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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SIMON J. BURCHETT PHOTOGRAPHY, INC.,

Case No.: 20-cv-4025

Plaintiff,

**ECF CASE**

v.

**COMPLAINT AND JURY DEMAND  
FOR DAMAGES FOR COPYRIGHT  
INFRINGEMENT**

PIEONEERS SOFTWARE, INC.,

Defendant.  
-----X

Plaintiff SIMON J. BURCHETT PHOTOGRAPHY, INC., by and through the undersigned counsel, brings this Complaint and Jury Demand against defendant PIEONEERS SOFTWARE, INC., for damages based on copyright infringement pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101, et seq. (“the Copyright Act” or “Act”) and the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-05 (the “DMCA”). Plaintiff alleges below, upon personal knowledge as to itself, and upon information and belief as to other matters so indicated.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

2. This Court has specific jurisdiction over the defendant this matter pursuant to CPLR§ 302(a)(3)(ii) as defendant is a nondomiciliary who committed a tortious act without the

state causing injury to person or property within the state, and it expected or should reasonably have expected the act to have consequences in the state and it derives substantial revenue from interstate or international commerce.

3. Defendant is a domiciliary of Canada, and copied, published, and publicly displayed plaintiff's Copyrighted Image without a license or authority.

4. Defendant continued to publicly display the Copyrighted Image on its website after notice.

5. Defendant derives substantially all of its revenue from international commerce.

6. This Court has jurisdiction pursuant to Federal Rule 4(k)(2) as defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and exercising jurisdiction is consistent with the United States Constitution and laws.

#### **VENUE**

7. A plaintiff may bring a case in: "(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. . . ;or (3) if there is no district in which an action may otherwise be brought . . . a judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b)(1)-(3).

8. At bar, a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

#### **DUE PROCESS**

9. There are no due process concerns in light of the fact that defendant committed an intentional tort knowing it would have an impact in this Judicial District.

## PARTIES

10. Plaintiff SIMON J. BURCHETT PHOTOGRAPHY, INC. is a New York corporation with a headquarters located in Manhattan, New York.

11. Upon information and belief, defendant PIEONEERS SOFTWARE, INC. (“PIEONEERS”), is a foreign corporation with a headquarters located 950 – 777 Hornby Street, Vancouver, BC V6Z 1S4.

## FACTS

12. Plaintiff is the beneficial owner, by assignment, of the copyrighted image at issue here which is an aerial image of the container ship the CSCL Zeebrugge titled “\_L4A3135” of the containership CSCL Zeebrugge, U.S. Copyright Registration No. VA 2-036-532 (the “Copyrighted Image”). See **Exhibit 1**.

13. A true and correct copy of the Copyrighted Image appears below.



14. Plaintiff is owned solely by Simon Burchett, a world-renowned photographer who has been honored with many awards and accolades.

15. Mr. Burchett is accredited as a master photographer by the Master Photographers Association (the “MPA”) in England. To become accredited, a photographer must: (i) have

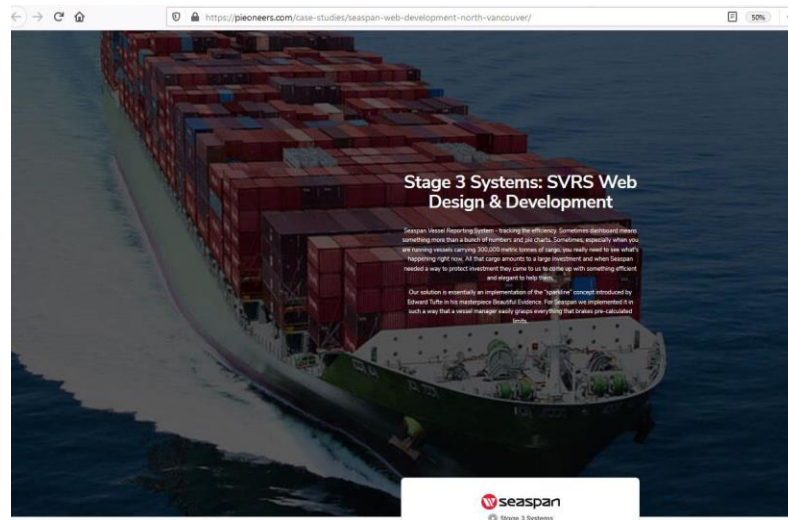
professional liability insurance, (ii) show a substantial history of professional work, (iii) provide a detailed client list, (iv) produce a curriculum vitae, and (iv) pass an interview.

16. In July 2019, Mr. Burchett won the very prestigious Gold Medal at the MPA's professional photographers' competition. This is a national competition conducted by the MPA which is open to all professional photographers. There are in excess of 1,000 images submitted to each competition.

17. Another image taken by plaintiff received a Silver Medal at the Master Photographers Association competition in 2018.

18. Defendant is a web developer and mobile app. designer.

19. Defendant engaged as its agent, San Francisco based Stage 3 to produce the below web-page:



20. Defendant was notified on five separate occasions of its infringement.

21. Defendant responded with a litany of excuses, necessitating the within action.

22. Defendant copied, distributed, and publicly displayed plaintiff's Copyrighted Image with no license or authority.

23. Defendant's use of the Copyrighted Image was, and is, purely commercial.

24. Defendant's blatant failure to license the Copyrighted Image prior to its commercial use, after notice, entitles plaintiff to the right to elect enhanced statutory damages pursuant to 17 U.S.C. 504(c)(2).

25. Defendant's blatant failure to license the Copyrighted Image prior to its commercial use, after notice, entitles plaintiff to enhanced damages pursuant to 17 U.S.C. 504(c)(2).

26. Plaintiff has suffered significant injuries due to defendant's acts. Plaintiff is entitled to its actual damages including a licensing fee of \$3,000 per year from defendant for the three years prior to this Complaint. Plaintiff is also entitled to defendant's profit in excess of plaintiff's actual damages.

27. Defendant's failure to include any copyright management information is a violation of 17 U.S.C. § 1202 – the DMCA. Plaintiff is entitled to up to \$25,000 for each violation of the DMCA pursuant to Section 1203 of the DMCA plus all reasonable attorneys' fees and costs.

**FIRST CLAIM FOR RELIEF  
COPYRIGHT INFRINGEMENT**

28. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

29. It cannot be disputed that the plaintiff has a valid, registered copyright, and owns all rights to the Copyrighted Image.

30. Defendant without license or authority from plaintiff, reproduced, publicly displayed, and/or distributed plaintiff's Copyrighted Image.

31. Defendant copied and publicly displayed the Copyrighted Image solely for the purpose of commercial gain.

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