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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

Attorneys for Plaintiff, Mavrix Photo, Inc.

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

MAVRIX PHOTO, INC., a Florida corporation,

Plaintiff,

v.

DAILY MAIL OF LONDON, a DBA for ASSOCIATED NEWSPAPERS LIMITED; DMGT PLC; and DOES 1-10 INCLUSIVE,

Defendants.

CV10 9045 PSG VBIKx
Case No.

COMPLAINT FOR COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

Mavrix Photo, Inc. ("Mavrix"), by and through its attorneys of record, complains against Associated Newspapers Limited dba "Daily Mail of London" and dba www.dailymail.co.uk, DMGT PLC, and DOES 1 through 10 (collectively, "Defendants"), as follows:

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2 **JURISDICTION AND VENUE**

3 1. This is a civil action against Defendants for copyright infringement in breach
4 of the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has subject matter
5 jurisdiction over the copyright infringement under 28 U.S.C. § 1331, 17 U.S.C. § 501(a),
6 and 28 U.S.C. § 1338(a) and (b).

7 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28
8 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the Defendants may be
9 found and transact business in this Judicial District, and the injury suffered by Plaintiff took
10 place in this Judicial District. Defendants are subject to the jurisdiction of this Court
11 because of their contacts with the United States and the State of California.

12 **PARTIES: MAVRIX, DAILY MAIL, AND THE DAILY MAIL'S OPENING OF A**
13 **CELEBRITY-FOCUSED BUREAU IN LOS ANGELES**

14 3. Plaintiff Mavrix is a corporation incorporated and existing under the laws of
15 Florida, with offices located in Los Angeles, California and Miami, Florida, which is
16 publicly stated as such. Mavrix is a prominent celebrity photography agency. Mavrix
17 licenses its photographs to its end customers, the world's leading newspapers, television
18 programs and magazines, like People or US Weekly.

19 4. Plaintiff is informed and believes and, upon such, alleges that Associated
20 Newspapers Limited is a worldwide business with its corporation headquarters in London,
21 England and a Los Angeles Bureau.

22 5. Associated Newspapers Limited publishes the worldwide online newspaper
23 known as www.dailymail.co.uk ("Website" or "Daily Mail Online") as well as the print
24 paper known as the Daily Mail Newspaper ("Daily Mail"). The print version of the Daily
25 Mail is sold in the United States, in California and in Los Angeles specifically, which
26 consumers pay for the paper and those monies paid by Californians and Los Angelinos
27 eventually reach Associated Newspapers.
28

1 6. Public documents indicate that Associated Newspapers Ltd. is itself simply a
2 “division” of DMGT PLC, a multi-billion dollar worldwide publicly traded media
3 conglomerate entity that operates in over 40 countries, including the United States, and has
4 offices in the United States as well as facilities at the California Market Center in Los
5 Angeles. In fact, the Daily Mail entity appears from public documents to be a division of
6 DMGT housed in what DMGT calls its “A&N Media” group. The A&N Media Group
7 includes various media outlets. On information and belief, DMGT stands for “Daily Mail
8 and General Trust.” Associated Newspapers Ltd. and DMGT are all part of the same
9 entity, do not enjoy a separate corporate structure and function as one common enterprise
10 and/or as alter egos of each other.

11 7. In 2010, Defendants opened a Los Angeles Bureau of the Daily Mail Online,
12 which Bureau is in Los Angeles for the purpose of engaging in commerce related to
13 celebrity photographs and celebrity news stories. Defendants picked Los Angeles for their
14 new celebrity-focused Bureau because Los Angeles and Hollywood are the epicenter of
15 celebrity culture and celebrity sightings. Defendants operate their Los Angeles Daily Mail
16 Online Bureau in Inglewood, Los Angeles and have a 310 phone number for consumers to
17 call with any celebrity leads or photos to offer Defendants, and the number is registered to
18 a “World Media DMG.” On information and belief World Media DMG is an alter ego of
19 Defendants (“DMG” refers to “Daily Mail Group” on information and belief) and the front
20 for their Los Angeles Daily Mail Online Bureau. True and correct copies of articles
21 discussing the opening of the Defendants’ Los Angeles Bureau are attached as Exhibit A.

22 8. The true names or capacities, whether individual, corporate or otherwise, of
23 the Defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff,
24 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
25 Court to amend this Complaint and insert the true names and capacities of said Defendants
26 when the same have been ascertained. Plaintiff is informed and believes and, upon such,
27 alleges that each of the Defendants designated herein as a “DOE” is legally responsible in
28

1 some manner for the events and happenings herein alleged, and that Plaintiff's damages as
2 alleged herein were proximately caused by such Defendants.

3 **FACTS COMMON TO ALL COUNTS: THE DAILY MAIL'S REPEATED**
4 **COPYRIGHT INFRINGEMENT OF PLAINTIFF'S WORKS AND ITS PATTERN**
5 **AND PRACTICE OF SIMILAR INFRINGEMENTS AGAINST OTHERS.**

6 9. The Daily Mail Online is one of the largest websites in the world. It is the
7 second largest English news site in the world, second only to the New York Times.
8 Individuals associated with the Daily Mail Online (and working for Defendants,
9 specifically one James Bromley) claim that one-third of its online audience comes from the
10 United States.

11 10. Of the nearly 80 million websites in the world, the Website ranks number 157
12 in the United States, according to the internet website traffic monitoring company Alexa.
13 A true and correct copy of the Alexa verification of this is attached as Exhibit B. Similarly,
14 Quantcast (another internet website traffic monitoring company) indicates that **2.8 million**
15 **Americans per month** view the Website, and ranks the website as number 548 in the world.
16 A true and correct copy of Quantcast's data is also attached as part of Exhibit B.

17 11. Not surprisingly, the Daily Mail Online advertises myriad product and service
18 offerings to people in California and the United States generally. For example, true and
19 correct advertisements from the Website are attached as Exhibit C, all of which
20 demonstrate the Defendant offering Californians Mercedes Benz cars for sale (at Southern
21 California Mercedes Benz dealerships), job opportunities, health care plans, Cable TV at
22 Time Warner in Southern California, auto insurance in California, and Lincoln Mercury
23 cars for sale in California, among myriad other advertisements on the Website directed to
24 Californians and Americans.

25 12. The Daily Mail Online also has a California-focused section, specifically a
26 top-level link to a portion of the Website named "U.S. Showbiz" with a dedicated section
27 to Los Angeles celebrity culture named "Gossip – Direct From L.A." This portion of the
28 Website focuses on celebrity culture, the world epicenter of which is Los Angeles. A true

1 and correct copy of this Los Angeles section of the Website is attached as Exhibit D. As
2 discussed in Exhibit A, the celebrity gossip portion of the Website engages readers for
3 longer than any other portion of the Website.

4 13. The Daily Mail Online also itself boasts that it has more non-UK users of its
5 English language website than it does UK users, claiming recently that it received an
6 average of almost 2,670,371 million unique non-UK visitors per day. Moreover, it claims
7 that 64.05% percent of its unique users come from browser sessions outside the UK, with
8 the remaining 35% coming from the UK.

9 14. The Website has "Debate Boards" for users to upload comments on celebrity
10 issues and engage in online sparring debates as well as voting/polling opportunities for
11 users to vote on celebrity issues (Example: "Has Kelly Osborne lost too much weight?").

12 15. Defendants are familiar with Mavrix and Mavrix's valuable and proprietary
13 celebrity images. Indeed, in the past Mavrix had licensed the Daily Mail certain of
14 Mavrix's images. But the parties' business relationship deteriorated over time, and
15 Defendants took to simply using Mavrix's photos (at issue here) despite no legal authority
16 to do so, a pattern of conduct that is apparently part of Defendants' *modus operandi* with
17 other photograph agencies.

18 16. Mavrix captures and authors certain valuable celebrity images and offers them
19 for license to entities, including the Defendants, by way of, for example, the following offer
20 (the following is a specific offer given to Defendants by Plaintiff via a communication to
21 Mr. Elliot Wagland, the Online Picture Editor for Defendants):

22 **MAVRIXONLINE.COM - DAILY MAIL ONLINE OUT -**

23 **EXCLUSIVE!!** Kate Hudson relaxes poolside in a blue bikini with her
24 brother Oliver Hudson and his wife Erinn Bartlett. Hudson, who turns 31
25 in ten days time, had a pedicure, ate bbq ribs and chilled out in the
26 Florida sunshine. She also appeared to be reading a script, possibly
27 learning lines for her upcoming movie Ass Backwards. Florida, 4/9/10.

28 **Fees must be agreed prior to publication.** Byline, credit, TV usage,

1 web usage or linkback **must read MAVRIXONLINE.COM**. Failure to
2 byline correctly will incur double the agreed fee. Tel: 305 542 9275 or
3 954 698 6777.

4 17. Despite prominent warning that under no circumstances could the images be
5 used in the print media without agreeing to fees first, and that under all circumstances the
6 images could not be used on the Daily Mail Online website (“**DAILY MAIL ONLINE**
7 **OUT**”), Defendants nonetheless used the images on its online website and/or its hard-copy
8 publication.

9 18. Despite prominent warning that “Fees must be agreed” prior to publication,
10 Defendant simply would use the image online and in print editions and never negotiate
11 fees. Defendant would on occasion send a check for a trivial, insubstantial sum of money,
12 which was never agreed upon as the appropriate fee for the valuable images.

13 19. As such, Defendants have repeatedly reproduced, publicly distributed and
14 publicly displayed numerous photographs belonging to Mavrix on numerous occasions via
15 their Website and also in their print editions of the Daily Mail, all of which was done
16 without consent or license of Plaintiff.

17 20. There are multiple infringements at issue in this case across two different
18 media:

19 a. Specifically, the following photographs are photographs that belong
20 exclusively to Mavrix and which, as evidenced in the referenced Exhibits, were reproduced
21 on Defendant’s Website without consent:

- 22 1. Pamela Anderson (Exclusive) (Exhibit E)
- 23 2. Robbie Williams Wedding (Exhibit F)
- 24 3. Devon James (Exclusive) (Exhibit G)
- 25 4. Roger Daltrey (Exclusive) (Exhibit H)
- 26 5. Halle Berry & Olivier Martinez (Exhibit I)

1 b. Specifically, the following photographs are photographs that belong
2 exclusively to Mavrix and which were placed on Defendant's hard copy printed Daily Mail,
3 and distributed in California and the United States without consent or agreement to terms as
4 evidenced by the referenced Exhibits:

- 5 1. Kate Hudson Blue Bikini (Exclusive) (Exhibit J)
- 6 2. Devon James (Exclusive) (Exhibit G)
- 7 3. Roger Daltrey (Exclusive) (Exhibit H)
- 8 4. Robbie Williams Wedding (Exhibit F)
- 9 5. Halle Berry & Olivier Martinez reproduced on two different
10 ocasions in two different paper editions (Exhibit I)

11 The above-referenced infringed images identified in this paragraph are collectively
12 referred to as "Photos" hereafter.

13 21. Mavrix filed for copyright registration of all the Photos (excepting Devon
14 James and Roger Daltrey which were filed after 90 days) within 90 days of their authorship
15 and first publication, and the copyright registration receipts for all the Photos are attached
16 hereto as Exhibits K (Roger Daltrey), L (Robbie Williams), M (Pamela Anderson), N
17 (Halle Berry/Olivier Martinez), O (Devon James) & P (Kate Hudson).

18 22. The Photos had substantial monetary value for Mavrix.

19 23. As discussed in paragraph 16 above, one of the Daily Mail employees who
20 Mavrix interacted with in the past regarding Mavrix images was Elliot Wagland, the Daily
21 Mail Online Picture Editor. Defendants with Mr. Wagland's assistance have a history of
22 this copyright piracy conduct. Indeed, the pattern and practice of Defendants is to ignore
23 the demand of photo agencies or photographers to agree to rates before use and to simply
24 take the pictures and use them without compensation or to then offer token compensation.
25 Attached as Exhibit Q are true and correct copies of articles addressing this similar
26 behavior as applied to other photo agencies and photographers similarly situated to Plaintiff
27 here. As such, the conduct of Defendants here as applied to Plaintiff Mavrix, given both
28 the facts discussed above but also given Defendants' similar pattern and practice of

1 intellectual property piracy, was willful thereby entitling Mavrix to statutory damages of
2 \$150,000 per eligible image infringed per infringement.

3 //

4 **FIRST CLAIM FOR RELIEF**

5 **(Copyright Infringement, 17 U.S.C. § 501)**

6 24. Plaintiff Mavrix incorporates here by reference the allegations in paragraphs 1
7 through 23 above.

8 25. Mavrix is the owner of all rights, title and interest in the copyrights to the
9 Photos, which substantially consist of material wholly original with Plaintiff and which are
10 proper subject matter for copyright under the laws of the United States. Mavrix has
11 complied in all respects with the Copyright Act and all of the laws of the United States
12 governing copyrights. The Photos have been registered with the United States Copyright
13 Office.

14 26. Defendants have directly, vicariously and/or contributorily infringed, and
15 unless enjoined, will continue to infringe Mavrix's copyrights by reproducing, displaying,
16 distributing and utilized the Photos for purposes of trade in violation of 17 U.S.C. § 501 *et*
17 *seq.*

18 27. Defendants have willfully infringed, and unless enjoined, will continue to
19 infringe Mavrix's copyrights by knowingly reproducing, displaying, distributing and
20 utilizing the Photos for purposes of trade.

21 28. Defendants have received substantial benefits in connection with the
22 unauthorized reproduction, display, distribution and utilization of the Photos for purposes
23 of trade, including by increasing the traffic to Defendants' websites and, thus, increasing
24 the advertising fees realized.

25 29. The Defendants' acts are and were performed without the permission, license
26 or consent of Mavrix.

27 30. The wrongful acts of Defendants have caused, and are causing, great injury to
28 Mavrix, of which damages cannot be accurately computed, and unless this Court restrains

1 Defendants from further commission of said acts, Mavrix will suffer irreparable injury, for
2 all of which it is without an adequate remedy at law. Accordingly, Mavrix seeks a
3 declaration that Defendants are infringing Mavrix's copyrights and an order under 17
4 U.S.C. § 502 enjoining Defendants from any further infringement of Mavrix's copyrights.

5 31. As a result of the acts of Defendants alleged herein, Mavrix has suffered and is
6 suffering substantial damage to its business in the form of diversion of trade, loss of profits,
7 injury to goodwill and reputation, and the dilution of the value of its rights, all of which are
8 not yet fully ascertainable.

9 32. Because of the willful nature of the copyright infringement, Mavrix is entitled
10 to an award of statutory damages equal to \$150,000 per infringement.

11 33. Mavrix is also entitled to its attorney's fees in prosecuting this action.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests judgment against Defendants as follows:

14 1. The Defendants, their officers, agents, servants, employees,
15 representatives, and attorneys, and all person in active concert or participation with them,
16 be permanently enjoined from designing, copying, reproducing, displaying, promoting,
17 advertising, distributing, or selling, or any other form of dealing or transaction in, any and
18 all advertising and promotional materials, print media, signs, Internet websites, or any other
19 media, either now known or hereafter devised, bearing any design or mark which infringe,
20 contributorily infringe, or vicariously infringe upon Plaintiff Mavrix's rights in the Photos.

21 2. Defendants be held liable to Plaintiff in statutory damages for copyright
22 infringement, including willful infringement, in accordance with 17 U.S.C. §§ 504(a)(2) &
23 (c) and for costs, interest and reasonable attorney's fees pursuant to 17 U.S.C. § 505.

24 3. An accounting be made for all profits, income, receipts or other benefit
25 derived by Defendants from the reproduction, copying, display, promotion, distribution or
26 sale of products and services, or other media, either now known or hereafter devised, that
27 improperly or unlawfully infringes upon Plaintiff's copyrights pursuant to 17 U.S.C. §§
28 504 (a)(1) & (b).

1 4. Requiring Defendants to account for and pay over to Plaintiff all profits
2 derived by Defendants from their acts of copyright infringement and to reimburse Plaintiff
3 for all damages suffered by Plaintiff by reasons of Defendant's acts, pursuant to 17 U.S.C.
4 §§ 504 (a)(1) & (b).

5 5. Actual damages for copyright infringement pursuant to 17 U.S.C. §§
6 504 (a)(1) & (b).

7 6. That Plaintiff be awarded any such other and further relief as the Court
8 may deem just and appropriate.

9
10 Dated: November 22, 2010

ONE LLP

11
12 By: 

13 Peter Afrasiabi, Esq.
14 Attorneys for Plaintiff
15 Mavrix Photo, Inc.
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DEMAND FOR JURY TRIAL

Plaintiff Mavrix Photo, Inc. hereby demands trial by jury of all issues so triable under the law.

Dated: November 22, 2010

ONE LLP

By: 

Peter Afrasiabi, Esq.
Attorneys for Plaintiff,
Mavrix Photo, Inc.

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