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9 *Attorneys for Plaintiff,*  
 10 Backgrid USA, Inc.

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

13 BACKGRID USA, INC., a California  
 14 corporation,

15 Plaintiff,

16 v.

17 TWITTER, INC., a Delaware  
 18 corporation and DOES 1-10, inclusive,  
 19

20 Defendants.  
 21

Case No.: 2:22-cv-9462

**COMPLAINT FOR:**

- (1) COPYRIGHT INFRINGEMENT**
- (17 U.S.C. § 501)**
- (2) DECLARATORY JUDGMENT RE**
- NO DMCA SAFE HARBOR**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff, Backgrid USA, Inc., complains against Defendant Twitter, Inc. a  
2 corporation, and Does 1-10 (collectively, “Defendants”) as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil action for direct, contributory, and vicarious copyright  
5 infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has  
6 subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1332, 28 U.S.C. §  
7 2201, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a) and (b).

8 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and  
9 28 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the defendants  
10 may be found and transact business in this Judicial District, and the injury suffered by  
11 Backgrid took place, and is taking place, in this Judicial District. Defendant has  
12 offices in Santa Monica, California. Defendants are subject to the general and specific  
13 personal jurisdiction of this Court because of their contacts with the State of  
14 California.

15 **PARTIES**

16 3. Plaintiff Backgrid is incorporated in and existing under the laws of the  
17 State of California, with its principal place of business located in Redondo Beach,  
18 California.

19 4. On information and belief, Defendant Twitter, Inc. is incorporated in and  
20 existing under the laws of Delaware, with its principal place of business in San  
21 Francisco, California.

22 5. The true names or capacities, whether individual, corporate or otherwise,  
23 of the defendants named herein as Does 1 through 10, inclusive, are unknown to  
24 Backgrid, who therefore sues said defendants by such fictitious names. Backgrid will  
25 ask leave of Court to amend this Complaint to insert the true names and capacities of  
26 said defendants when the same have been ascertained.

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1 **FACTS COMMON TO ALL COUNTS**

2 ***Backgrid and the Photographs that Frame this Dispute***

3 6. Backgrid is the world’s premier celebrity-related photograph agency and  
4 provides highly sought-after images of celebrities around the world to top news and  
5 lifestyle outlets. Its photographs increase the sales of its customers’ magazines and  
6 newspapers and increase their website traffic and website viewer engagement.

7 Backgrid’s photographs are regularly licensed by *People* magazine, the *Huffington*  
8 *Post*, the *Daily Mail*, *TMZ*, *US Weekly*, *Radar Online*, *Harper’s Bazaar*,  
9 *Entertainment Tonight*, *Vogue*, *Elle* magazine, and many other publications.

10 7. Backgrid owns all rights to the Celebrity Photographs, each of which was  
11 timely registered with the United States Copyright Office. A list of the copyright  
12 registrations for the Celebrity Photographs known to have been infringed is attached  
13 as Exhibit A. Due to Defendant’s continuing infringements and refusal to adopt and  
14 reasonably implement a Digital Millennium Copyright Act (“DMCA”) repeat  
15 infringer policy, the number of timely registered infringements on its Twitter platform  
16 and the damages for which Defendant is responsible is continually increasing.  
17 Backgrid seeks to recover for all such infringements whether they are specifically  
18 alleged herein or not.

19 8. For valuable consideration, Backgrid and/or AKM-GSI Media, Inc.  
20 (“AKM-GSI”), the predecessor in interest to certain Celebrity Photographs, have  
21 licensed, and Backgrid continues to license, the rights to reproduce, distribute, and  
22 publicly display the Celebrity Photographs and make derivative versions thereof, to  
23 hundreds of magazines, newspapers, television stations, and other media outlets  
24 throughout the world.

25 ***Twitter’s Platform***

26 9. Defendant’s business is a simple, but spectacularly profitable, platform  
27 that touts itself as a “global platform for public self-expression and conversation in  
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1 real time” that “help[s] people discover what’s happening through text, images, on  
2 demand and live video” among other types of content. According to SimilarWeb.com,  
3 Twitter is one of the top ranked websites globally, ranking it as number five in the  
4 world and averages 7.1 billion visits per month.

5 10. Twitter monetizes its platform by enabling advertisers to promote their  
6 brands, products, and services through the Twitter platform that then permits targeting  
7 specific audience members by the accounts they follow and the actions they have  
8 taken on the Twitter platform. Twitter also monetizes the data it collects from its  
9 users and sells it to their clients for commercial use. Each upload, click, and view is  
10 data that can be and is monetized, which means Twitter monetizes each photo  
11 uploaded on the platform through the data it collects.

12 11. Once a Twitter user uploads a photo, Twitter selects, orders, and/or  
13 arranges content to display to other Twitter users, including content from Twitter  
14 accounts that are not among those “followed” by the viewing user.

15 12. A significant factor enabling Defendant to drive massive amounts of  
16 traffic to the Twitter platform is the presence of sought-after and searched-for  
17 celebrity images uploaded onto the users’ accounts without the consent of the third-  
18 party copyright owners. Defendant is aware of the massive scale of copyright  
19 infringement it facilitates and encourages, and of the revenue and profits such  
20 infringement generates for it.

21 **Twitter Does Not Terminate Repeat Infringers as Required for Safe Harbor**  
22 **Protection Under 17 U.S.C. § 512(i)**

23 13. Twitter claims to have DMCA compliant take-down policies set forth in  
24 its websites’ Terms of Service. Based thereon, it claims that the DMCA’s safe harbor  
25 protection for ISPs with DMCA compliant take-down policies shields it from liability  
26 for the massive number of infringements it contributes to and engages in daily. But  
27 such lip service compliance with the DMCA is merely a fig leaf to hide its systematic  
28

1 abuse of the rights of photograph copyright holders and their enormous profits derived  
2 from such infringement.

3 14. A threshold requirement for DMCA safe harbor protection is that the ISP  
4 must have “adopted *and reasonably implemented* ... a policy that provides for the  
5 termination in appropriate circumstances of subscribers and account holders ... who  
6 are repeat infringers.” 17 U.S.C. § 512(i)(1)(A) (emphasis added).

7 15. Although Twitter’s “Copyright Policy” provides that copyright owners  
8 may send a DMCA takedown notice and that “If multiple copyright complaints are  
9 received about an account, or other evidence suggests a pattern of repeat infringement,  
10 Twitter may suspend that account in accordance with our Repeat Infringer Policy.”  
11 Unfortunately, its purported policy is honored in the breach.

12 16. Industry standard practices have resulted in the widespread adoption and  
13 implementation by legitimate ISPs of a “three-strikes” policy with respect to repeat  
14 infringers. The industry standard requires that to qualify for the DMCA safe harbor  
15 protection, ISPs must terminate the accounts of users that have been the subject of  
16 three infringement complaints. Defendant, however, regularly fails and refuses to  
17 comport with the industry standard.

18 17. Defendant’s failure to reasonably implement a policy resulting in the  
19 expeditious removal of infringing photographs owned by Backgrid and others and/or  
20 their failure and refusal to terminate subscribers shown to be repeat infringers divests  
21 them of DMCA safe harbor protection and renders them not just directly but  
22 contributory and vicariously liable for the infringement of Backgrid’s Celebrity  
23 Photographs as described herein.

24 18. Despite sending more than 6,700 DMCA takedown notices, not a single  
25 work was taken down and not a single repeat infringer was suspended.

26 19. Backgrid attempted to resolve this dispute prior to filing this complaint,  
27 but Twitter did not respond.  
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