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11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 PLAYBOY ENTERTAINMENT GROUP,
15 INC., a Delaware corporation,

16 Plaintiff,

17 v.

18 HAPPY MUTANTS, LLC, a Delaware
19 limited liability company; and DOES 1
20 through 10,

21 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT

Jury Trial Demanded

22 PLAYBOY ENTERPRISES, INC., by and through its undersigned attorneys,
23 hereby prays to this honorable Court for relief based on the following:

24 **JURISDICTION AND VENUE**

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

circumstances, including, but not limited to, full knowledge of each violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

CLAIMS RELATED TO USE OF PHOTOGRAPHIC IMAGES

8. Plaintiff PLAYBOY owns 477 original photographs commonly referred to as Playboy Centerfolds ("Subject Works") that have been registered with the United States Copyright Office. Attached hereto as Exhibit A is a chart listing the 477 Subject Works.

9. Plaintiff is informed and believes and thereon alleges that following PLAYBOY's publication of the Subject Works, Defendants, and each of them used the Subject Works without Plaintiff's authorization for commercial purposes on its website, including, but not limited to, their use in articles and advertising.

10. Plaintiff is informed and believes and thereon alleges that one such use of the Subject Works by Defendants, and each of them, was an article from February 29, 2016 touting the availability of "Every Playboy Playmate Centerfold Ever" for viewing or download without Plaintiff's authorization, as shown below:

boingboing / XENI JARDIN / 2:43 PM MON FEB 29, 2016

Every Playboy Playmate Centerfold Ever



Some wonderful person uploaded scans of every Playboy Playmate centerfold to imgur. It's an amazing collection, whether your interests are prurient or lofty. Kind of amazing to see how our standards of hotness, and the art of commercial erotic photography, have changed over time.

[Every Playboy Playmate Centerfold](#) [contains nudity, duh]

And below, a video that contains all 746 of these incredible shots, [created by YouTuber Ryan Powers](#).



1 11. Plaintiff is informed and believes and thereon alleges that Defendants, and
2 each of them, generate revenue through the advertising on the website pages bearing
3 the Subject Works, as well as through any referral links to external websites on those
4 pages.

5 **FIRST CLAIM FOR RELIEF**

6 (For Copyright Infringement - Against All Defendants, and Each)

7 12. Plaintiff repeats, realleges and incorporates herein by reference as though
8 fully set forth the allegations contained in the preceding paragraphs of this
9 Complaint.

10 13. Plaintiff is informed and believes and thereon alleges that Defendants, and
11 each of them, had access to the Subject Works, including, without limitation,
12 through viewing the Subject Works via Plaintiff's magazine or website, or viewing
13 the Subject Works on a third-party websites (e.g., Tumblr, Pinterest, etc.).

14 14. Plaintiff is informed and believes and thereon alleges that Defendants, and
15 each of them, used and distributed images of the Subject Works, and exploited said
16 images in website posts without Plaintiff's authorization or consent.

17 15. Due to Defendants', and each of their, acts of infringement, Plaintiff has
18 suffered damages in an amount to be established at trial.

19 16. Due to Defendants', and each of their, acts of copyright infringement as
20 alleged herein, Defendants, and each of them, have obtained profits they would not
21 otherwise have realized but for their infringement of the Subject Works. As such,
22 Plaintiff is entitled to disgorgement of Defendants', and each of their, profits
23 attributable to the infringement of Subject Works in an amount to be established at
24 trial.

25 17. Plaintiff is informed and believes and thereon alleges that Defendants, and
26 each of them, have committed copyright infringement with actual or constructive
27

1 knowledge of Plaintiff's rights such that said acts of copyright infringement were,
2 and continue to be, willful, intentional and malicious.

3 **SECOND CLAIM FOR RELIEF**

4 (For Vicarious and/or Contributory Copyright Infringement - Against All
5 Defendants)

6 18. Plaintiff repeats, realleges, and incorporates herein by reference as though
7 fully set forth, the allegations contained in the preceding paragraphs of this
8 Complaint.

9 19. Plaintiff is informed and believes and thereon alleges that Defendants
10 knowingly induced, participated in, aided and abetted in and profited from the illegal
11 reproduction of the Subject Works as alleged herein.

12 20. Plaintiff is informed and believes and thereon alleges that Defendants, and
13 each of them, are vicariously liable for the infringement alleged herein because they
14 had the right and ability to supervise the infringing conduct and because they had a
15 direct financial interest in the infringing conduct.

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

21 22. Due to Defendants', and each of their acts of copyright infringement as
22 alleged herein, Defendants, and each of them, have obtained direct and indirect
23 profits they would not otherwise have realized but for their infringement of the
24 Subject Works. As such, Plaintiff is entitled to disgorgement of Defendants' profits
25 directly and indirectly attributable to Defendants' infringement of the Subject
26 Design, in an amount to be established at trial.

23. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against All Defendants, and Each:

With Respect to Each Claim for Relief

- a. That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing Plaintiff's copyrights in the Subject Works, including without limitation an order requiring Defendants, and each of them, to remove any content incorporating, in whole or in part, the Subject Works from any print, web, or other publication owned, operated, or controlled by any Defendant;
- b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and, to the extent available, statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C. § 1203, and other applicable law;
- c. That Plaintiff be awarded his costs and attorneys' fees, including as available under the Copyright Act U.S.C. § 101 et seq.;

- 1 d. That Plaintiff be awarded statutory damages and/or penalties under the
2 statutes set forth above;
3 e. That Plaintiff be awarded pre-judgment interest as allowed by law;
4 f. That Plaintiff be awarded such further legal and equitable relief as the
5 Court deems proper.

6 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
7 38 and the 7th Amendment to the United States Constitution.

8 Respectfully submitted,

9
10 Dated: November 7, 2017

By: /s/ Stephen M. Doniger
Stephen M. Doniger, Esq.
Howard S. Han, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff

EXHIBIT A

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