



the property that is the subject of this action is situated here.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because the named plaintiff Richard N. Bell resides in this district and because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; and/or Defendant conducts business in this district.

### **PARTIES**

5. The Plaintiff, Richard N. Bell is an attorney and a professional photographer and lives in McCordsville, Indiana.

6. Defendant NATIONAL ASSOCIATION OF REALTORS (“REALTORS”) has conducted and does conducts business in this district. REALTORS created a website with the domain name of [www.realtor.com](http://www.realtor.com) for its business.

### **FACTS**

7. In March 2000, the Plaintiff, a United States citizen, took a photograph of downtown Indianapolis skyline from overlooking the canal from St. Clair Avenue.

8. The photograph is an original work that is copyrighted under United States law. A copy of the photo is attached as Exhibit A, hereinafter referred to as “Indianapolis Photo”.

9. Since March 2000, the Plaintiff has either published or licensed for publication all copies of the Indianapolis Photo in compliance with the copyright laws and has remained the sole owner of the copyright.

10. Indianapolis Photo was first published on the World Wide Web on August 29, 2000 by the user's account on Web shots. It was recently published on a website created by the Plaintiff under the domain name: [www.richbellphotos.com](http://www.richbellphotos.com)

11. The "Indianapolis Photo" was registered on August 4, 2011 with the United States Copyright Office and assigned Registration Number VA0001785115.

12. Plaintiff has used the Indianapolis Photo in advertising to such an extent that the Indianapolis Photo is identified by the public as being created by the Plaintiff.

13. Plaintiff has used the Indianapolis Photo in advertising to promote his photography business.

## **COUNT I**

### **COPYRIGHT INFRINGEMENT**

14. Defendant REALTORS created a website with the domain name of [realtor.com](http://realtor.com) to promote and advertise REALTORS's business in Indianapolis and used the Indianapolis Photo on <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg> (Exhibit B Screen Shot of Infringement)

15. Defendant REALTORS used the Indianapolis Photo to draw or attract prospective customers to Defendant's business in Indianapolis.
16. Defendant REALTORS are liable to Plaintiff because he had the right and ability to control and supervise the content of and to control and supervise the access of third party Internet users to that website.
17. Upon information and belief, the Defendant REALTORS downloaded or took the Indianapolis Photo from the internet without permission from the owner.
18. In February 2019 the Plaintiff discovered through three computer programs; Google images, TinEye and Wayback Machine that the website of <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg> and was visible to world viewers on April 8, 2016. (Exhibit B Screen Shot of Infringement)
19. Defendant did not disclose the source of the stolen Indianapolis Photo or otherwise conferred credit to the owner; instead, the Defendant willfully and recklessly falsely claimed that Defendant REALTORS owned the copyrights of all images and photos contained on the website of <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg> including Indianapolis Photo as they added their copyright notice "©1995-2019 National Association of REALTORS® and Move, Inc. All rights reserved." below the photo.
20. Upon information and belief it appears beginning in years 2015 to 2018 the

website of Defendant REALTORS published the Indianapolis Photo for its commercial use without paying for said use and without obtaining the necessary authorization from the Plaintiff, the copyright owner.

21. While the Defendant will know the exact date of first publication, based upon the Plaintiff's investigation, during the year 2013, Defendant began publishing the Indianapolis Photo and used the Indianapolis Photo for their commercial use without paying for said use and without obtaining the necessary authorization from the Plaintiff and continues to publish the Indianapolis Photo.

22. The Defendant knew that he did not own Indianapolis Photo and knew the Defendant had not obtained the rights to publish the Indianapolis Photo, but recklessly and falsely represented to the world otherwise.

23. Defendant REALTORS has not paid anyone for the right to publish the Indianapolis Photo, but instead fraudulently declared that the Defendant REALTORS owned the copyrights to the Indianapolis Photo.

24. Defendant refuses to pay for the unauthorized use of Indianapolis Photo.

25. Defendant has not agreed be enjoined from using the Indianapolis Photo.

26. After the Defendant published the Indianapolis Photo, Defendant permitted third parties to access to the webpage <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg> and copy the Indianapolis Photo to third party Internet User's computers.

27. Defendant is vicariously liable for each such downloaded copy of the Indianapolis Photo initiated by each third-party Internet User regardless of whether Defendant was aware that the third party was creating the downloaded copy.

28. Defendant is liable for all profits resulting from each downloaded copy of the Indianapolis Photo created by each such third-party Internet User.

29. Defendant is liable for copyright infringement regardless of whether Defendant knew that any use of the Indianapolis Photo would infringe copyrights Plaintiff owns.

30. Plaintiff has complied in all respects with 17 U.S.C. §§ 101 et seq., and secured the exclusive rights and privileges in and to the copyrights of the above-referenced works.

31. Plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyrights in their respective works as referenced above.

32. Defendant REALTORS's conduct violates the exclusive rights belonging to Plaintiff as owner of the copyrights, including without limitation Plaintiff's rights under 17 U.S.C. § 106.

33. Plaintiff seeks damages for Defendant's use of Plaintiff's advertising idea comprising the Indianapolis Photo.

34. On information and belief, Plaintiff alleges that, as a direct and proximate result of their wrongful conduct, Defendant REALTORS has realized and continues to realize profits and other benefits rightfully belonging to Plaintiff. Accordingly, Plaintiff seek an award of damages pursuant to 17 U.S.C. §§ 504 and 505 and 15 U.S.C. 1125(a).

35. Defendant's infringing conduct has also caused and is causing substantial and irreparable injury and damage to Plaintiff in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving the Plaintiff with no adequate remedy at law.

36. Defendant has willfully and deliberately engaged in, and, is willfully engaging in, the acts complained of with oppression, fraud, and malice ("Acts") and in conscious disregard of the rights of Plaintiff. Plaintiff is, therefore, entitled to the maximum statutory damages allowable.

37. Examples of these willfully and deliberately Acts, include but not limited to the following:

- a. Defendant REALTORS downloaded or took the Indianapolis Photo from the internet and included said photo on the Defendant's website.
- b. Defendant failed to designate the source of the stolen Indianapolis Photo or otherwise confer credit to the owner.

- c. Defendant recklessly, willfully and falsely asserted that the Defendant owned the copyrights of all content, images and photos contained on the Defendant's website <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg>
- d. Defendant knew that it did not own Indianapolis Photo and knew the Defendant had not obtained the rights to publish the Indianapolis Photo, but deliberately and falsely represented to the world otherwise.
- e. Defendants has not paid anyone for the right to use Indianapolis Photo, but instead fraudulently declared that the Defendant owned the copyrights to the Indianapolis Photo on <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg>

THEREFORE, Plaintiff prays for judgment against Defendant REALTORS as follows:

- a. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under common law, and the Federal Copyright Act;
- b. Immediately and permanently enjoining Defendant REALTORS, their members, officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing any of Plaintiff's copyrighted articles or copyrighted material without consent or otherwise infringing Plaintiff's copyrights or other rights in any manner;
- c. Enjoin Defendant from "republishing" any of your copyrighted materials that, if granted, would require that the Indianapolis Photo not be available on <http://www.realtor.com/data-portal/realestatestatistics/img/cities/Indianapolis-IN.jpg> which would



thereby make it impossible for third party Internet users to download copies of the Indianapolis Photo from said webpage.

- d. Ordering Defendant REALTORS to account to Plaintiff for all gains, profits, and advantages derived by Defendants, and third-party users by their infringement of Plaintiff's copyrights or such damages as are proper, and since Defendant intentionally infringed plaintiff's copyrights, for the maximum allowable statutory damages for each violation;
- e. Awarding Plaintiff actual and/or statutory damages for Defendant copyright infringement in an amount to be determined at trial;
- f. Awarding Plaintiff their costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505 and 15 U.S.C. 1125(a) and;
- g. Awarding Plaintiff such other and further relief as is just and proper.

Respectfully Submitted:

March 28, 2019

/s Richard N. Bell  
Richard N. Bell

Richard N. Bell, Atty No. 2669-49  
Bell Law Firm  
10042 Springstone Road  
McCordsville, In 46055  
(317) 589-8535  
(317) 690-2053 Cell  
richbell@comcast.net