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LEE GOLDEN, III,

Plaintiff,

v.

MICHAEL GRECCO PRODUCTIONS,  
INC.; MICHAEL GRECCO; MICHAEL  
GRECCO PHOTOGRAPHY, INC; JOHN  
DOES 1-10; and BUSINESS ENTITIES A-J,

Defendants.

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: UNITED STATES DISTRICT COURT  
: FOR THE EASTERN DISTRICT OF NEW  
: YORK

: Civil Case No.

: COMPLAINT

Plaintiff, LEE GOLDEN, III, by way of Complaint against the Defendants, Michael Grecco Productions, Inc.; Michael Grecco; Michael Grecco Photography, Inc. (hereafter referred to collectively, as appropriate, as the “Defendants”) says:

**PARTIES**

1. Plaintiff Lee Golden, III (“Golden” or “Plaintiff”) is a natural person and is a resident of the State and City of New York, Queens County.

2. Defendant Michael Grecco Photography, Inc. (“Grecco Photo”) is the purported copyright holder of the allegedly infringed photograph.

3. Defendant Michael Grecco Productions, Inc. (“Grecco Prod.”) is the party named on a draft complaint sent to counsel for Golden threatening to bring a civil action against him as discussed more fully below.

4. Defendant Michael Grecco (“Grecco”) is a natural person, and, upon information and belief, the photographer who took the photograph.

5. Upon information and belief, Grecco Photo, Grecco Prod. and Grecco are all residents of California.

6. The reason for naming all these Defendants is because the threatened complaint, discussed below, misidentifies the copyright holder and, therefore, Plaintiff is at risk of another party bringing such an action as a result of the defective nature of the threatened complaint.

7. The John Doe and Business Entity defendants are fictitious parties named herein because their identities are not currently known, and are used to represent individuals involved in the conduct set forth herein as well as, potentially, the owners, operators, employees, directors, managers and individuals or business entities with controlling interests in Defendants, if any such exist and whom or which, after discovery, may be determined to be partially or otherwise responsible for the harm which the Plaintiff suffered and therefore an amended Complaint would be necessary to name them.

#### **NATURE OF THE ACTION**

8. This is an action brought by Golden who seeks a declaration along with applicable injunctive relief under the Declaratory Judgment Act, 28 U.S.C. 2201 and *Fed.R.Civ.P.* 57.

9. Plaintiff has been forced to bring this action as a result of Defendants' improper threats and assertions of copyright infringement against Plaintiff purportedly due to Plaintiff's posting on a website, "filmcombatsyndicate.com," of a picture allegedly copyrighted by at least one of the Defendants. Indeed, there are extensive misrepresentations therein as the threatened Complaint names Grecco Prod. as the plaintiff, but the referring documentation relied upon indicates that the purported copyrights are held by Grecco Photo.

10. Because Golden's use of the allegedly copyrighted material in question is lawful under the statutory "fair use" doctrine set forth in the Copyright Act, 17 U.S.C. § 107, Golden brings this action to clarify the rights of the parties and to refute the defendant's assertions of copyright infringement.

**JURISDICTION AND VENUE**

11. This Court has Subject Matter Jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 as the threats against Plaintiff allege violations of the Copyright Act.

12. Venue is proper in this Judicial District under 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claims herein are within this district as well as this district is Plaintiff's principal address.

13. Further, Defendants have availed themselves of this Court's jurisdiction as a result of their substantial business throughout the United States, including in this district, by selling or licensing their allegedly copyrighted images via "gettyimages.com."

14. Similarly, Defendants have availed themselves of this Court jurisdiction by directly reaching out to Plaintiff, on numerous occasions, to engage him in discussions, threats, and other conduct.

**FACTS**

15. Golden is an indigent person in his mid-thirties, who lives with his elderly parents in Queens to help support them.

16. As a hobby, and escape from the mundane, Golden contributes to the website "filmcombatsyndicate.com" where he makes original, blog-style commentary on pop-culture events. This is not done for economic purposes, but solely personal entertainment.

17. The "filmcombatsyndicate.com" website was started in February of 2013.

18. Over the last five years, he has done his posting exclusively from his cell phone because he does not own, and cannot afford, a computer.

19. Golden is, among other things, a fan of Xena: Warrior Princess, a television show

which aired in the late 1990s and into the beginning of this millennium and relates to certain fantasy characters. The show is now in syndication.

20. Golden wrote a post, in or about, August 2015, on the above referenced website, regarding a future, potential revival of said television show (the “Post”) and included a photograph he had downloaded from the internet. **Exhibit A**. This was a follow-up to a post made the previous month.

21. The photographs, Exhibit A, was found freely online and the way in which it discovered was without any form of attribution or ownership.

22. While Golden posts many such articles relating to television shows and other entertainment, he makes no substantial income from these postings, ad sales, or any other source pertaining to this website.

23. The Post, specifically, earned him zero dollars in ad sales.

24. Sometime in February 2019, Golden received communications from Defendants counsel, accusing him of infringing a photograph, and threatening damages of up to \$150,000.00, in addition to attorney’s fees and costs, if he did not comply with certain demands.

25. The undersigned, appearing as *pro bono* counsel as it does herein, reached out to Defendants’ counsel and advised that the picture in question was taken down, that Mr. Golden’s use is protected by the “fair use” doctrine, that he is indigent, and – presuming that he could be found liable for any violation of the Act – only minimal statutory damages of \$200.00 would likely be awarded against Mr. Golden.

26. The undersigned *pro bono* counsel submitted relevant ad sales reports from Mr. the website and offered to send Mr. Golden’s tax returns as well.

27. In response to the attempt to assuage Defendants’ concerns, on April 29, 2019, the

undersigned counsel received an outrageous and extortionate demand in this matter, and a copy of a proposed lawsuit to be filed in the Central District of California. **Exhibit B.**

28. Mr. Golden does not personally conduct any business in the State of California, and to drag him into a case there is frivolous/. The clear intent is, knowing that Golden lacks the necessary resources to defend himself on the opposite side of the county, to force a default judgment and place him into irreparable harm.

#### **FAIR USE DOCTRINE**

29. Pursuant to Section 107 of the Copyright Act, 17 U.S.C. § 107, certain uses of copyrighted works are authorized by law as “fair uses.”

30. In determining whether the use of a copyrighted work in any particular case is protected as fair use, the statutory factors to be considered include (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. § 107.

31. Golden’s use of the photograph in question, in the context of a reference to a television series that may be rebooted, and not relating to the photograph itself, is permitted under the fair use doctrine and, therefore, does not infringe upon the Defendants’ purported copyright.

32. Golden’s purpose was non-commercial and highly transformative, in that it was entirely different than Defendants’ original purpose in creating the work. Whereas Defendants original purpose was, presumably, for artistic and/or commercial purpose; Golden’s purpose was solely for reference to a television show of which Defendants’ apparently photographed a copyrighted and/or trademarked character, by and through an actresses’ dressing in costume of

said character, and Golden did not obtain any profit from the illustrative use of the Photo on the Post.

33. The nature of the original work is creative; however, because the photograph was apparently copyrighted in 2009 or 2010, could not have been taken after 2001 when the show ceased its current performance, Golden's limited use of the photograph did not compromise Defendants' rights to control the first appearance of the photograph. Indeed, within the compilation, there are photographs for characters and individuals from the late 1970's through early 1980's as well as ones from the late 1990's. Indeed, some of the individuals in the compilation had passed away (*e.g.* photographs of Sonny Bono who passed in January of 1998 though the copyright notice indicates that the work was created 11 years thereafter and was filed for copyright protection in July of 2010 or greater than 12 years thereafter).

34. Similarly, Golden's use caused no market harm. His use of the photograph as a reference to an unrelated topic as the photograph is of Lucy Lawless, an actress, dressed as Xena, and the Post was not about her or the photograph, but was solely about the potential reboot of the show, the Post was not a market substitute for the Photograph nor did the Post cause any harm to any market for the Photograph.

35. Similarly, the Photograph is one of many such photographs of Xena widely available online without attribution and, therefore, any market value has been substantially diminished by the widespread use of similar photographs as well as widespread use of the Photograph in general.

36. Thus, even if Golden used the Photograph in the Post was an infringement, it was done in conformity of fair use principals.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(28 U.S.C. §§ 2201, et seq.)**

37. Plaintiff repeats and realleges the statements as set forth in the preceding paragraphs as if set forth in full herein.

38. The Declaratory Judgment Act, 28 U.S.C. 2201, grants the Court the power to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

39. The Plaintiff herein is threatened with litigation whereby the Defendants have accused him of willful violations of the Copyright Act, 17 U.S.C. 501, *et seq.*

40. Plaintiff asserts that any use of a copyrighted photograph was unintentional or done pursuant to the fair use doctrine.

41. The Plaintiff seeks the Court to declare the following:

- a. Plaintiff did not violate Defendants’ copyright as a result of the Fair Use Doctrine; and/or
- b. Defendants’ photograph has had its marketable value diminished long before the threatened infringement and, therefore, no damages have occurred as a result of any use by Plaintiff; and/or
- c. Plaintiff is an innocent infringer consistent with the Copyright Act.

**WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment in their favor, and against the Defendants, jointly and severally as applicable, as follows:

- A. Entering a declaration that:
  - a. Plaintiff did not violate Defendants' copyright as a result of the Fair Use Doctrine; and/or
  - b. Defendants' photograph has had its marketable value diminished long before the threatened infringement and, therefore, no damages have occurred as a result of any use by Plaintiff; and/or
  - c. Plaintiff is an innocent infringer consistent with the Copyright Act.
- B. Award counsel fees and costs of suit;
- C. Award prejudgment and post-judgment interest; and
- D. Any other such relief as the Court deems just and appropriate.

Dated: May 27, 2019

Respectfully submitted,

s/ Yevgeny (Eugene) Strupinsky, Esq.  
Yevgeny (Eugene) Strupinsky, Esq.

/s/ Joshua M. Lurie  
Joshua M. Lurie, Esq.

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