-time freelance professional photographer who specializes in
- 13 storm-chasing photography.
- 14 9. During May and June of 2009, McGinnis photographed events related to the
- 15 VORTEX-2, a project sponsored by the National Science Foundation and the
- 16 National Oceanic and Atmospheric Administration to further understand
- 17 tornadoes.
- 18 10. McGinnis subsequently and has continuously since 2009 licensed his VORTEX-
- 19 2 photographs through his own website at <http://www.bigstormpicture.com> and
- 20 through stock agencies: Alamy Inc., age fotostock America, Inc., and Getty
- 21 Images, Inc.
- 22 11. On or about July 20, 2009, non-party Phil Berg (“Berg”) contacted McGinnis by
- 23 electronic mail to inquire whether McGinnis had any photographs of the
- 24 vehicles used in the VORTEX-2 project.
- 25 12. On the same day, McGinnis replied to Berg by electronic mail: “if you give me a
- 26 postal address, I can send you a CD full of full resolution images of you & your
- 27 Hummer in action for your own personal non-commercial use. I’ll also make a
- 28 separate gallery over on Photoshelter that you can point any magazine clients to;

1 they can license the images right off that site if they want to.”

2 13. On July 21, 2009, McGinnis compiled thirty-six of his photographs of the
3 VORTEX-2 Hummer H3T (individually each a “Photograph,” collectively the
4 “Photographs”).

5 14. All of the Photographs are in perspective, orientation, positioning, composition,
6 and other details entirely original, distinctive, and unique. As such, they are
7 subject matter protectable under the Copyright Act.

8 15. McGinnis embedded the following license in the metadata of each Photograph:
9 “[t]his license is for personal use only. Personal means non-commercial
10 use of the image(s) for display on personal websites and computers, or
11 making prints for personal use. The image(s) may not be used in
12 advertising. The image(s) may not be resold, relicensed, or sublicensed.
13 Title and ownership, and all rights now and in the future, of and for the
14 image(s) remain exclusively with the photographer.” (“License”).

15 16. McGinnis also embedded the text “Copyright 2009 Ryan McGinnis” in the
16 copyright field in the metadata of each Photograph (“Copyright Information”).

17 17. McGinnis also included his contact information, including his name, address, e-
18 mail address, phone number, and website address in the metadata of each
19 Photograph (“Contact Information”).

20 18. McGinnis subsequently copied the thirty-six Photographs to a compact disc and
21 mailed it to Berg. McGinnis also set up a web gallery with all of his VORTEX-
22 2 photographs so that others could view and license them.

23 19. Upon information and belief, Berg mailed copies of the compact disc of thirty-
24 six Photographs to SIM without McGinnis’ knowledge or authority.

25 20. SIM subsequently published Berg’s article entitled “Storm Chaser: One
26 Hummer H3T Helps Scientists Gather Data in Tornado Alley” in SIM’s
27 November/December 2009 print edition of *Truck Trend* magazine (the
28 “Article”).

- 1 21. SIM also published the Article in the electronic/digital version of the
2 November/December 2009 edition of *Truck Trend* magazine, which has been
3 and continues to be sold on the Internet at <http://www.zinio.com> (“Electronic
4 Magazine”).
- 5 22. SIM published four of McGinnis’ Photographs in the Article in the Electronic
6 Magazine (“Four Photographs”), as shown in Exhibit B, without McGinnis’
7 permission.
- 8 23. The Four Photographs as published in the Electronic Magazine did not include
9 McGinnis’ License, Copyright Information, or Contact Information.
- 10 24. SIM published the Article in the Electronic Magazine with the byline/credit to,
11 “Story and Photography by Phil Berg” (“Magazine Byline”).
- 12 25. SIM also published the Article on the *Truck Trend* website at the following url
13 addresses:
- 14 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
15 [rm_chaser/index.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
 - 16 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
17 [rm_chaser/off_road_driving.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto); and
 - 18 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
19 [rm_chaser/driving_in_a_tornado.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto).
- 20 (“Website Use”), as shown in Exhibit B.
- 21 26. SIM published an online gallery featuring full-sized copies of ten of McGinnis’
22 Photographs, which included the Four Photographs, to accompany the Article
23 with the Website Use (the “Ten Photographs,” as shown in Exhibit C), without
24 McGinnis’ permission at the following url addresses:
- 25 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
26 [rm_chaser/photo_02.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
 - 27 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
28 [rm_chaser/photo_03.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);

- 1 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 2 [rm_chaser/photo_04.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 3 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 4 [rm_chaser/photo_05.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 5 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 6 [rm_chaser/photo_06.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 7 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 8 [rm_chaser/photo_08.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 9 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 10 [rm_chaser/photo_09.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 11 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 12 [rm_chaser/photo_13.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 13 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 14 [rm_chaser/photo_15.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);
- 15 • http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto
- 16 [rm_chaser/photo_16.html](http://www.trucktrend.com/features/travel/163_0912_hummer_h3t_sto);

17 as shown in part in Exhibit D.

- 18 27. The Ten Photographs included McGinnis' Copyright Information, as shown in
- 19 part in Exhibit E.
- 20 28. SIM published the Article in the Website Use with the byline/credit: "By Phil
- 21 Berg; Photography by Phil Berg" ("Website Byline").
- 22 29. On or around October 5, 2010, McGinnis discovered the Website Use and asked
- 23 Berg via electronic mail correspondence about SIM's unauthorized uses of his
- 24 Ten Photographs.
- 25 30. On or around October 5, 2010, Berg replied to McGinnis by electronic mail
- 26 stating: "[SIM] got all the photos from me, although I didn't get paid for them
- 27 and [SIM] wouldn't put the correct credit on the images, although I provided the
- 28 credits for images that were yours."

1 31. On October 19, 2010, McGinnis through his attorney sent a letter to Source
2 Interlink Companies, Inc., giving notice that SIM's reproduction, display, and
3 distribution of his Photographs in the Website Use and Electronic Magazine
4 were unauthorized and demanding that SIM account for and stop all uses of his
5 Photographs, specifically stating: "Mr. McGinnis demands that you: Cease any
6 further use of Mr. McGinnis' Photographs."

7 32. McGinnis through his attorney gave additional notice to SIM on March 7, 2011,
8 stating that "despite written notification to [SIM] to cease using any of the
9 Photographs on October 19, 2010, [SIM] continues to sell the e-magazine
10 including four of Mr. McGinnis' Photographs through www.zinio.com, almost
11 five months later."

12 33. McGinnis through his attorney gave additional notice to SIM on April 6, 2011,
13 stating that:

14 It is not a burden for [SIM] to replace Mr. McGinnis' photographs in
15 the article and upload a new file to Zinio.com. With the notification of
16 reserved rights in the metadata of the Photographs and our firm's
17 communications with [SIM], [SIM]'s refusal to cease using Mr.
18 McGinnis' Photographs without authorization constitutes willful
19 infringement.

20 34. At the time of the filing of this lawsuit, SIM continues to reproduce, display, and
21 distribute the Four Photographs in the Electronic Magazine, which is for sale at
22 <http://www.zinio.com> for \$4.99 per copy.

23 35. McGinnis never authorized Berg or SIM to reproduce, display, distribute, or
24 create a derivative work of the Photographs in the Electronic Magazine or for
25 the Website Use.

26 36. McGinnis has complied with all respects with the Copyright Act of 1976, 17
27 U.S.C. § 101 *et seq.*, as amended, and all other laws and regulations governing
28 copyrights and has secured the exclusive rights and privileges in and to the

1 copyrights for the Photographs. The Register of Copyrights for the U.S.
2 Copyright Office issued McGinnis a Certificate of Registration for the
3 copyrights to the Photographs, number VAu 990-176, effective June 13, 2009,
4 as shown as Exhibit F.

5 37. McGinnis is and always has been the sole proprietor of all right, title, and
6 interest in and to the copyright in the Photographs. McGinnis is the author and
7 copyright owner of the Photographs pursuant to 17 U.S.C. § 201.

8 FIRST CAUSE OF ACTION

9 Copyright Infringement – 17 U.S.C. §§ 101 *et seq.*

10 38. McGinnis re-alleges and incorporates by reference paragraphs 1 through 37
11 above.

12 39. Beginning in or around November 2009, SIM reproduced, displayed, and
13 distributed ten of McGinnis' Photographs in the Website Use and in the
14 Electronic Magazine without authorization of McGinnis or the law (the
15 "Infringements").

16 40. SIM has not compensated McGinnis for the Infringements.

17 41. SIM's conduct violates the exclusive rights belonging to McGinnis as owner of
18 the copyrights for his Ten Photographs, including without limitation, McGinnis'
19 exclusive rights under 17 U.S.C. § 106.

20 42. As SIM began to reproduce, display, and distribute McGinnis' Ten Photographs
21 in November 2009, McGinnis' claims are within the three-year statute of
22 limitations period pursuant to 17 U.S.C. § 507(b).

23 43. As a direct and proximate result of its wrongful conduct, SIM has realized and
24 continues to realize profits and other benefits rightfully belonging to McGinnis
25 for his Ten Photographs. Accordingly, McGinnis seeks an award of actual
26 damages and profits plus attorneys' fees and costs pursuant to 17 U.S.C. §§
27 504(b) and 505.

28 44. In the alternative, McGinnis is entitled to and seeks statutory damages for the

1 Infringements of the Ten Photographs, including attorneys' fees and costs,
2 pursuant to 17 U.S.C. §§ 504(c)(1) and 505.

3 45. The Infringements by SIM are willful and performed with knowledge that the
4 reproduction, display, and distribution of the Ten Photographs was
5 unauthorized, including SIM's continued use of the Four Photographs after
6 McGinnis gave notice of infringement to SIM; McGinnis is therefore entitled to
7 the recovery of enhanced statutory damages pursuant to U.S.C. § 504(c)(2).

8 SECOND CAUSE OF ACTION

9 Violations of the Digital Millennium Copyright Act – 17 U.S.C. §§ 1201 *et seq.*

10 46. McGinnis re-alleges and incorporates by reference paragraphs 1 through 37
11 above.

12 47. The License, Copyright Information, and Contact Information embedded in the
13 metadata of the electronic files of each of the Four Photographs constitute
14 copyright management information pursuant to 17 U.S.C. § 1202(c)(1), (2) and
15 (3).

16 48. For the Four Photographs as used in the Electronic Magazine, SIM, without the
17 authority of McGinnis or the law, intentionally removed and altered McGinnis'
18 copyright management information and distributed the Photographs, knowing
19 that McGinnis' copyright management information had been removed or altered,
20 knowing or having reasonable grounds to know that such removal or alteration
21 would induce, enable, facilitate, or conceal a copyright infringement, in
22 violation of 17 U.S.C. § 1202(b).

23 49. Berg's name used in both the Magazine Byline and the Website Byline of the
24 Article is identifying information about the copyright owner, constituting
25 copyright management information pursuant to 17 U.S.C. § 1202(c)(2).

26 50. SIM, without the authority of McGinnis or the law, knowingly and with the
27 intent to induce, enable, facilitate, or conceal infringement provided copyright
28 management information for ten of the Photographs that is false and distributed

1 copyright management information that is false, in violation of 17 U.S.C. §
2 1202(a).

3 51. As a direct and proximate result of SIM's wrongful conduct, McGinnis has
4 suffered damages and so is entitled to the remedies set forth under 17 U.S.C. §
5 1203.

6 52. Specifically, McGinnis is entitled to and seeks actual damages pursuant to 17
7 U.S.C. § 1203(c)(2).

8 53. In the alternative, McGinnis is entitled to and seeks statutory damages pursuant
9 to 17 U.S.C. § 1203(c)(3)(B), and costs of litigation and attorneys' fees pursuant
10 to 17 U.S.C. § 1203(b)(4-5).

11 PRAYER FOR RELIEF

12 WHEREFORE McGinnis prays that this Honorable Court:

- 13 1. Issue an order that SIM's unauthorized conduct violates McGinnis' rights under
14 the Federal Copyright Act at 17 U.S.C. §101, et seq.;
- 15 2. Order SIM to account to McGinnis for all gains, profits, and advantages derived
16 from the unauthorized use of the Photographs;
- 17 3. Award McGinnis all profits and damages in such amount as may be found
18 pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate)
19 for the infringements of McGinnis' copyright in the Ten Photographs;
20 alternatively, maximum statutory damages in the amount of \$30,000 for each
21 infringement pursuant to 17 U.S.C. § 504(c)(1); or such other amount as may be
22 proper pursuant to 17 U.S.C. § 504;
- 23 4. Award McGinnis maximum statutory damages in the amount of \$150,000 for
24 each unauthorized violation of 17 U.S.C. § 106 pursuant to 17 U.S.C. §
25 504(c)(2), or such other amount as may be proper pursuant to 17 U.S.C. § 504;
- 26 5. Award McGinnis actual damages suffered and profits for each violation of 17
27 U.S.C. § 1202 (a) and (b), pursuant to 17 U.S.C. § 1203(c)(2) (with interest
28 thereon at the highest legal rate); or such other amount as may be proper

1 pursuant to 17 U.S.C. 1203;

- 2 6. In the alternative, if McGinnis so elects, award McGinnis maximum statutory
3 damages in the amount of \$25,000 for each unauthorized violation of 17 U.S.C.
4 § 1202 pursuant to 17 U.S.C. § 1203(c)(3)(B), or such other amount as may be
5 proper pursuant to 17 U.S.C. § 1203;
- 6 7. Award McGinnis his costs of litigation, reasonable attorneys' fees and
7 disbursements in this action, pursuant to 17 U.S.C. §§ 505 and 1203;
- 8 8. Enter preliminary and permanent injunctions providing that SIM shall deliver to
9 McGinnis all copies of the infringing works, and all other materials containing
10 such infringing copies in SIM's possession, custody or control, for destruction;
- 11 9. Enter preliminary and permanent injunctions providing that SIM shall deliver to
12 McGinnis an accounting identifying each recipient of any infringing works;
- 13 10. Enter preliminary and permanent injunctions enjoining SIM from engaging in
14 any further acts of copyright infringement of McGinnis' Photographs and
15 violations of 17 U.S.C. § 1202; and
- 16 11. For such other and further relief as this Honorable Court deems just and proper.

17 **McGinnis demands a jury trial on all of the foregoing counts.**

18 Dated: March 5, 2012.

19 Respectfully submitted,

20
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