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9 Attorneys for Plaintiffs OUR HOUSE FILMS, LLC

10 and KICKBOXER II RETALIATION, LLC

11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 OUR HOUSE FILMS, LLC, a
14 Colorado limited liability company;
15 and KICKBOXER II RETALIATION,
16 LLC, a Colorado limited liability
17 company,

18 Plaintiffs,

19 v.

20 TUNNEL, INC., a California
21 corporation,

22 Defendant.

CASE NO.

COMPLAINT FOR:

- (1) **COPYRIGHT INFRINGEMENT;**
- (2) **NEGLIGENCE; AND**
- (3) **AN ACCOUNTING**

[DEMAND FOR JURY TRIAL]

23 Plaintiffs Our House Films, LLC and Kickboxer II Retaliation, LLC
24 (collectively sometimes referred to herein as "Plaintiff") allege as follows:

25 **JURISDICTION AND VENUE**

26 1. This is an action based on copyright infringement arising under the
27 Copyright Act of 1976, 17 U.S.C. §§ 101 et seq., which also alleges pendent claims
28 for negligence and an accounting. Jurisdiction lies with this Court pursuant to
29 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b). Venue lies within this Court pursuant
30 to 28 U.S.C. §§ 1391 and 1400(a) because Plaintiff's claims arose within this
31 district.

1 **THE PARTIES**

2 2. Plaintiff Our House Films, LLC (“Our House”) is now and at all times
3 material hereto has been a limited liability company organized and existing under
4 the laws of the State of Colorado and conducting business in, among other places,
5 the Central District of California.

6 3. Plaintiff Kickboxer II Retaliation, LLC (“Kickboxer”) is now and at
7 all times material hereto has been a limited liability company organized and existing
8 under the laws of the State of Colorado and conducting business in, among other
9 places, the Central District of California. Kickboxer is a Special Purpose Vehicle
10 entity that was set up by Our House to produce the motion picture at issue in this
11 case.

12 4. Plaintiff is informed and believes, and thereon alleges, that Defendant
13 Tunnel, Inc. (“Tunnel”) is now and at all times material hereto has been a
14 corporation organized and existing under the laws of the State of California, with its
15 principal place of business in the Central District of California. Plaintiff is further
16 informed and believes, and thereon alleges, that Tunnel previously operated as
17 and/or is or was affiliated with an entity known as “Tunnel Post LLC,” a California
18 limited liability company.

19 **ALLEGATIONS COMMON TO ALL CLAIMS**

20 5. Plaintiff is the producer and owner of the copyright of a motion picture
21 completed in 2016 entitled “Kickboxer: Retaliation” (“the Picture”). Plaintiff is
22 entitled to bring a copyright infringement action concerning the Picture because,
23 among other things, Plaintiff has registered its copyright on the Picture with the U.S.
24 Copyright Office pursuant to the Copyright Act.

25 6. Tunnel is a motion picture post-production service with offices in
26 Santa Monica, California. Tunnel and Plaintiff entered into a written agreement
27 dated as of September 13, 2016, a copy of which is attached as Exhibit 1 hereto,
28 providing for Tunnel to provide specified post-production services to Plaintiff with

1 respect to the Picture, as well as to assist in distributing the Picture to the sales agent
2 retained by Plaintiff (“the “Agreement”).

3 7. The final cut of the Picture was possessed by Tunnel and delivered
4 pursuant to the Agreement in or about October 2017.

5 8. The understanding between Plaintiff and Tunnel was, consistent with
6 custom and practice in the entertainment industry, that the final cut of the Picture
7 would be delivered to no one without Plaintiff’s express authorization. As Tunnel
8 knew, this was critical in order to avoid unauthorized dissemination of the Picture
9 prior to its release. If the Picture was provided to unauthorized third parties,
10 unlawful dissemination of the Picture would be likely, resulting in dissipation of the
11 market value of the Picture. A Laboratory Agreement entered into between
12 Plaintiff, Tunnel and others further limited access of third parties to materials
13 associated with the Picture.

14 9. Following delivery of the final cut of the Picture, Plaintiff scheduled
15 January 26, 2018 as the date for theatrical release of the Picture in North America.
16 However, weeks prior to that date, Plaintiff discovered that the final cut of the
17 Picture had been disseminated to various locations and territories throughout the
18 world and been seen without authorization by literally millions of consumers via pay
19 per view services and the internet, among other places. Plaintiff is informed and
20 believes, and thereon alleges, that the Picture has been available for unauthorized
21 viewing on a worldwide basis since approximately December 2017. Plaintiff is
22 further informed and believes, and thereon alleges, that dissemination of the Picture
23 occurred through and as a result of unauthorized actions and/or omissions of Tunnel.

24 10. At no time did Plaintiff authorize Tunnel to provide a copy of the final
25 cut of the Picture to anyone other than Plaintiff or Plaintiff’s sales agent. The
26 unauthorized distribution of the final cut of the Picture did not occur from or through
27 Plaintiff or its sales agent.

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1 11. Tunnel has failed to respond to Plaintiff's requests for substantive
2 information concerning the parties to whom the final cut was disseminated.
3 Meanwhile, Plaintiff has suffered literally millions of dollars in damages, the
4 specific amount of which will be determined and proven at trial, as a result of
5 unlawful and unauthorized distribution of the Picture resulting from Tunnel's
6 actions and omissions. Plaintiff brings this action against Tunnel for redress.

7 **FIRST CLAIM FOR RELIEF**

8 **(For Copyright Infringement)**

9 12. Plaintiff repeats, realleges and incorporates by reference each and
10 every allegation contained in Paragraphs 1 through 11, inclusive, of this Complaint
11 as if fully set forth herein.

12 13. Plaintiff is the owner of all right, title and interest in and to the
13 copyright in the Picture and has the right to bring an action against Tunnel for
14 copyright infringement by virtue of Plaintiff's standing as exclusive holder of all
15 rights to distribute and exploit the Picture, and its registration of copyright with the
16 U.S. Copyright Office.

17 14. Plaintiff is informed and believes and thereon alleges that,
18 notwithstanding Plaintiff's exclusive ownership of the copyright and exclusive right
19 to exploit the Picture, Defendants willfully infringed on Plaintiff's copyright by
20 distributing, disseminating, copying and/or providing copies of the final cut of the
21 Picture to third parties or otherwise exploiting the Picture in the United States and
22 elsewhere without obtaining a license from Plaintiff or providing Plaintiff with
23 compensation.

24 15. The acts of Defendants complained of herein were done without the
25 agreement or consent of Plaintiff, and constitute acts of copyright infringement
26 under Title 17 of the United States Code.

27 16. As a direct and proximate result of Defendants' infringement of
28 Plaintiff's copyright and exclusive rights under the Copyright Act, Plaintiff is

1 entitled to damages as well as any profits realized by Defendants from the
2 exploitation of the Picture pursuant to 17 U.S.C. § 504(b), which Plaintiff is
3 informed and believes will exceed \$5 Million.

4 17. Alternatively, Plaintiff is entitled to the maximum statutory damages
5 pursuant to 17 U.S.C. § 504(c), in the amount of One Hundred Fifty Thousand
6 Dollars (\$150,000) for each instance of infringement or for such other amount as
7 may be proper pursuant to 17 U.S.C. § 504(c).

8 18. In addition to the foregoing, Plaintiff is entitled to a temporary
9 restraining order and preliminary and permanent injunctive relief enjoining and
10 restraining Tunnel and all persons acting in concert with it from infringing
11 Plaintiff's copyright in the Picture.

12 19. In accordance with 17 U.S.C. § 505, as a result of Tunnel's willful and
13 intentional infringement of Plaintiff's copyright in the Picture, Plaintiff has incurred
14 and will continue to incur attorneys' fees and is, therefore, entitled to recover from
15 Tunnel an award of reasonable attorneys' fees and costs.

16 **SECOND CLAIM FOR RELIEF**

17 **(For Negligence)**

18 20. Plaintiff repeats, realleges and incorporates by reference each and
19 every allegation contained in Paragraphs 1 through 11 and 13 through 15, inclusive,
20 of this Complaint as if fully set forth herein.

21 21. Tunnel accepted and owed Plaintiff a duty of care to the effect that
22 Tunnel would perform its work with respect to the Picture in a timely, competent
23 and professional manner and, among other things, would take necessary steps to
24 ensure that the final cut of the Picture would not be infringed, disseminated or
25 distributed to the general public in a manner that would result in copyright
26 infringement and loss of exploitation value of the Picture.

27 22. Plaintiff is informed and believes and thereon alleges that, as a result
28 of negligent acts and omissions of Tunnel, the final cut of the Picture was

1 disseminated and distributed to locations within the United States and various
2 territories throughout the world and was seen by literally millions of consumers via
3 pay per view services and the internet, among other places. Plaintiff is informed and
4 believes and thereon alleges that the final cut of the Picture has been available for
5 unauthorized viewing on a worldwide basis since approximately December 2017,
6 thereby depriving Plaintiff of all or a substantial portion of the exploitation value of
7 the Picture.

8 23. As a direct and proximate result of Tunnel's negligence, Plaintiff has
9 sustained damages in an amount subject to proof at the time of trial, but which is
10 expected to exceed \$5 Million.

11 **THIRD CLAIM FOR RELIEF**

12 **(For An Accounting)**

13 24. Plaintiff repeats, realleges and incorporates by reference each and
14 every allegation contained in Paragraphs 1 through 11 and 13 through 15, inclusive,
15 of this Complaint as if fully set forth herein.

16 25. Tunnel breached its duty of due care to Plaintiff by engaging or
17 allowing the wrongful dissemination of the Picture. By virtue of Tunnel's wrongful
18 infringement of the Picture and negligent conduct as described above, Plaintiff is
19 entitled to an accounting of any and all proceeds obtained by Tunnel as a result of its
20 wrongful conduct. Specifically, the Court should order an accounting of all monies
21 obtained by Tunnel from the distribution, dissemination, copying, providing or other
22 exploitation of the Picture in violation of Plaintiff's exclusive rights.

23 26. Plaintiff requests that this Court order such accounting to be conducted
24 at Tunnel's sole expense.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Tunnel as follows:

AS TO THE FIRST CLAIM FOR RELIEF:

1. That judgment be entered against Tunnel in an amount determined at trial equal to either:

(a) Actual damages sustained by Plaintiff and profits derived by Tunnel as a result of Tunnel's infringing conduct as alleged herein, pursuant to 17 U.S.C. § 504(b) and other applicable law; or

(b) Statutory damages in the maximum amount of \$150,000 for each act of infringement with respect to the Picture pursuant to 17 U.S.C. 504(c), whichever is greater;

2. For a temporary restraining order and preliminary and permanent injunctive relief enjoining and restraining Tunnel and all persons acting in concert with it from manufacturing, reproducing, selling, renting, offering for sale or rent, or otherwise providing the Picture or any portion or element thereof, and to deliver to the Court for destruction or other reasonable disposition all such materials in Tunnel's possession or control; and

3. That Plaintiff be awarded attorneys' fees pursuant to 17 U.S.C. §505;

AS TO THE SECOND CLAIM FOR RELIEF:

4. For compensatory damages in an amount according to proof at the time of trial;

AS TO THE THIRD CLAIM FOR RELIEF:

5. For an accounting (and return to Plaintiff) of all profits and monies obtained by Tunnel in connection with any distribution, dissemination, copying or other exploitation of the Picture;

AS TO ALL CLAIMS FOR RELIEF:

6. For recovery of attorneys' fees and costs pursuant to the Agreement, federal copyright law, and/or other applicable law;

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- 7. For costs of suit incurred herein; and
- 8. For such other and further relief as the Court deems to be just and proper.

DATE: August 20, 2018

LAVELY & SINGER
PROFESSIONAL CORPORATION
PAUL N. SORRELL

By: 

PAUL N. SORRELL
Attorneys for Plaintiffs OUR HOUSE
FILMS, LLC and KICKBOXER II
RETALIATION, LLC

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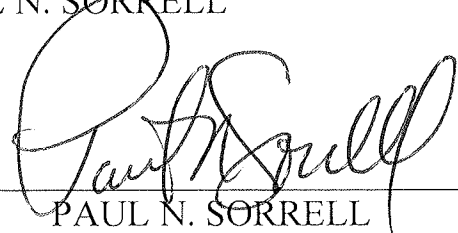
DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

DATE: August 20, 2018

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PROFESSIONAL CORPORATION
PAUL N. SORRELL

By: _____



PAUL N. SORRELL

Attorneys for Plaintiffs OUR HOUSE
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RETALIATION, LLC