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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 JIM MARSHALL and JOHNNY CASH,) CASE NO: _____
17 Plaintiffs,)
18 v.) **COMPLAINT FOR COPYRIGHT**
19 URBAN OUTFITTERS, INC., a California) **INFRINGEMENT, FALSE**
corporation; and Does 1-50,) **DESIGNATION OF ORIGIN, AND**
20 Defendants.) **MISAPPROPRIATION OF RIGHT OF**
21) **PUBLICITY (Cal. Civ. Code § 3344)**
_____) **DEMAND FOR JURY TRIAL**

22 Plaintiffs Jim Marshall and Johnny Cash bring this action against the named
23 defendants for injunctive relief and damages under the Copyright and Trademark laws of the
24 United States as follows:

25 **THE PARTIES**

26 1. Plaintiff Jim Marshall (“Marshall”) is an internationally recognized
27 photographer based in San Francisco who has taken many of the most well known photographs
28

1 of a wide range of musical performers such as Johnny Cash, Jimi Hendrix, Janis Joplin, Bob
2 Dylan, and the Beatles.

3 2. Plaintiff Marshall’s photographs have appeared on over 500 record covers,
4 and in domestic and international publications including Newsweek, Time, Life, The Saturday
5 Evening Post, Look, Rolling Stone, and two recently published coffee table books published by
6 Little Brown and Co.: “Not Fade Away,” a collection of the Rock and Roll Photography of Jim
7 Marshall and “Early Dylan,” a collection of photos of Bob Dylan. Portions of his body of work
8 are found in the permanent collection of the Smithsonian Institute.

9 3. Plaintiff Marshall is the creator and copyright owner of numerous
10 internationally famous photographs of musical artists, and specifically he is owner of
11 internationally famous photographs of Plaintiff Johnny Cash, including one taken of Cash at San
12 Quentin Prison in 1969.

13 4. Plaintiff Marshall is so meticulous about the artistic quality of his work
14 that he has entrusted only one person, Kirk Anspach, to produce his “original” works (“original”
15 in this context means a print of a photograph which has been printed from the original negative
16 taken by Plaintiff Marshall and sold as works of fine art).

17 5. All of Plaintiff Marshall’s “original” works are exclusively printed by Kirk
18 Anspach over whom Plaintiff maintains strict artistic control.

19 6. Plaintiff Johnny Cash (“Cash”), who is based in Nashville, Tennessee, is
20 one of the most accomplished, famous, and recognizable country music artists ever. Over the
21 course of his nearly 50 year career, he has sold over 50 million records, recorded more than 1,500
22 songs, and has won 10 Grammys, including the Lifetime Achievement Award in 1999. He has
23 won Grammys as well for his last two albums, *American Recordings* and *Unchained*. In 1996,
24 Plaintiff Cash was honored by President Clinton with a Kennedy Center Award.

25 7. In addition to his achievements in music, Cash has starred in several
26 movies, has made numerous television appearances, and hosted his own television show, *The*
27 *Johnny Cash Show* (1969-1971). His autobiography, *Man in Black*, has sold approximately 1.5
28 million copies.

1 VENUE

2 14. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c) and 28
3 U.S.C. § 1400(a).

4 INTRADISTRICT ASSIGNMENT

5 15. This action should be assigned to the San Francisco Division because a
6 substantial part of the events and/or omissions which give rise to the claims for relief asserted
7 herein occurred in San Francisco County.

8 FIRST CLAIM FOR RELIEF

9 **(Plaintiff Jim Marshall Against All Defendants For Copyright Infringement)**

10 16. Plaintiffs reallege and incorporate by this reference each and every
11 allegation set forth in paragraphs 1 through 15 herein.

12 17. Plaintiff Marshall owns all right, title and interest in and to the photograph
13 of Plaintiff Johnny Cash and registered with the United States Copyright Office and bearing valid
14 Copyright Registration No. VA 932-352. True and correct copies of the Certificate of Copyright
15 and photograph are attached hereto as Exhibits "A" and "B" respectively.

16 18. Since the creation of the aforementioned work, Plaintiff Marshall has
17 continued to comply with provisions of the Copyright Act with respect to the copyright and
18 continues to be the sole proprietor of all right, title and interest in and to the copyrighted work.

19 19. Neither Plaintiff Marshall, nor anyone authorized by him, has at any time
20 licensed defendants to reproduce, advertise, distribute, sell, exhibit, or otherwise deal in the
21 copyrighted work.

22 20. Plaintiffs have learned that defendants have nevertheless publicly
23 exhibited, offered for sale and sold articles, namely tee shirts, which infringe the copyright which
24 Plaintiff Marshall owns. A true and correct copy of the image as it appears on the tee shirts is
25 attached hereto as Exhibit "C."

26 21. As of the date of the filing of this Complaint, Plaintiff Marshall and/or his
27 representatives have discovered hundreds of the infringing tee shirts in at least 8 of the
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1 interference with Plaintiffs' goodwill and reputation, and (iii) the defendants' conduct, and the
2 damages resulting to Plaintiffs therefrom, are continuing. Accordingly, Plaintiffs Marshall and
3 Cash are entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116(a).

4 31. Defendants have been guilty of oppression, fraud and malice in doing the
5 things herein, by reason of which Plaintiffs are entitled to damages for the sake of example and
6 by way of punishing defendants.

7 32. Plaintiffs Marshall and Cash are also entitled to recover their attorney's
8 fees and costs of suit pursuant to 15 U.S.C. § 1117(a).

9 **THIRD CLAIM FOR RELIEF**

10 **(Plaintiff Johnny Cash Against All Defendants For Common Law and Statutory**
11 **Misappropriation of Right of Publicity [Calif. Civil Code § 3344])**

12 _____ 33. Plaintiffs reallege and incorporate by this reference each and every
13 allegation set forth in paragraphs 1 through 32.

14 34. Defendants knowingly and without consent used and misappropriated
15 Plaintiff Cash's name and likeness on the tee shirts they sold, exhibited and distributed. Such
16 misappropriation severely injures Cash's right to control the commercial exploitation of his
17 extraordinarily valuable name and likeness.

18 35. Defendants' unauthorized use and misappropriation of Plaintiff Cash's
19 name and likeness violates for commercial purposes California Civil Code § 3344(a) as well as
20 Cash's common law right of publicity.

21 36. As a direct result of Defendants' unauthorized use and misappropriation of
22 Plaintiff Cash's name and likeness, Plaintiff Cash has been damaged and defendants have been
23 unjustly enriched in amounts to be established at trial. Moreover, pursuant to California Civil
24 Code § 3344 (a), Plaintiff Cash is also entitled to recover statutory damages, defendants' profits,
25 his attorneys' fees and costs, as well as punitive damages against defendants based on their
26 wrongful, oppressive, and malicious conduct.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs demand judgment as follows:

3 **On the First Claim For Relief, judgment in favor of Plaintiff Jim Marshall:**

4 37. Preliminarily and permanently enjoining defendants from engaging in any
5 conduct constituting an infringement of Plaintiff Marshall’s copyright identified above;

6 38. Directing the destruction of all goods infringing Plaintiff Marshall’s
7 copyright in the possession, custody or control of defendants;

8 39. Awarding Plaintiff Marshall either his actual damages and defendants’
9 profits from their infringing activities or, at Plaintiff Marshall’s subsequent election, statutory
10 damages, together with his costs of this action, including his reasonable attorneys’ fees; and

11 40. That defendants, within thirty days after service of judgment, with notice
12 of entry thereof upon defendants, be required to file with the Court and serve upon Plaintiff
13 Marshall a written report under oath setting forth in detail the manner in which defendants have
14 complied with the injunctive relief requested herein.

15 **On the Second Claim for Relief, judgment in favor of Plaintiffs Jim Marshall**
16 **and Johnny Cash:**

17 41. That defendants account for and pay over to Plaintiffs Marshall and Cash
18 all damages sustained by them and all profits realized by defendants by reason of defendants’
19 unlawful acts alleged herein pursuant to 15 U.S.C. §1117(a) and that Plaintiffs Marshall and
20 Cash be awarded recovery of the full costs of this action against defendants;

21 42. That Plaintiffs Marshall and Cash be awarded three times the amount of
22 their damages or defendants’ profits, whichever is greater, together with a reasonable attorney’s
23 fee pursuant to 15 U.S.C. §1117(b); and

24 **On the Third Claim For Relief, judgment in favor of Plaintiff Johnny Cash:**

25 43. That Plaintiff Cash be awarded his damages in an amount to be established
26 at trial, including, pursuant to California Civil Code §3344 (a), statutory damages, Defendants’
27 profits, his attorneys’ fees and costs, as well as punitive damages against Defendants based on
28 their wrongful, oppressive, and malicious conduct.

1 **On All Claims For Relief:**

2 44. For such other and further relief as the Court may deem just and proper.

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4 Dated: April 23, 2001

5 Stephen W. Tropp
6 Attorney for Plaintiffs Jim Marshall and
7 Johnny Cash

8
9 Dated: April 23, 2001

MENNEMEIER, GLASSMAN & STROUD LLP

10 Andrew W. Stroud
11 Attorneys for Plaintiffs Jim Marshall and
12 Johnny Cash

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14 DEMAND FOR JURY TRIAL. [FRCP Rule 38(b)]

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