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10 LIBERTY MEDIA HOLDINGS, LLC

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 LIBERTY MEDIA HOLDINGS, LLC)
14 Plaintiff,)
15 vs.)
16 VINIGAY.COM, GUSTAVO PALADESKI,)
17 AND DOES 1-100)
18 Defendants.)

Case No.
Judge:

COMPLAINT

- (1) DIRECT COPYRIGHT INFRINGEMENT;**
- (2) CONTRIBUTORY COPYRIGHT INFRINGEMENT;**
- (3) VICARIOUS COPYRIGHT INFRINGEMENT**
- (4) INDUCEMENT OF COPYRIGHT INFRINGEMENT**

19 Plaintiff, Liberty Media Holdings (“Liberty” or “Plaintiff”) files this complaint against
20 multiple Defendants, Vinigay.com (“Vinigay”), Gustavo Paladeski (“Paladeski”), and Does 1-
21 100, and alleges as follows:

INTRODUCTION

22 1. This is an action by Liberty to recover damages arising from infringement of
23 Plaintiff’s copyrights in its creative works by the Defendants, either directly or indirectly,
24 through the use of the Vinigay.com website.

25 2. Vinigay.com is owned and operated by Gustavo Paladeski, a foreign individual.

26 3. Defendants reproduced and distributed certain Plaintiff-owned works through
27 www.vinigay.com.

28 4. Does 1-100 are members of Vinigay.com or merely downloaded copyrighted
works off of the Vinigay.com website. They remain presently unidentified.

1 5. The Defendants' actions were willful in nature, entitling the Plaintiff to enhanced
2 damages. The Plaintiff seeks statutory damages, actual damages, an award of its attorneys' fees
3 and costs of suit, as well as injunctive relief.

4 **JURISDICTION AND VENUE**

5 6. This Court has subject matter jurisdiction pursuant to the Copyright Act. 17
6 U.S.C. §§ 101 et seq.

7 7. This Court has personal jurisdiction over the Defendants, who have engaged in
8 business activities in and directed to this district, and have committed tortious acts within this
9 district or directed at this district. Gustavo Paladeski registered the domain name, Vinigay.com,
10 with Wild West Domains—a domain name registrar located in Arizona. Paladeski, therefore,
11 consented to jurisdiction in Arizona by virtue of signing the Wild West Domains registration
12 agreement. In addition, registering the Vinigay.com domain name in Arizona makes the
13 Vinigay.com domain name and its operator subject to jurisdiction in Arizona.

14 8. Additionally, as foreign defendants, Vinigay and Paladeski are subject to
15 jurisdiction in any district. See 28 U.S.C. 1391 (“An alien may be sued in any district.”). See
16 also Fed. R. Civ. P. 4(k)(2).

17 9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), (c) and (d); and 28
18 U.S.C. §1400(a).

19 **THE PARTIES**

20 **THE PLAINTIFF, LIBERTY MEDIA HOLDINGS, LLC**

21 10. Liberty is a California LLC with a mailing address of 302 Washington Street,
22 Suite 321, San Diego, CA 92103.

23 11. Plaintiff Liberty produces, markets, and distributes adult-oriented audiovisual
24 works under the registered marks CORBIN FISHER®, and CORBIN FISHER’S AMATEUR
25 COLLEGE SEX®, including photographs, books, DVDs, and through the operation of a
26 website. At this website, individuals purchase monthly subscriptions to view Plaintiff’s
27 photographic works and audiovisual content.

1 12. Liberty's website has "free tour" areas where G-Rated photographs may be
2 viewed, but its more explicit erotic works are only available to individuals who pay a monthly
3 subscription fee or who purchase a DVD from Liberty.

4 13. Liberty prohibits persons who are under the age of 18 from accessing the more
5 explicit areas of its website, and does not sell its DVDs to minors.

6 **DEFENDANT VINIGAY.COM**

7 14. Vinigay.com does business as and operates the website at www.vinigay.com.

8 15. Defendant Vinigay.com competes with Plaintiff in the distribution and sale of
9 adult-oriented, audiovisual works through Internet distribution.

10 16. Plaintiff avers that each Defendant, individually, corporately, jointly and/or
11 severally, acted intentionally, knowingly, negligently or through willful blindness, as an agent, or
12 representative of each and every, all and singular, the other Defendants, and acted to further the
13 ends of the illegal and improper purposes alleged herein in a common course or scheme to
14 infringe on the Plaintiff's copyrighted intellectual property for profit and monetary gain.

15 **DEFENDANT GUSTAVO PALADESKI**

16 17. On information and belief, Paladeski is the owner and operator of the website
17 Vinigay.com. He is shown as the registrant on the Whois information for vinigay.com. Exh. 1.

18 18. On information and belief he is responsible for posting each of Plaintiff's videos to the
19 vinigay.com website.

20 19. Plaintiff avers that each Defendant, individually, corporately, jointly and/or severally,
21 acted intentionally, knowingly, negligently or through willful blindness, as an agent, or
22 representative of each and every, all and singular, the other Defendants, and acted to further the
23 ends of the illegal and improper purposes alleged herein in a common course or scheme to
24 infringe on the Plaintiff's copyrighted intellectual property for profit and monetary gain.

25 **STATEMENT OF FACTS**

26 20. Vinigay.com is a website that provides adult-themed audiovisual content to the
27 public. The sole type of works available on the website appear to be copyrighted videos. These
28 videos are stolen from a number of adult entertainment companies, including Plaintiff. The site
is free to join and view videos, and posts links to megaporn.com where paying members of

1 megaporn.com may download the videos as well. Megaporn sells monthly subscriptions for
2 roughly \$11.23 per month or \$112.45 per year. Exh. 2. Should someone sign up for a
3 membership at Megaporn after being referred by Vinigay.com, Vinigay.com receives a
4 commission. Exh. 3.

5 21. Additionally, Vinigay's business model depends on ad generated income and
6 profits. In addition to the usual sort of web banners and pop up advertisements that appear on
7 Vinigay.com, each free video is embedded with an ad at the beginning of the copyrighted content
8 as well. Exh. 4.

9 22. Although Liberty takes steps to keep its materials out of the hands of minors,
10 Vinigay.com took no such protective steps, thus potentially circumventing Liberty's strong "no
11 minors" policy

12 23. Neither Defendant Vinigay.com nor the individual viewing the pirated material
13 pays anything to the actual copyright owner of the pirated materials.

14 24. Defendant Vinigay.com's is additionally attempting to grow its membership base
15 by requesting that users visiting the site repost the videos they watch to their own twitter
16 accounts. Exh. 5.

17 25. Plaintiff Liberty discovered 3 copies of its copyrighted material illegally shared
18 on Defendant's website. A list of the copyrighted works, as well as the URL of the infringing
19 copy, is attached hereto as Exhibit 6.

20 26. Plaintiff conducted an investigation, which revealed that Defendant Vinigay.com
21 did not have a registered DMCA Agent, required by 17 U.S.C. §512(c)(2), to qualify for the
22 DMCA safe harbor provisions. See http://www.copyright.gov/onlinesp/list/h_agents.html.

23 27. Defendant Vinigay.com is a massive copyright infringer. It publishes illicitly
24 obtained copyrighted materials to lure potential members to its website, and engages in this illicit
25 activity for profit.

26 28. The principals of Vinigay.com and the other corporate Defendants, both known
27 and unknown, are equally liable.

28 29. In addition to memberships sold through its website, Plaintiff sells its copyrighted
audiovisual material in DVD format. Sales occur through various channels, including wholesale

1 distribution for down-channel retail distribution. Plaintiff also markets its products through
2 third-party licensees.

3 30. The audiovisual works at issue are valuable, and easily discernable as
4 professionally produced works. Plaintiff Liberty created the works using highly talented
5 performers, directors, cinematographers, lighting technicians, set designers, and editors. Plaintiff
6 Liberty created the works using the highest quality cameras, lighting, and editing equipment.

7 31. Neither the individuals supplying copyrighted works to Defendant nor
8 Vinigay.com itself, nor any other Defendants, determines the true and correct owners of the
9 copyrighted works. This is true although both the individuals transferring and the Defendant
10 receiving and distributing these works are actually or constructively aware, should be aware, or
11 are willfully blind that the copyrights belong to entities other than the individuals or Defendants.
12 Both the individuals supplying the works and the Defendant distributing the intellectual property
13 fail and refuse to apply for proper licensing and further fail to determine the identity and age of
14 the actors appearing in the works as required by law.

15 32. Vinigay.com earns revenue through commissions on premium memberships by
16 referring users to megaporn.com as well as advertisements. Vinigay.com is able to generate
17 Internet traffic based on the number and quality of videos available on its website and is able to
18 sell ad space based on its site's daily hits and number of users, which in turn is influenced by the
19 number of new videos uploaded as well as their quality and desirability.

20 33. Defendants' unauthorized reproduction, public display, and distribution of
21 Plaintiff Liberty's works serve as an inducement, attracting many individuals to access the
22 Defendant Vinigay.com web site, and who would also profit the Defendants by clicking through
23 on other paid ads to other sponsors of the Vinigay.com website, or by signing up for
24 memberships at megaporn.com in order to download the copyrighted works in full.

25 34. Defendants reproduce, distribute, and profit from Plaintiff Liberty's works on
26 Defendant Vinigay.com's website.

27 35. Defendants actively engage in, promote, and induce copyright infringement.
28 Each infringement act occurred on www.Vinigay.com.

1 36. Plaintiff Liberty's employee discovered and documented that Defendants
2 reproduced, publicly displayed, and distributed through the Vinigay.com website at least 3
3 unauthorized video files copyrighted by and belonging to Plaintiff. Vinigay.com's customers
4 viewed the illegally and improperly obtained intellectual property, and downloaded the property,
5 thus making more copies thereof.

6 37. Defendants' business model depends on the uploading, posting, displaying and
7 performance of copyrighted audiovisual works belonging to Plaintiff Liberty. Defendants
8 intentionally, knowingly, negligently, or by willful blindness built a library of works that
9 infringed on copyrighted material for drawing Internet traffic to view the works and in order to
10 sell ad space on its website, creating substantial revenues thereby, and to generate commissions
11 from megaporn.com.

12 38. Defendants intentionally, knowingly, negligently, or through willful blindness
13 choose to avoid reasonable precautions to deter rampant copyright infringement on Defendant
14 Vinigay.com's website.

15 39. Defendants make no attempt to identify the individuals providing the works,
16 where the individuals obtained the works, or whether the individuals had authority to further
17 reproduce and distribute the works.

18 40. Defendants acts and omissions allow them to profit by their infringement while
19 imposing on copyright owners a monetary burden to monitor Defendant's website without
20 sufficient means to prevent continued and unabated infringement.

21 41. Prior to releasing its works into the market on the Internet or in DVD format,
22 Plaintiff Liberty marks each work with a copyright notice. Plaintiff Liberty's labels reflect its
23 true business address and a statement that it maintains age authentication records at that address,
24 as required by 18 U.S.C. §2257.

25 42. Plaintiff Liberty prominently displays its copyright mark on its website, and
26 prominently displays its trademark on its films.

27 43. Defendants' infringements harmed and continue to harm Plaintiff Liberty and
28 others legally deriving the benefits of Plaintiff Liberty's creative works. Defendants' continued

1 infringements undermine Plaintiff Liberty and other creative enterprises that produce audiovisual
2 works.

3 44. Plaintiff Liberty seeks immediate redress, as follows:

- 4 a. A declaration that Defendants' conduct in reproducing and distributing
5 Plaintiff's copyrighted works without authorization willfully infringes
6 Plaintiff Liberty's copyrights;
- 7 b. A permanent injunction requiring Defendants employ reasonable methods
8 and/or technologies preventing or limiting infringement of Plaintiff Liberty's
9 copyrights;
- 10 c. Statutory damages for Defendants' past and present willful infringement, or
11 actual damages plus profits.
- 12 d. A seizure of all of the instrumentalities of the Defendants' illegal acts.

13
14 **FIRST CAUSE OF ACTION**

15 **Copyright Infringement – 17 U.S.C. §§ 101 *Et. Seq.***

16 45. Plaintiff repeats and incorporates by reference as if *verbatim*, each and every
17 paragraph previous to this section, inclusive.

18 46. Plaintiff Liberty holds the copyright on each of the infringed works alleged in this
19 action. Exh. 7.

20 47. At all pertinent times, Plaintiff Liberty was the producer and registered owner of
21 the audiovisual works illegally and improperly reproduced and distributed by Defendants
22 through the Vinigay.com website.

23 48. Defendants reproduced, reformatted, and distributed Plaintiff Liberty's
24 copyrighted works by and through servers and/or other hardware owned, operated, and/or
25 controlled by Defendant Vinigay.com.

26 49. Defendants infringed Plaintiff's copyrights by reproducing and distributing the
27 works through Defendant Vinigay.com's website without proper approval or authorization of
28 Plaintiff.

1 50. Defendants knew or should have reasonably known they did not have permission
2 to exploit Plaintiff Liberty's works on the Vinigay.com website and further knew or should have
3 known their acts constituted copyright infringement.

4 51. Defendants made no attempt to discover the copyright owners of the pirated
5 works before exploiting them. Defendants failed and refused to take any reasonable measures to
6 determine the owner or license holder of copyrighted works.

7 52. Defendants engaged in intentional, knowing, negligent, or willfully blind conduct
8 sufficient to demonstrate they engaged actively in the improper collection and distribution of
9 Plaintiff Liberty's copyrighted works.

10 53. The quantity of copyrighted files available to Internet users increased the
11 attractiveness of Defendant Vinigay.com's services to its customers, increased its membership
12 base, and increased its ad sales revenue.

13 54. Vinigay.com actively encouraged users to upload and republish pirated
14 copyrighted files.

15 55. Defendants controlled the files removed from Defendant Vinigay.com's website
16 and determined which files remained.

17 56. Vinigay.com never adopted procedures to ensure that distribution of Liberty's
18 copyrighted materials would not occur. Further, Vinigay.com never established, implemented,
19 or enforced a "repeat infringer" policy.

20 57. Defendant Vinigay.com was aware, either actually or constructively, should have
21 been aware, or was willfully blind that pirated copyrighted materials comprised the most popular
22 videos on the Defendant Vinigay.com system. Defendant Vinigay.com affirmatively and
23 willfully accommodated Internet traffic generated by the illegal acts.

24 58. Defendants' conduct was willful within the meaning of 17 U.S.C. §101, *et seq.*
25 At a minimum, Defendants acted with willful blindness and reckless disregard of Plaintiff
26 Liberty's registered copyrights.

27 59. Because of their wrongful conduct, Defendants are liable to Plaintiff for copyright
28 infringement. See 17 U.S.C. §501. Plaintiff suffers and will continue to suffer substantial
losses, including, but not limited to, damage to its business reputation and goodwill.

1 60. The law permits Plaintiff to recover damages, including readily ascertainable
2 direct losses and all profits Defendants made by their wrongful conduct. 17 U.S.C. §504.
3 Alternatively, the law permits Plaintiff Liberty to recover statutory damages. 17 U.S.C. §504(c).

4 61. Because of Defendants' willful infringement, the law permits enhancement of the
5 allowable statutory damages. 17 U.S.C. §504(c)(2).

6 62. The law permits Plaintiff injunctive relief. 17 U.S.C. §502. Further, the law
7 permits a Court Order impounding any and all infringing materials. 17 U.S.C. §503.

8 63. Plaintiff Liberty has no adequate remedy at law for Defendants' wrongful
9 conduct, as follows:

- 10 a. Plaintiff's copyrights are unique and valuable property having no readily
11 determinable market value;
- 12 b. Defendants' infringement harms Plaintiff's business reputation and goodwill
13 such that Plaintiff could not be made whole by any monetary award; and,
- 14 c. Defendants' wrongful conduct and damages to Plaintiff are continuing and
15 unremitting.

16 64. Plaintiff is entitled to preliminary and permanent injunctive relief prohibiting
17 further infringement of Plaintiff's copyrights; 17 U.S.C. §502.

18 **SECOND CAUSE OF ACTION**
19 **Contributory Copyright Infringement**

20 65. Plaintiff re-alleges and incorporates by reference as if *verbatim*, each and every
21 paragraph previous to this section, inclusive.

22 66. Unknown individuals, without authorization, reproduced and distributed Plaintiff
23 Liberty's works through Defendant Vinigay.com's website, directly infringing Plaintiff Liberty's
24 copyrighted works.

25 67. Vinigay.com contributed to the infringing acts of those individuals.

26 68. Vinigay.com was aware, should have been aware, or was willfully blind to the
27 infringing activity.

28

1 69. Vinigay.com aided, abetted, allowed, and encouraged those individuals to
2 reproduce and distribute Plaintiff Liberty’s copyrighted works through its website without regard
3 to copyright ownership.

4 70. Vinigay.com had the obligation and ability to control and stop the infringements.
5 However, Vinigay.com failed to do so.

6 71. Vinigay.com materially contributed to the infringement.

7 72. Vinigay.com received direct financial benefits from the infringements.

8 73. All Defendants had actual, constructive or should have had actual or constructive
9 knowledge of the infringing acts.

10 74. The conduct, acts, and omission of all Defendants demonstrate contributory
11 copyright infringement.

12 **THIRD CAUSE OF ACTION**

13 **Vicarious Copyright Infringement**

14 75. Plaintiff Liberty re-alleges and incorporates by reference as if *verbatim*, each and
15 every paragraph previous to this section, inclusive.

16 76. Without authorization, individuals reproduced, distributed, and publicly displayed
17 Plaintiff Liberty’s works through Defendant Vinigay.com’s website, directly infringing Plaintiff
18 Liberty’s copyrighted works.

19 77. Vinigay.com was actually or constructively aware or should have been aware or
20 were willfully blind to the infringing activity.

21 78. Vinigay.com was able to control or completely end the illegal and improper
22 infringement, but failed and refused to do so.

23 79. Vinigay.com contributed materially to the infringement

24 80. Vinigay.com received direct financial gain and profit from those infringing
25 activities.

26 81. The acts, omissions, and conduct of all Defendants constitute vicarious copyright
27 infringement.

28 **FOURTH CAUSE OF ACTION**

Inducement of Copyright Infringement

1 82. Plaintiff Liberty re-alleges and incorporates by reference as if *verbatim*, each and
2 every paragraph previous to this section, inclusive.

3 83. Defendants designed and distributed technology and devices and induced
4 individuals to use this technology to promote the use of infringed and copyrighted material. As a
5 direct and proximate result of Defendants' inducement, individuals infringed Plaintiff Liberty's
6 copyrighted works. These individuals reproduced, distributed and publicly disseminated
7 Plaintiff's copyrighted works through Defendant Vinigay.com's website.

8 84. Defendants' inducements were willful, knowing, or negligent and, at all pertinent
9 times, Defendant acted in disregard of and with indifference to Plaintiff Liberty's copyrights.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff Liberty respectfully requests the Court hereby:

- 12 (1) Enter a judgment declaring that all Defendants, jointly and severally, with a
13 common plan, purpose or scheme, willfully infringed Plaintiff's rights in federally
14 registered copyrights pursuant to 17 U.S.C. §501 through direct, contributory,
15 vicarious, and inducing acts;
- 16 (2) Issue declaratory and injunctive relief against all Defendants, their agents,
17 representatives, servants, employees, attorneys, successors and assigns, and all
18 others in acting in concert or participation with them, and further to enjoin and
19 restrain all Defendants and others from copying, posting or making any other
20 infringing use or infringing distribution of Plaintiff's audiovisual works,
21 photographs or other materials;
- 22 (3) Issue injunctive and declaratory relief against Defendants Vinigay.com, Frank,
23 and Does 3-500 and their agents, representatives, servants, employees, attorneys,
24 successors and assigns, and all others in active concert or participation with them,
25 be enjoined and restrained from engaging in further acts of copyright
26 infringement; and if they are unable to comply, then this Court should issue an
27 order shutting down Vinigay.com completely.

- 1 (4) Enter an order of impoundment pursuant to 17 U.S.C. §§503 and 509(a)
2 impounding all infringing copies of Plaintiff's audiovisual works, photographs or
3 other materials, which are in Defendants' possession or under their control;
- 4 (5) Enter an order enjoining Defendants Vinigay.com and Frank from disposition of
5 any domain names registered to them, or other property, until full and final
6 settlement of any and all money damage judgments;
- 7 (6) Enter an order requiring a full and complete accounting of all amounts due and
8 owing to Plaintiff Liberty as a result of their illegal or improper activity, whether
9 criminal or civil in nature, of any and all Defendants, each and singular, jointly or
10 severally;
- 11 (7) Enter an order directing the Defendants pay Plaintiff statutory damages as
12 follows:
13 a. maximum enhanced statutory damages of \$150,000 per infringed work
14 pursuant to 17 U.S.C. §504(c)(2), for Defendants' willful infringement of
15 Plaintiff Liberty's copyrights;
16 b. Plaintiff Liberty's damages and Defendants' profits or alternatively statutory
17 damages pursuant to 15 U.S.C. §1117; and,
- 18 (8) Enter an order directing the Defendants pay Plaintiff Liberty both the costs of
19 action and the reasonable attorney's fees incurred by it in prosecuting this action
20 pursuant to 17 U.S.C. §504 and 15 U.S.C. §1117;
- 21 (9) Enter an order directing the Defendants pay pre- and post-judgment interest at the
22 highest legal rate;
- 23 (10) Grant to Plaintiff Liberty whatever and further relief, either in law or in equity, to
24 which this honorable Court deems them fit to receive.

25
26 Date: February 10, 2011.

s/ Marc Randazza
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