

1 David Quinto (Bar No. 106232)
 2 Dquinto@onellp.com
 3 Peter R. Afrasiabi (Bar No. 193336)
 4 pafrasiabi@onellp.com
 5 Joanna Ardalan (Bar No. 285384)
 6 jardalan@onellp.com
 7 **ONE LLP**
 8 23 Corporate Plaza, Suite 150-105
 Newport Beach, CA 92660
 Telephone: (949) 502-2870
 Facsimile: (949) 258-5081

9 *Attorneys for Plaintiff,*
 10 Backgrid USA, Inc.

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

13 BACKGRID USA, INC., a California
 14 corporation,

15 Plaintiff,

16 v.

17 TWITTER, INC., a Delaware
 18 corporation and DOES 1-10, inclusive,

19 Defendants.
 20
 21

Case No.: 2:22-cv-9462

COMPLAINT FOR:

- 22 **(1) COPYRIGHT INFRINGEMENT**
- 23 **(17 U.S.C. § 501)**
- 24 **(2) DECLARATORY JUDGMENT RE**
- 25 **NO DMCA SAFE HARBOR**

DEMAND FOR JURY TRIAL

1 Plaintiff, Backgrid USA, Inc., complains against Defendant Twitter, Inc. a
2 corporation, and Does 1-10 (collectively, “Defendants”) as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil action for direct, contributory, and vicarious copyright
5 infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has
6 subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1332, 28 U.S.C. §
7 2201, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a) and (b).

8 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and
9 28 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the defendants
10 may be found and transact business in this Judicial District, and the injury suffered by
11 Backgrid took place, and is taking place, in this Judicial District. Defendant has
12 offices in Santa Monica, California. Defendants are subject to the general and specific
13 personal jurisdiction of this Court because of their contacts with the State of
14 California.

15 **PARTIES**

16 3. Plaintiff Backgrid is incorporated in and existing under the laws of the
17 State of California, with its principal place of business located in Redondo Beach,
18 California.

19 4. On information and belief, Defendant Twitter, Inc. is incorporated in and
20 existing under the laws of Delaware, with its principal place of business in San
21 Francisco, California.

22 5. The true names or capacities, whether individual, corporate or otherwise,
23 of the defendants named herein as Does 1 through 10, inclusive, are unknown to
24 Backgrid, who therefore sues said defendants by such fictitious names. Backgrid will
25 ask leave of Court to amend this Complaint to insert the true names and capacities of
26 said defendants when the same have been ascertained.

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1 **FACTS COMMON TO ALL COUNTS**

2 ***Backgrid and the Photographs that Frame this Dispute***

3 6. Backgrid is the world’s premier celebrity-related photograph agency and
4 provides highly sought-after images of celebrities around the world to top news and
5 lifestyle outlets. Its photographs increase the sales of its customers’ magazines and
6 newspapers and increase their website traffic and website viewer engagement.
7 Backgrid’s photographs are regularly licensed by *People* magazine, the *Huffington*
8 *Post*, the *Daily Mail*, *TMZ*, *US Weekly*, *Radar Online*, *Harper’s Bazaar*,
9 *Entertainment Tonight*, *Vogue*, *Elle* magazine, and many other publications.

10 7. Backgrid owns all rights to the Celebrity Photographs, each of which was
11 timely registered with the United States Copyright Office. A list of the copyright
12 registrations for the Celebrity Photographs known to have been infringed is attached
13 as Exhibit A. Due to Defendant’s continuing infringements and refusal to adopt and
14 reasonably implement a Digital Millennium Copyright Act (“DMCA”) repeat
15 infringer policy, the number of timely registered infringements on its Twitter platform
16 and the damages for which Defendant is responsible is continually increasing.
17 Backgrid seeks to recover for all such infringements whether they are specifically
18 alleged herein or not.

19 8. For valuable consideration, Backgrid and/or AKM-GSI Media, Inc.
20 (“AKM-GSI”), the predecessor in interest to certain Celebrity Photographs, have
21 licensed, and Backgrid continues to license, the rights to reproduce, distribute, and
22 publicly display the Celebrity Photographs and make derivative versions thereof, to
23 hundreds of magazines, newspapers, television stations, and other media outlets
24 throughout the world.

25 ***Twitter’s Platform***

26 9. Defendant’s business is a simple, but spectacularly profitable, platform
27 that touts itself as a “global platform for public self-expression and conversation in
28

1 real time” that “help[s] people discover what’s happening through text, images, on
2 demand and live video” among other types of content. According to SimilarWeb.com,
3 Twitter is one of the top ranked websites globally, ranking it as number five in the
4 world and averages 7.1 billion visits per month.

5 10. Twitter monetizes its platform by enabling advertisers to promote their
6 brands, products, and services through the Twitter platform that then permits targeting
7 specific audience members by the accounts they follow and the actions they have
8 taken on the Twitter platform. Twitter also monetizes the data it collects from its
9 users and sells it to their clients for commercial use. Each upload, click, and view is
10 data that can be and is monetized, which means Twitter monetizes each photo
11 uploaded on the platform through the data it collects.

12 11. Once a Twitter user uploads a photo, Twitter selects, orders, and/or
13 arranges content to display to other Twitter users, including content from Twitter
14 accounts that are not among those “followed” by the viewing user.

15 12. A significant factor enabling Defendant to drive massive amounts of
16 traffic to the Twitter platform is the presence of sought-after and searched-for
17 celebrity images uploaded onto the users’ accounts without the consent of the third-
18 party copyright owners. Defendant is aware of the massive scale of copyright
19 infringement it facilitates and encourages, and of the revenue and profits such
20 infringement generates for it.

21 **Twitter Does Not Terminate Repeat Infringers as Required for Safe Harbor**
22 **Protection Under 17 U.S.C. § 512(i)**

23 13. Twitter claims to have DMCA compliant take-down policies set forth in
24 its websites’ Terms of Service. Based thereon, it claims that the DMCA’s safe harbor
25 protection for ISPs with DMCA compliant take-down policies shields it from liability
26 for the massive number of infringements it contributes to and engages in daily. But
27 such lip service compliance with the DMCA is merely a fig leaf to hide its systematic
28

1 abuse of the rights of photograph copyright holders and their enormous profits derived
2 from such infringement.

3 14. A threshold requirement for DMCA safe harbor protection is that the ISP
4 must have “adopted *and reasonably implemented* ... a policy that provides for the
5 termination in appropriate circumstances of subscribers and account holders ... who
6 are repeat infringers.” 17 U.S.C. § 512(i)(1)(A) (emphasis added).

7 15. Although Twitter’s “Copyright Policy” provides that copyright owners
8 may send a DMCA takedown notice and that “If multiple copyright complaints are
9 received about an account, or other evidence suggests a pattern of repeat infringement,
10 Twitter may suspend that account in accordance with our Repeat Infringer Policy.”
11 Unfortunately, its purported policy is honored in the breach.

12 16. Industry standard practices have resulted in the widespread adoption and
13 implementation by legitimate ISPs of a “three-strikes” policy with respect to repeat
14 infringers. The industry standard requires that to qualify for the DMCA safe harbor
15 protection, ISPs must terminate the accounts of users that have been the subject of
16 three infringement complaints. Defendant, however, regularly fails and refuses to
17 comport with the industry standard.

18 17. Defendant’s failure to reasonably implement a policy resulting in the
19 expeditious removal of infringing photographs owned by Backgrid and others and/or
20 their failure and refusal to terminate subscribers shown to be repeat infringers divests
21 them of DMCA safe harbor protection and renders them not just directly but
22 contributory and vicariously liable for the infringement of Backgrid’s Celebrity
23 Photographs as described herein.

24 18. Despite sending more than 6,700 DMCA takedown notices, not a single
25 work was taken down and not a single repeat infringer was suspended.

26 19. Backgrid attempted to resolve this dispute prior to filing this complaint,
27 but Twitter did not respond.
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**Examples of Twitter’s Failure to Terminate Infringing Accounts Notwithstanding
Backgrid’s Issuance of Numerous Take-down Notifications**

20. Backgrid sent Twitter *at least 73 DMCA take-down notifications* encompassing *at least 49 timely registered infringing photographs* on the ‘BSO’ account.

21. Specifically, it sent the notices described herein on or around dates alleged therein:

- September 28, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/999723833413308416>.
- September 28, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1041018833249730561>.
- September 29, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1295225863349374976>.
- September 30, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1431844066434686982>.
- October 1, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1148821772021706752>.
- October 2, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1432010166602506241>.
- October 3, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1148952773360308226>.
- October 4, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1149012113907683335>.
- October 5, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1151253995769516032>.

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- October 6, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1151314397450686464>.
- October 7, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1151357279385587712>.
- October 8, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1177817294208212992>.
- October 10, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1185425722288103429>.
- October 11, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1185591823588352000>.
- October 12, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1187601737210830848>.
- October 13, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1187603582008381440>.
- October 14, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1391987038027661312>.
- October 15, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1187754580890783744>.
- October 16, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1187767834593693697>.
- October 17, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1190135157690380288>.
- October 18, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1190286158447730688>.
- October 19, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bsostatus/1211891609807282176>.

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- October 20, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1212027510822703113>.
- October 21, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1225084306047033346>.
- October 22, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1277831087113359360>.
- October 23, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1277891487578062848>.
- October 24, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1283997752997945345>.
- October 25, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1284133652071419906>.
- October 26, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1295376867541880832>.
- October 27, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1295949135443570689>.
- October 28, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1296172670934044678>.
- October 29, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1314430538124537857>.
- October 30, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1314581539288748032>.
- October 31, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1316813710766342144>.
- November 1, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1323874836037410816>.

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- November 2, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1323935241296334848>.
- November 3, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1336195907394670592>.
- November 4, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1336435400081108993>.
- November 5, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1336495805553840128>.
- November 6, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1352139360758587392>.
- November 7, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1352290361734008835>.
- November 8, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1355397326089711618>.
- November 9, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1355563454766198784>.
- November 10, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1359950244000247811>.
- November 11, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1360010649913425925>.
- November 12, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1361454500725329921>.
- November 13, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1361514903660552194>.
- November 14, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1378212598903111680>.

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- November 15, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1378378900082987011>.
- November 16, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1380761472112979970>.
- November 17, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1380927572494725128>.
- November 18, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1392138036859838467>.
- November 19, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1395419105281421314>.
- November 20, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1395479508757716999>.
- November 21, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1404666758347333634>.
- November 22, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1404675563462201349>.
- November 23, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1404811465001947139>.
- November 24, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1404817760094404616>.
- November 25, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1410832827281780737>.
- November 26, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1410983831256055814>.
- April 18, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bso/status/1482122357967921152>.

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- April 19, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1473715965326200847>.
- April 20, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1473776368282341376>.
- April 21, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1482182759976214535>.
- April 22, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1482405267585310722>.
- April 23, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1482465669656555522>.
- April 24, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1486031048832126979>.
- April 25, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1486091452958527493>.
- April 26, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1487081489514868740>.
- June 20, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1522045895088525312>.
- November 14, 2022, for the work reproduced, distributed and displayed at <https://twitter.com/bs0/status/1536507682248609794>.

Notwithstanding the receipt of the take-down notices described herein, the ‘BSO’ account remains live and active.

22. Backgrid sent Twitter *at least 101 DMCA take-down notifications* encompassing *at least 42 timely registered photographs* on the ‘foochia’ account.

23. Specifically, it sent the notices described herein on or around dates alleged therein:

- September 4, 2021, for the work reproduced, distributed and displayed at <https://twitter.com/foochia/status/1168402506415845376>.

- 1 • September 5, 2021, for the work reproduced, distributed and
2 displayed at <https://twitter.com/foochia/status/1189797107726798848>.
- 3 • September 6, 2021, for the work reproduced, distributed and
4 displayed at <https://twitter.com/foochia/status/1219887570714316800>.
- 5 • September 7, 2021, for the work reproduced, distributed and
6 displayed at <https://twitter.com/foochia/status/1230496105030393857>.
- 7 • September 8, 2021, for the work reproduced, distributed and
8 displayed at <https://twitter.com/foochia/status/1242346693233979394>.
- 9 • September 9, 2021, for the work reproduced, distributed and
10 displayed at <https://twitter.com/foochia/status/1244936574992777217>.
- 11 • September 10, 2021, for the work reproduced, distributed and
12 displayed at <https://twitter.com/foochia/status/1261676767611359234>.
- 13 • September 11, 2021, for the work reproduced, distributed and
14 displayed at <https://twitter.com/foochia/status/1275021219327287296>.
- 15 • September 16, 2021, for the work reproduced, distributed and
16 displayed at <https://twitter.com/foochia/status/1224979299415068673>.
- 17 • September 17, 2021, for the work reproduced, distributed and
18 displayed at <https://twitter.com/foochia/status/1228919405133926400>.
- 19 • September 18, 2021, for the work reproduced, distributed and
20 displayed at <https://twitter.com/foochia/status/1315261038602981376>.
- 21 • September 19, 2021, for the work reproduced, distributed and
22 displayed at <https://twitter.com/foochia/status/1239099980675043328>.
- 23 • September 20, 2021, for the work reproduced, distributed and
24 displayed at <https://twitter.com/foochia/status/1239444904205594629>.
- 25 • September 21, 2021, for the work reproduced, distributed and
26 displayed at <https://twitter.com/foochia/status/1259482814124351489>.
- 27 • September 22, 2021, for the work reproduced, distributed and
28 displayed at <https://twitter.com/foochia/status/1359140560771112967>.

- 1 • September 23, 2021, for the work reproduced, distributed and
2 displayed at <https://twitter.com/foochia/status/1267803477490753536>.
- 3 • September 24, 2021, for the work reproduced, distributed and
4 displayed at <https://twitter.com/foochia/status/1384114559124865025>.
- 5 • September 25, 2021, for the work reproduced, distributed and
6 displayed at <https://twitter.com/foochia/status/1280427602763829248>.
- 7 • September 26, 2021, for the work reproduced, distributed and
8 displayed at <https://twitter.com/foochia/status/1346778759261782022>.
- 9 • September 27, 2021, for the work reproduced, distributed and
10 displayed at <https://twitter.com/foochia/status/1288188106907291648>.
- 11 • September 28, 2021, for the work reproduced, distributed and
12 displayed at <https://twitter.com/foochia/status/1291645663504216064>.
- 13 • September 29, 2021, for the work reproduced, distributed and
14 displayed at <https://twitter.com/foochia/status/1302622811303927809>.
- 15 • September 30, 2021, for the work reproduced, distributed and
16 displayed at <https://twitter.com/foochia/status/1308330389698740224>.
- 17 • October 1, 2021, for the work reproduced, distributed and displayed
18 at <https://twitter.com/foochia/status/1359427158767259649>.
- 19 • October 2, 2021, for the work reproduced, distributed and displayed
20 at <https://twitter.com/foochia/status/1309206358038806529>.
- 21 • October 3, 2021, for the work reproduced, distributed and displayed
22 at <https://twitter.com/foochia/status/1316333226261131266>.
- 23 • October 4, 2021, for the work reproduced, distributed and displayed
24 at <https://twitter.com/foochia/status/1365995375073591302>.
- 25 • October 5, 2021, for the work reproduced, distributed and displayed
26 at <https://twitter.com/foochia/status/1318885370562531328>.
- 27 • October 6, 2021, for the work reproduced, distributed and displayed
28 at <https://twitter.com/foochia/status/1320666838825652225>.

- 1 • October 7, 2021, for the work reproduced, distributed and displayed
2 at <https://twitter.com/foochia/status/1371400721778810880>.
- 3 • October 8, 2021, for the work reproduced, distributed and displayed
4 at <https://twitter.com/foochia/status/1371431515851264002>.
- 5 • October 9, 2021, for the work reproduced, distributed and displayed
6 at <https://twitter.com/foochia/status/1372488206889975808>.
- 7 • October 10, 2021, for the work reproduced, distributed and displayed
8 at <https://twitter.com/foochia/status/1374677747352633354>.
- 9 • October 11, 2021, for the work reproduced, distributed and displayed
10 at <https://twitter.com/foochia/status/1377214458112700420>.
- 11 • October 12, 2021, for the work reproduced, distributed and displayed
12 at <https://twitter.com/foochia/status/1392178032480247816>.
- 13 • October 13, 2021, for the work reproduced, distributed and displayed
14 at <https://twitter.com/foochia/status/1400452726320889870>.
- 15 • October 14, 2021, for the work reproduced, distributed and displayed
16 at <https://twitter.com/foochia/status/1401554740236914695>.
- 17 • October 15, 2021, for the work reproduced, distributed and displayed
18 at <https://twitter.com/foochia/status/1402929340845891585>.
- 19 • October 16, 2021, for the work reproduced, distributed and displayed
20 at <https://twitter.com/foochia/status/1404733002949828608>.
- 21 • October 17, 2021, for the work reproduced, distributed and displayed
22 at <https://twitter.com/foochia/status/1411583606661681156>.
- 23 • October 18, 2021, for the work reproduced, distributed and displayed
24 at <https://twitter.com/foochia/status/1447112174036525056>.
- 25 • April 18, 2022, for the work reproduced, distributed and displayed at
26 <https://twitter.com/foochia/status/1479030242299817987>.
- 27 • April 19, 2022, for the work reproduced, distributed and displayed at
28 <https://twitter.com/foochia/status/1493274691833937923>.

- 1 • September 21, 2022, for the work reproduced, distributed and
2 displayed at <https://twitter.com/foochia/status/1531577485976125443>.
- 3 • September 23, 2022, for the work reproduced, distributed and
4 displayed at <https://twitter.com/foochia/status/1561278228047724544>.
- 5 • September 24, 2022, for the work reproduced, distributed and
6 displayed at <https://twitter.com/foochia/status/1239099980675043328>.
- 7 • September 25, 2022, for the work reproduced, distributed and
8 displayed at <https://twitter.com/foochia/status/1228919405133926400>.
- 9 • September 26, 2022, for the work reproduced, distributed and
10 displayed at <https://twitter.com/foochia/status/1154470148071231488>.
- 11 • September 27, 2022, for the work reproduced, distributed and
12 displayed at <https://twitter.com/foochia/status/1400452726320889870>.
- 13 • September 28, 2022, for the work reproduced, distributed and
14 displayed at <https://twitter.com/foochia/status/1479030242299817987>.
- 15 • September 29, 2022, for the work reproduced, distributed and
16 displayed at <https://twitter.com/foochia/status/1387059554450563079>.
- 17 • September 30, 2022, for the work reproduced, distributed and
18 displayed at <https://twitter.com/foochia/status/1192369868085039104>.
- 19 • October 1, 2022, for the work reproduced, distributed and displayed at
20 <https://twitter.com/foochia/status/1219887570714316800>.
- 21 • October 2, 2022, for the work reproduced, distributed and displayed at
22 <https://twitter.com/foochia/status/1479030242299817987>.
- 23 • October 3, 2022, for the work reproduced, distributed and displayed at
24 <https://twitter.com/foochia/status/1481374850706980870>.
- 25 • October 4, 2022, for the work reproduced, distributed and displayed at
26 <https://twitter.com/foochia/status/1531577485976125443>.
- 27 • October 5, 2022, for the work reproduced, distributed and displayed at
28 <https://twitter.com/foochia/status/1219887570714316800>.

- 1 • October 6, 2022, for the work reproduced, distributed and displayed at
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- 5 • October 22, 2022, for the work reproduced, distributed and displayed
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- 15 • October 27, 2022, for the work reproduced, distributed and displayed
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- 17 • October 28, 2022, for the work reproduced, distributed and displayed
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- 19 • October 29, 2022, for the work reproduced, distributed and displayed
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- 21 • October 30, 2022, for the work reproduced, distributed and displayed
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- 5 • November 6, 2022, for the work reproduced, distributed and displayed
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- 7 • November 7, 2022, for the work reproduced, distributed and displayed
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- 9 • November 8, 2022, for the work reproduced, distributed and displayed
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- 11 • November 9, 2022, for the work reproduced, distributed and displayed
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- 7 • November 21, 2022, for the work reproduced, distributed and
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- 9 • November 28, 2022, for the work reproduced, distributed and
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- 11 • November 30, 2022, for the work reproduced, distributed and
12 displayed at <https://twitter.com/foochia/status/1570023374881169415>.

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14 Notwithstanding the receipt of the take-down notices described herein, the ‘foochia’
15 account remains live and active.

16 24. On information and belief, infringements that have been uploaded and
17 saved on the Twitter server by one user can be and are displayed on other user’s
18 accounts at the direction of the other user. Twitter not only fails and refuses to take
19 down repeat infringers who post and display unauthorized and infringing copies of
20 Celebrity Photographs but also fails and refuses to apply its purported take-down
21 policy to repeat infringers who save such infringements.

22 25. Backgrid’s extensive but frustrated copyright enforcement efforts
23 evidence the massive, repeated, and ongoing infringing activity permitted, facilitated,
24 and encouraged on Twitter accounts. Notwithstanding the frequent written demands
25 from Backgrid, Twitter’s own Copyright Policy, and the legal prerequisites for
26 DMCA safe harbor protection, Twitter has willfully failed and refused to terminate the
27 accounts. Stunningly, all of the accounts remain live and online today while Twitter
28 continues to profit from the blatant, repeated, and ongoing infringements of the

1 copyrighted works of others, including without limitation the timely registered
2 Celebrity Photographs collectively attached as Exhibit B, which are infringed by
3 Twitter.

4 **Twitter Does Not Expeditiously Remove Infringements as Required for Safe**
5 **Harbor Protection Under 17 U.S.C. 512(b)-(d)**

6 26. To enjoy safe harbor protection, a qualified Internet Service Provider
7 (“ISP”) must “upon notification of claimed infringement respond[] expeditiously to
8 remove, or disable access to, the material that is claimed to be infringing or to be the
9 subject of the infringing activity.” 17 U.S.C. §§ 512(b)(2)(E), 512(c)(1)(C),
10 512(d)(3).

11 27. Defendant’s users have reproduced, publicly displayed, and publicly
12 distributed, and continue to reproduce, publicly display and publicly distribute,
13 Celebrity Photographs by making them available for download, copy, and
14 reproduction, together with other photographs that Backgrid either owns or
15 exclusively licenses for distribution, reproduction, public display, and use in creating
16 derivative works.

17 28. Despite having received DMCA notices from Backgrid, Twitter has
18 not expeditiously taken down Backgrid’s Celebrity content. For example, Backgrid
19 sent over 6,700 DMCA notices, but Twitter has not expeditiously taken down content
20 in response to the same and cannot seek protection under the DMCA.

21 **FIRST CLAIM FOR RELIEF**
22 **(Direct, Contributory, and Vicarious Copyright**
23 **Infringement, 17 U.S.C. § 501)**

24 29. Backgrid incorporates by reference the allegations in paragraphs 1
25 through 28, above, as though set forth at length.

26 30. The Celebrity Photographs consist substantially of material that is wholly
27 original and contain copyrightable subject matter. Each of the Celebrity Photographs
28

1 was either lawfully registered by Backgrid or assigned to it, including all rights of
2 copyright thereto, by AKM-GSI. Accordingly, Backgrid now owns all rights of
3 copyright, title, and interest in the Celebrity Photographs and each of the Celebrity
4 Photographs contains protectable subject matter.

5 31. Each Celebrity Photograph was registered with the United States
6 Copyright Office within 90 days of publication and/or before it was infringed.
7 Accordingly, Backgrid is entitled to all legally cognizable relief for its infringement,
8 including without limitation temporary, preliminary, and permanent injunctive relief,
9 the recovery of actual damages and lost profits or statutory damages, and an award of
10 costs and attorneys' fees.

11 32. As of the filing of this Complaint, Twitter had infringed at least 1,526
12 Celebrity Photographs, as reflected in Exhibit B hereto and incorporated herein. The
13 infringed Celebrity Photographs identified in the attached exhibits are merely
14 illustrative; Defendant's acts of infringement are continuous and on-going and
15 additional infringements of Celebrity Photographs—both those that have already
16 occurred and those that occur pre-discovery—will doubtlessly be discovered.
17 Accordingly, Backgrid seeks, and is entitled to, its full legal remedies with respect to
18 each act of infringement proved whether or not specifically alleged herein.

19 33. Defendant has directly infringed and will continue to directly infringe the
20 Celebrity Photographs, including without limitation by continuing to display the
21 photos long after being apprised of their infringing status, using Twitter's explore
22 feature to choose and arrange infringing content, and continuing to store copies of
23 them on Defendant's servers without Backgrid's consent.

24 34. Defendant has contributorily infringed the Celebrity Photographs,
25 including without limitation by encouraging its users to upload and edit photographs
26 found on the Internet, failing to advise users that civil and criminal penalties attach to
27 the unauthorized copying, posting, and public display of copyrighted photographs, and
28

1 by removing the metadata from each unlawfully posted and displayed Celebrity
2 Photograph.

3 35. Defendant's acts of direct, contributory, and vicarious infringement have
4 been and are willful as demonstrated by, inter alia, their numerous claims that they
5 never received take-down notices, their consistent failure to act on take-down notices
6 expeditiously—or at all, their failure and refusal to bar repeat infringers from using
7 their websites, and their failure and refusal to apply their own Copyright Policy to
8 their users.

9 36. Defendant's acts alleged herein have been and are being performed
10 without the permission, license, or consent of Backgrid.

11 37. As a result of Defendant's acts alleged herein, Backgrid has suffered
12 substantial economic damage in an amount to be proved at trial.

13 38. Defendant has willfully infringed, and unless enjoined will continue to
14 willfully infringe, Backgrid's copyrights by continuing to engage in the acts alleged
15 herein.

16 39. Defendant's wrongful acts of have caused, and are continuing to cause,
17 injury to Backgrid in an amount that cannot be accurately computed. Unless this
18 Court temporarily, preliminarily, and permanently restrains defendants from the
19 further commission of such acts, Backgrid will suffer irreparable injury for which it
20 will not have an adequate remedy at law. Accordingly, Backgrid seeks a declaration
21 that defendants are infringing Backgrid's copyrights and appropriate orders under 17
22 U.S.C. § 502 enjoining defendants from any further acts of infringement.

23 40. In light of the willful and egregious nature of their acts of copyright
24 infringement, Backgrid is also entitled to an award of \$150,000 per photograph in
25 statutory damages.

26 41. Backgrid is additionally entitled to an award of its costs and attorneys'
27 fees from each defendant.

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SECOND CLAIM FOR RELIEF

(Declaratory Relief, No Safe Harbor Under the DMCA)

42. Backgrid incorporates by reference the allegations in paragraphs 1 through 41, above, as though set forth at length.

43. Under 28 U.S.C. § 2201, an actual controversy exists over whether Twitter has satisfied the requirements of 17 U.S.C. 512(i) by adopting and reasonably implementing a Digital Millennium Copyright Act repeat infringer policy, and, therefore, whether Twitter is entitled to the safe harbor.

44. Backgrid seeks a declaration that Twitter has neither adopted nor reasonably implemented a repeat infringer policy, and, as such, is liable for each of the works infringed on its platform.

PRAAYER FOR RELIEF

WHEREFORE, Backgrid requests judgment against defendants as follows:

1. That defendants, their officers, agents, servants, employees, and representatives, and all persons in active concert or participation with them, be permanently enjoined from copying, reproducing, displaying, promoting, advertising, distributing, or selling, or engaging in any other form of dealing or transaction in, any and all photographs whose copyrights are owned by Backgrid;
2. That an accounting pursuant to 17 U.S.C. §§ 504 (a)(1) & (b) be made of all profits, income, receipts or other benefit derived by defendants from the unlawful reproduction, copying, display, promotion, distribution, or sale of products and services, or other media, either now known or hereafter devised, that improperly or unlawfully infringed upon Backgrid’s copyrights;
3. For actual damages for copyright infringement pursuant to 17 U.S.C. §§ 504 (a)(1) & (b);

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4. For statutory damages for copyright infringement, including willful infringement, in accordance with 17 U.S.C. §§ 504(a)(2) & (c), and for costs, interest and reasonable attorney’s fees pursuant to 17 U.S.C. § 505;

5. For a declaration that Twitter is not entitled to the DMCA safe harbor for any work posted on its platform, and;

6. That Backgrid be awarded such other and further relief as the Court deem just and appropriate.

Dated: December 30, 2022

ONE LLP

By: /s/ Joanna Ardalan
Joanna Ardalan
Peter R. Afrasiabi
David W. Quinto

Attorneys for Plaintiff,
Backgrid USA, Inc.

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DEMAND FOR JURY TRIAL

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

Dated: December 30, 2022

ONE LLP

By: /s/ Joanna Ardalan

Joanna Ardalan
David W. Quinto
Peter R. Afrasiabi

*Attorneys for Plaintiff,
Backgrid USA, Inc.*