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Attorneys for Defendant Complex Media, Inc.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STEVEN HIRSCH,

Plaintiff,

-against-

COMPLEX MEDIA, INC.,

Defendant.

Civil Action No.: 18-cv-5488 (CM) (KHP)

**ANSWER TO AMENDED COMPLAINT,
SEPARATE DEFENSES,
AND JURY DEMAND**

Defendant, Complex Media, Inc. (“Complex Media” or “Defendant”), by its undersigned attorneys, as and for its Answer to the Amended Complaint (“Complaint”) filed by plaintiff, Steven Hirsch (“Hirsch” or “Plaintiff”), alleges as follows:

NATURE OF THE ACTION

1. Complex Media admits that Plaintiff purports to assert claims under Section 501 of the Copyright Act in paragraph 1 of the Complaint and denies that Plaintiff is entitled to any

such relief. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. The allegations in paragraph 2 of the Complaint assert legal conclusions to which no response is required. However, Complex Media does not contest subject matter jurisdiction.

3. The allegations in paragraph 3 of the Complaint assert legal conclusions to which no response is required. However, Complex Media does not contest this Court's jurisdiction.

4. The allegations in paragraph 4 of the Complaint assert legal conclusions to which no response is required. However, Complex Media does not contest venue in this Court.

PARTIES

5. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. Complex Media admits that it is a corporation organized and existing under the laws of the State of Delaware with offices at 229 West 43rd Street, 10th Floor, New York, New York 10036. To the extent paragraph 6 asserts legal conclusions, no response is required. Complex Media denies the remaining allegations in paragraph 6 of the Complaint.

7. The allegations in paragraph 7 of the Complaint assert legal conclusions to which no response is required. However Complex Media admits that it is registered with the New York Department of State, Division of Corporations.

8. Complex Media admits that the website at the URL www.complex.com is operated by Complex Media and/or its agents and affiliates and denies the remaining allegations in paragraph 8 of the Complaint.

9. The allegations in paragraph 9 of the Complaint assert legal conclusions to which no response is required.

10. Complex Media admits that www.complex.com sometimes includes news content and denies the remaining allegations of paragraph 10 of the Complaint.

11. Complex Media denies the allegations in paragraph 11 of the Complaint.

12. Complex Media admits it has been wrongfully sued under the Copyright Act, including by this Plaintiff's law firm, which has been identified by the U.S. District Court for the Southern District of New York as a "copyright troll," and denies the remaining allegations in paragraph 12 of the Complaint. Complex Media avers that due to confidentiality obligations, it is unable to make public statements about settlement agreements and/or the fact that it settled any lawsuits against it, whether they were wrongfully filed or otherwise.

13. Complex Media denies the allegations in paragraph 13 of the Complaint and avers that due to confidentiality obligations, it is unable to make public statements about settlement agreements and/or the fact that it settled any lawsuits against it, whether they were wrongfully filed or otherwise.

STATEMENT OF FACTS

14. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint.

15. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint.

16. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint.

17. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint.

18. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint.

20. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. Complex Media denies the truth of the allegations in paragraph 21 of the Complaint.

22. Complex Media admits that a video is on record at ECF Docket #13-2 and has previously been transmitted to the Court and denies the truth of the remaining allegations in paragraph 22 of the Complaint.

23. Complex Media admits that the video it refers to in its response to the allegations in paragraph 22 of the Complaint is one minute and forty-four seconds long and denies the truth of the remaining allegations in paragraph 23 of the Complaint.

24. Complex Media denies the truth of the allegations in paragraph 24 of the Complaint.

25. Complex Media admits that Plaintiff did not create photographs in the video and the image appears to involve Santino Boderick and denies the remaining allegations in paragraph 25 of the Complaint.

26. The allegations in paragraph 26 of the Complaint assert legal conclusions to which no response is required. Complex Media admits that content supplied by entities other than Complex Media may appear on the website referenced in paragraph 26 of the Complaint.

27. Complex Media denies that a photograph appears associated with an article as alleged in paragraph 27 of the Complaint.

28. Complex Media denies that a photograph appears on the face of a Complex Video, and thus it was not possible to provide credit to Plaintiff as alleged in paragraph 28 of the Complaint.

29. Complex Media is unable to respond to the allegations in paragraph 29 of the Complaint as it is indiscernible.

30. The allegations in paragraph 30 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed required, Complex Media admits that it did not license the subject photograph from Plaintiff, which was not required under the circumstances and denies the remaining allegations in paragraph 30 of the Complaint.

31. The allegations in paragraph 31 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed required, Complex Media admits that it did not seek Plaintiff's permission or consent regarding the subject photograph, which was not required under the circumstances and denies the remaining allegations in paragraph 31 of the Complaint.

32. Complex Media admits that it did not communicate with Plaintiff, which was not required under the circumstances and denies the remaining allegations in paragraph 32 of the Complaint.

33. Complex Media is unable to respond to the allegations in paragraph 33 of the Complaint as the phrase “its own photographer” is indiscernible. To the extent a response is deemed required, Complex Media denies the allegations in paragraph 33 of the Complaint.

34. Complex Media is unable to respond to the allegations in paragraph 34 of the Complaint as the reference to an “article” with a photograph of Santino Broderick is indiscernible since it did not publish such article. To the extent a response is deemed required, Complex Media denies the allegations in paragraph 34 of the Complaint.

35. Complex Media denies the allegations in paragraph 35 of the Complaint.

36. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint.

37. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint.

38. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Complaint.

39. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Complaint.

40. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Complaint.

41. Complex Media is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. Complex Media denies the allegations in paragraph 42 of the Complaint.

43. Complex Media is unable to respond to the allegations in paragraph 43 of the Complaint because “text-based hyperlink” for a video is indiscernible. To the extent a response is deemed required, Complex Media denies the allegations in paragraph 43 of the Complaint.

44. The allegations in paragraph 44 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed required, Complex Media admits the Photograph does not appear on a Complex Media Facebook page.

45. The allegations in paragraph 45 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed required, Complex Media admits the Photograph does not appear in a Complex Media Tweet.

46. The allegations in paragraph 46 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed required, Complex Media admits the Photograph does not appear on Google Plus with any relation to Complex Media.

47. The allegations in paragraph 47 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed required, Complex Media admits it has sent an email with the Photograph.

48. Complex Media is unable to respond to the allegations in paragraph 48 of the Complaint because it requires expert testimony. To the extent a response is deemed required, Complex Media denies the allegations in paragraph 48 of the Complaint.

49. Complex Media admits it posted a video at the stated link and denies the remaining allegations in paragraph 49 of the Complaint.

50. Complex Media admits that it removed a video from its website and is without knowledge or information sufficient to form a belief as to the truth of whether and what Plaintiff

accessed on its website on July 31, 2018, and denies the remaining allegations in paragraph 50 of the Complaint.

51. Complex Media admits that an article referring to Bobby Shmurda and Santino Boderick appears at the www.complex.com website and denies the remaining allegations in paragraph 51 of the Complaint.

**CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST COMPLEX)
(17 U.S.C. §§ 106, 501)**

52. Complex Media repeats and reasserts its responses to the preceding paragraphs of the Complaint as if fully set forth herein at length.

53. Complex Media denies the allegations in paragraph 53 of the Complaint.

54. Complex Media denies the allegations in paragraph 54 of the Complaint.

55. Complex Media denies the allegations in paragraph 55 of the Complaint.

56. Complex Media denies the allegations in paragraph 56 of the Complaint.

57. Complex Media denies the allegations in paragraph 57 of the Complaint.

58. Complex Media denies the allegations in paragraph 58 of the Complaint.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Complaint fails to set forth a cause of action for which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiff's alleged claims are barred by the statute of limitations.

THIRD SEPARATE DEFENSE

Plaintiff's alleged claims are barred by the doctrines of waiver, estoppel and laches.

FOURTH SEPARATE DEFENSE

Plaintiff's alleged claims are barred by the doctrine of unclean hands, including but not limited to, upon information and belief, that he provided the photograph in issue as a work-for-hire, does not own the copyright to the photograph, and/or is not entitled to enforce the copyright in the photograph in issue.

FIFTH SEPARATE DEFENSE

Plaintiff's alleged claims are barred by the doctrine of fair use.

SIXTH SEPARATE DEFENSE

Plaintiff lacks standing to bring this action and/or his claim is barred in whole or in part due to the absence of a proper copyright registration covering the allegedly infringing material.

SEVENTH SEPARATE DEFENSE

Complex Media's actions were justified and/or taken in good faith and were not willful, intentional or purposeful.

EIGHTH SEPARATE DEFENSE

Plaintiff's alleged claims are barred in whole or in part because Complex Media has not copied any copyright-protected works in which Plaintiff holds an exclusive right.

NINTH SEPARATE DEFENSE

Plaintiff's alleged claims are barred because the alleged infringing material lacks originality, and thus, is not copyrightable.

TENTH SEPARATE DEFENSE

Plaintiff's alleged claims are barred, in whole or in part, by reason of his failure to mitigate damages.

ELEVENTH SEPARATE DEFENSE

Plaintiff is not entitled to attorneys' fees.

TWELFTH SEPARATE DEFENSE

Complex Media reserves the right to supplement these separate defenses based on facts learned in discovery.

WHEREFORE, Complex Media, Inc. respectfully requests that the Court enter judgment against Plaintiff: (i) dismissing the Complaint with prejudice; (ii) awarding Complex Media costs, expenses and reasonable attorneys' fees; and, (iii) awarding Complex Media such further relief as the Court deems just and proper.

Dated: December 26, 2018

By: s/ Nancy A. Del Pizzo

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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Complex Media hereby demands a trial by of any issue so triable as of right.

Dated: December 26, 2018

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