

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LARRY G. PHILPOT,**

**Plaintiff**

**V.**

**RCC HOLDINGS, LLC,**

**Defendant.**

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**Civil Action No. 4:18-cv-1573**



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**PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND**

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Plaintiff Larry G. Philpot (“Philpot” or “Plaintiff”) files this Original Complaint against Defendant RCC Holdings, LLC (“RCC” or “Defendant”) on personal knowledge as to all facts regarding himself and on information and belief as to all other matters, as follows:

**I.**

**PRELIMINARY STATEMENT**

Photographers create pieces that extend well beyond the four corners of the photograph to evoke sentiments within the viewer so that the viewer is a part of the moment captured in time. For concert photographers, the odds are almost always against them—the musicians are constantly moving, the lighting is usually dark and typically changing, and it is practically impossible to secure a good vantage point. But every now and then, a photographer is able to get a great shot, the kind of iconic shot that does exactly what photographs are supposed to do, make the viewer a part of that very moment in time.

Larry Philpot, an experienced freelance photographer, created an iconic photograph of Ted Nugent, capturing a moment in time amidst the turbulence of a music concert. This

photograph is the type of career-making work that can make a successful photography career. Philpot offered the photograph under a Creative Commons license, permitting members of the public to use the photos provided that the photos are properly attributed to Philpot.

Defendant RCC copied and posted Philpot's photograph of Ted Nugent onto its website, [www.theredneckcountryclub.com](http://www.theredneckcountryclub.com), as its own. RCC did not attribute the photograph to Philpot, thereby infringing on Philpot's copyrighted work. In freelance photography, the reputation and licensing revenue guarded by copyright law are a photographer's sole means to support their career. RCC stole both of those from Philpot. Larry Philpot brings this action to protect not just his rights under copyright law, but also his livelihood as a photographer.

## **II.**

### **PARTIES**

#### **A. Plaintiff**

1. Plaintiff Larry G. Philpot is a citizen and resident of the State of Indiana. Philpot is a renowned freelance photographer who specializes in photographing concerts and musical performances across the United States.

#### **B. Defendant**

2. Defendant RCC Holdings, LLC is a Texas limited liability company with its principal place of business in Texas that may be served via its registered agent, Albert T. Van Huff, at 1225 North Loop West, Suite 640, Houston, Texas 77008 or wherever he may be found.

### III.

#### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this civil action presents a federal question as Plaintiff presents a civil claim arising under the Constitution, laws, or treaties of the United States.

4. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a) because this civil action arises under an Act of Congress relating to copyrights, namely the Copyright Act of the United States, 17 U.S.C. § 101, *et seq.*

5. This Court has personal jurisdiction over RCC Holdings, LLC because it is a Texas limited liability company and because its principal place of business is in the State of Texas.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Defendant RCC Holdings, LLC resides and may be found in this District.

### IV.

#### **FACTUAL BACKGROUND**

##### **A. The Highly Competitive World of Freelance Concert Photography**

7. To say that concert photography is a tough business is a severe understatement. Before having the opportunity to even take a photo, concert photographers must invest in expensive equipment and negotiate to obtain access to the concert stage. At the concert, they must battle all the variables that arise from an uncontrolled setting—a rowdy crowd, horrible lighting that is always changing, and musicians constantly moving. Not to mention, it is really loud. As a result, despite all of their efforts and hard work, concert photographers often take photographs that are entirely unusable, where the rock stars appear as blurs and washy blobs.

8. Financially, it can be difficult to maintain a steady income stream from concert photography. Freelance concert photographers only earn money when they license or sell their work product. If the photographs are unusable, which is often the case, or simply aren't good, then the photographers do not receive any type of payment.

9. And, in today's technological age where anyone with a smart phone can take pictures at concerts, concert photography is becoming significantly more competitive, making it even more imperative to capture *the* perfect shot. Because that is all that there is demand for—a few once-in-a-lifetime shots for each star. It doesn't matter if a concert photographer takes 100 good shots of a star at a concert—an article about Ted Nugent, for example, only needs one picture of Ted Nugent—*the best one*.

10. In such a competitive environment, it is essential that concert photographers receive the compensation and credit to which they are entitled, but also need to advance their career.

**B. Larry Philpot: A Professional Concert Photographer**

11. Larry Philpot is a renowned freelance photographer who specializes in taking photographs of musicians at concerts and other performances. Philpot has invested thousands of dollars in equipment and has spent years perfecting his craft. He has established a strong reputation for himself and his work, and due to his professional reputation, he often obtains privileged access to take photographs of musical performers at concerts.

12. Philpot's reputation as a premier photographer is critical to his business. The more his photographs are viewed with proper attribution provided to him, the more access he can obtain to take celebrity photographs, and the more he can command in licensing fees.

13. Philpot regularly licenses his photographs to end customers, including such publications and entities as Rolling Stone, Forbes, Gannett, AXS-TV, iHeart, Cummulus Media,

Hearst, PBS, NPR, AOL Music, Berkshire Hathaway—it is how he earns his living and expands his business. Philpot has also licensed his photographs to premier musicians, including Willie Nelson, Foreigner, KISS, John Mellencamp, Kid Rock, and Heart.

**C. Philpot Creates the Ted Nugent Photograph**

14. On July 31, 2013, Philpot created a photograph of Ted Nugent in Indianapolis, Indiana (the “Ted Nugent Photo”). A copy of the Ted Nugent Photo is attached as Exhibit A.

15. The Ted Nugent Photo is an original work that Philpot registered with the United States Copyright Office as part of a collection of photographs on August 15, 2013. The Ted Nugent Photo is registered with the United States Copyright Office under Certificate Number VAu 1-164-624. A copy of the copyright registration certificate for the Ted Nugent Photo is attached as Exhibit B.

16. Philpot first displayed the Ted Nugent Photo on September 12, 2013 on the Wikimedia website.

17. The Ted Nugent Photo has become one of the most widely-viewed pictures of Ted Nugent.

**D. The Creative Commons License**

18. A Creative Commons license is a simple, standardized copyright license that anyone can use to license their work. The copyright holder designates their work as governed by a Creative Commons license, and anyone may use the work provided they adhere to the terms of the license.

19. In an effort to market his freelance photography practice, Philpot offered the Ted Nugent Photo through Wikimedia for distribution, public display, and public digital performance under a Creative Commons Attribution-ShareAlike 3.0 Unported Generic license (abbreviated as “CC BY-SA 3.0”). A copy of the CC BY-SA 3.0 license is attached as Exhibit C.

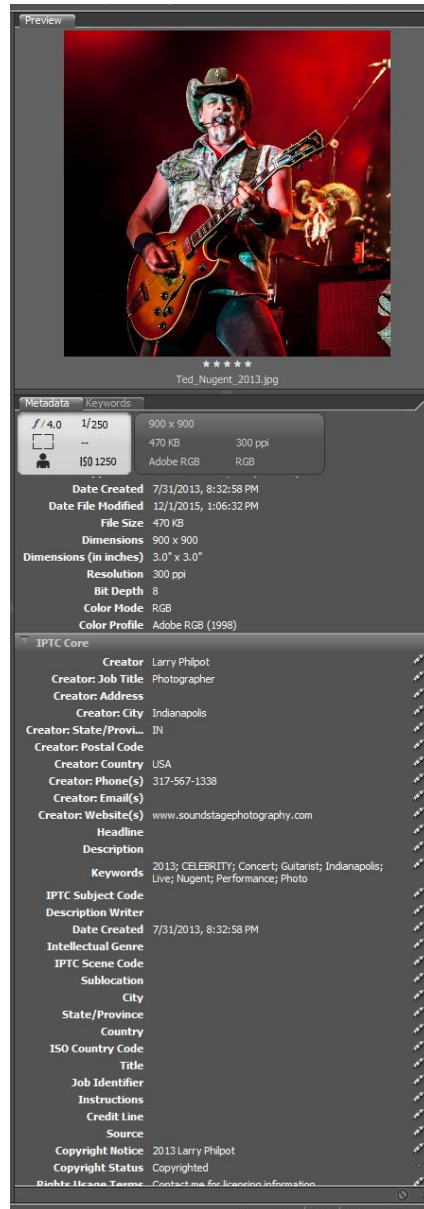
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- a. Include a copy of the Uniform Resource Identifier for the CC BY-SA 3.0;
- b. Provide attribution to the author of the work; and
- c. Provide the Uniform Resource Identifier that the licensor specifies to be included with the work.

**E. Restrictions on the Ted Nugent Photo**

21. At the Wikimedia website, Larry Philpot provided the following description for the Ted Nugent Photo, “English: Ted Nugent performs in Indianapolis at the Murat, July 31, 2013.” Philpot also provided the following requirement for the Ted Nugent Photo: “Attribution: Photo Credit: Larry Philpot of [www.soundstagephotography.com](http://www.soundstagephotography.com).”

22. Additionally, the Ted Nugent Photo contains specific metadata identifying Larry Philpot as the creator and that the work is copyrighted:



#### **F. RCC Infringes Philpot's Copyright in the Ted Nugent Photo.**

23. RCC owns and operates the website located at [www.theredneckcountryclub.com](http://www.theredneckcountryclub.com).
24. RCC uses the website at [www.theredneckcountryclub.com](http://www.theredneckcountryclub.com) for financial gain by advertising concerts for which it sells tickets and selling advertising to third parties.
25. The website located at [www.theredneckcountryclub.com](http://www.theredneckcountryclub.com) contained the following notation, "© Copyright 2018 The Redneck Country Club, Houston, TX."

26. RCC infringed Philpot's copyright in the Ted Nugent Photo by publishing the Ted Nugent Photo on the [www.theredneckcountryclub.com](http://www.theredneckcountryclub.com) website at <https://theredneckcountryclub.com/event/ted-nugent/> and [https://theredneckcountryclub.com/wp-content/uploads/2017/05/Ted\\_Nugent\\_2013.jpg](https://theredneckcountryclub.com/wp-content/uploads/2017/05/Ted_Nugent_2013.jpg). A copy of these webpages as they appeared with the Ted Nugent Photo is attached as Exhibit D.

27. RCC did not provide attribution to Philpot when it published the Ted Nugent Photo.

28. RCC did not list or link to Philpot's website, [soundstagephotography.com](http://soundstagephotography.com), when it published the Ted Nugent Photo.

29. Additionally, RCC removed the metadata from the Ted Nugent Photo that identified Larry Philpot as the creator and that the image is copyrighted.

#### **G. The Damage Done**

30. RCC passed off Philpot's Ted Nugent Photo as its own, ignoring Philpot's primary requirement under the Creative Commons license to allow RCC to use his copyrighted work—the credit. Philpot has been deprived of the credit for taking the exceptional Ted Nugent Photo.

31. Additionally, RCC removed the metadata from the Ted Nugent Photo, thereby creating the impression that the Ted Nugent Photo is in the public domain and exposing it to further copying by third parties without any notice that the image is copyrighted by Philpot.

### **V.**

#### **CLAIMS**

##### **A. Count One: Copyright Infringement**

32. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.



33. Defendant operates and operated the website located at [www.theredneckcountryclub.com](http://www.theredneckcountryclub.com).

34. Defendant published the Ted Nugent Photo at <https://theredneckcountryclub.com/event/ted-nugent/>.

35. Defendant published the Ted Nugent Photo at [https://theredneckcountryclub.com/wp-content/uploads/2017/05/Ted\\_Nugent\\_2013.jpg](https://theredneckcountryclub.com/wp-content/uploads/2017/05/Ted_Nugent_2013.jpg).

36. Defendant's acts are and were performed without the permission, license, or consent of Plaintiff.

37. Defendant acted with willful disregard of the laws protecting Plaintiff's copyrights.

38. Defendant infringed Plaintiff's copyrights in the Ted Nugent Photo in violation of 17 U.S.C. § 501.

39. Plaintiff has sustained and will continue to sustain substantial damage in an amount not yet fully ascertainable, including, but not limited to, damage to his business reputation and goodwill.

40. Plaintiff is informed and believes and thereon alleges that Defendant has obtained profits recoverable under 17 U.S.C. § 504. Plaintiff will require an accounting from the Defendant of all monies generated from the Ted Nugent Photo.

41. In the alternative and at his election, Plaintiff is entitled to seek maximum statutory damages for each separate act of willful infringement by Defendant in an amount of \$150,000 per each infringement.

42. Plaintiff has suffered and continues to suffer irreparable harm and damage as a result of the above-described acts. Accordingly, Plaintiff seeks permanent injunctive relief pursuant to 17 U.S.C. § 502, as well as seizure of the Ted Nugent Photo.

43. Plaintiff is entitled to recover from Defendant his attorney's fees and costs of suit, pursuant to 17 U.S.C. § 505.

**B. Count Two: Removal of Copyright Management Information**

44. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.

45. Defendant, without Plaintiff's knowledge, permission, or authorization, intentionally removed and/or altered copyright management information for the Ted Nugent Photo by removing the metadata for the Ted Nugent Photo that contained Plaintiff's name as the creator of, and the identification that the Ted Nugent Photo was copyrighted, in violation of 17 U.S.C. § 1202(b)(1).

46. Defendant, without Plaintiff's knowledge, permission, or authorization thereafter distributed the Ted Nugent Photo having reasonable grounds to know that such acts will induce, enable, facilitate, or conceal an infringement of copyright in violation of 17 U.S.C. § 1202(b)(2) and (3).

47. Defendant's removal or alteration of copyright management information from the Ted Nugent Photo was and is willful and intentional, and was and is executed with full knowledge of Plaintiff's rights under Copyright Law, and in disregard of those rights.

48. Plaintiff is entitled under 17 U.S.C. § 1203(b)(1) to the entry of permanent injunctive relief to prevent or restrain Defendant from removing Plaintiff's copyright management information or distributing Plaintiff's copyrighted works knowing that such copyrighted information has been unlawfully removed.

49. Plaintiff is entitled to recover his actual damages suffered as a result of the violation and any profits of Defendant attributable to the violation and not taken into account in computing actual damages, or, at Plaintiff's election, statutory damages pursuant to 17 U.S.C. § 1203(c).

50. Plaintiff is entitled to recover costs and attorney's fees from Defendant pursuant to 17 U.S.C. § 1203(b)(4) and (5).

**VI.**

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

**VII.**

**RELIEF REQUESTED**

WHEREFORE, Plaintiff demands that judgment be entered against Defendant as follows:

1. That the Court enter judgment against Defendant that Defendant willfully infringed Philpot's rights in the Ted Nugent Photo made the basis of this suit, in violation of 17 U.S.C. § 501.

2. That the Court issue permanent injunctive relief against Defendant and its agents, servants, employees, representatives, successors and assigns, and all persons, firms, corporations, or other entities in active concert or participation with Defendant, enjoining and restraining them from:

- a. directly or indirectly infringing the Plaintiff's copyrights in any manner, including generally, but not limited to reproducing, distributing, displaying, performing or making derivatives of any of the Ted Nugent Photo;
- b. directly or indirectly removing or altering Plaintiff's copyright management information from any work, including but not limited to the Ted Nugent Photo,

and from distributing any of Plaintiff's works with removed or altered copyright management information;

3. That the Court enter an order that Defendant:

- a. retrieve, to the extent possible, all copies of the Ted Nugent Photo;
- b. inform all recipients of the Ted Nugent Photo of Plaintiff's ownership; and
- c. inform all recipients of the Ted Nugent Photo that Defendant was not authorized to reproduce, distribute, display, perform, or make derivatives of the Ted Nugent Photo;

4. Defendant be required to pay actual damages, statutory damages, and disgorgement of all profits derived by Defendant from its acts of copyright infringement and removal of copyright management information;

5. Defendant be required to pay Plaintiff the costs of this action, prejudgment interest, and reasonable attorney's fees; and

6. Plaintiff be granted all other and further relief to which he is entitled.

Dated: May 15, 2018

Respectfully submitted,

**HUTCHERSON LAW PLLC**

/s/ Kenton J. Hutcherson  
Kenton J. Hutcherson  
Texas State Bar No. 24050798  
Hutcherson Law PLLC  
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Tel: (214) 443-4200  
Fax: (214) 443-4210  
Email: kjh@hutchersonlaw.com

**ATTORNEY FOR PLAINTIFF**

# **EXHIBIT A**



# **EXHIBIT B**





This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number

Vau 1-164-624

Effective date of  
registration:

August 21, 2013

## Title

Title of Work: Concert photographs through August 15, 2013

## Completion/Publication

Year of Completion: 2013

## Author

■ Author: Larry Gene Philpot

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1953

## Copyright claimant

Copyright Claimant: Larry Gene Philpot

12527 Winding Creek Lane, Indianapolis, IN, 46236

## Certification

Name: Larry G. Philpot

Date: August 15, 2013



**Registration #:** VAU001164624

**Service Request #:** 1-979744461



Larry Philpot  
8125 Halyard Way  
Indianapolis, IN 46236 United States



# EXHIBIT C



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# EXHIBIT D



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