

March 16, 2020

SENT VIA FIRST-CLASS MAIL

Re: Vic Nicastro - v. Henry Shivley d/b/a fromthetrenchesworldreport.com -
Our Case No. 545242

Dear Sir or Madam:

Higbee & Associates has been retained to represent Vic Nicastro in regards to 545242 copyright infringement under Title 17 of the United States Code.

Henry Shivley d/b/a fromthetrenchesworldreport.com engaged in copyright infringement when it posted our client's copyrighted image on its website without a valid licensing agreement. We have attempted to settle this matter to no avail. Please see the enclosed Complaint and Exhibits for further information.

Our client is entitled to recover Statutory damages of up to \$150,000 for each infringement and may also recover **attorney fees and court costs**. See 17 U.S.C. §§ 504 & 505.

In an effort to keep costs down, our client is willing to accept a firm settlement of \$4,500 to resolve this matter amicably and avoid litigation. This offer will be open for fifteen (15) days from the date of this letter, after which we recommend to our client that they consider filing the enclosed Complaint, which seeks damages to the full extent of the law.

If you have questions you may contact us at (657) 229-6215 or (800) 716-1245.

Sincerely,

Mathew K. Higbee
Attorney at Law
infringements@higbeeassociates.com

Enclosure(s)

Mathew K. Higbee (SBN #241380)
mhigbee@higbeeassociates.com
LAW FIRM OF HIGBEE & ASSOCIATES
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Santa Ana, CA 92705
714-617-8350
714-597-6729 facsimile
Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
DIVISION OF MEDFORD**

Vic Nicastro

Plaintiff,

v:

Henry Shivley d/b/a
fromthetrenchesworldreport.com

Defendant.

CASE NO

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff, Vic Nicastro, for their Complaint against Henry Shivley d/b/a fromthetrenchesworldreport.com, Defendant, alleges as follows:

INTRODUCTION

1. Vic Nicastro (hereinafter "Plaintiff"), by Plaintiff's attorneys, brings this action to challenge the actions of Henry Shivley d/b/a fromthetrenchesworldreport.com (hereinafter "Defendant"), with regard to the unlawful use of a copyrighted image (hereinafter "Image") owned by Plaintiff, and this conduct caused Plaintiff damages.
2. For the purposes of this Complaint for Damages, unless otherwise indicated, "Defendant" includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendant(s) named in this caption.

JURISDICTION AND VENUE

3. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, whereby the Defendant violated Plaintiff's exclusive rights as copyright owner pursuant to 17 U.S.C. § 106.
4. This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).
5. This Court has personal jurisdiction over Defendant because Defendant is a business entity incorporated in the State of Oregon Defendant's acts of infringement complained of herein occurred in the State of Oregon, and Defendant has caused injury to Plaintiff in his intellectual property within the State of Oregon.
6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the Defendant resides in this judicial district and a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant committed the acts of infringement and has a regular and established place of business in this judicial district.

PARTIES

7. Plaintiff is a natural person and is a professional photographer by trade.
8. Plaintiff is a "copyright owner" who holds "exclusive rights" to the "copyrighted work[s]" pursuant to 17 U.S.C. §§ 101 and 106.
9. Plaintiff is informed and believes, and thereon alleges, that Defendant is a business entity operating in the City of Chiloquin, in the State of Oregon, and conducted business within the City of Chiloquin, in the State of Oregon.
10. Plaintiff is informed and believes, and thereon alleges, that Defendant unlawfully published Plaintiff's copyrighted works without Plaintiff's express or implied authority, by the method of a license.

FACTUAL ALLEGATIONS

11. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant was a business entity residing within the State of Oregon.
12. Plaintiff is a well-known professional photographer. They sell or license their photographs to people and companies seeking to make use of the

photographs for advertisements and pecuniary gain. Plaintiff's livelihood is dependent on receiving compensation for the photographs they produce.

13. Plaintiff took the original image, see Original Image(s) attached hereto as Exhibit A.

14. Plaintiff has ownership rights and copyrights to the Image(s).

15. Plaintiff has registered the Image(s) with the United States Copyright Office under registration number(s) VA 2-141-408, see Registration Certificate(s) attached hereto as Exhibit B.

16. Plaintiff did not consent to authorize, permit, or allow in any manner the use of the Image by Defendant.

17. Plaintiff is informed and believes that Defendant used Plaintiff's copyrighted works without their permission and that it published, communicated, benefited through, posted, publicized and otherwise held out to the public, the original and unique work of Plaintiff without Plaintiff's consent or authority.

18. Plaintiff is informed and believes that Defendant used the Image on Defendant's website from as early as October 11, 2019, see Screenshots of Defendant's use attached hereto as Exhibit C.

19. Defendant uses the Image to promote the Defendant's website.

20. Plaintiff did not consent to the use of their Image.

**FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
Title 17 of the United States Code**

21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

22. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original materials and/or work.

23. Plaintiff is informed and believes and thereon alleges that said Defendant breached Title 17 of the U.S. Code in that it published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique work of the Plaintiff's consent or authority and acquired monetary gain and market benefit as a result.

24. As a result of each and every Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b) or statutory damages in an amount up to \$150,000.00 if willful or up to \$30,000.00 if unintentional pursuant to 17 U.S.C. § 504.

25. As a result of the Defendant's violations of Title 17 of the U.S. code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C §505 from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant

- Awarding statutory damages pursuant to 17 U.S.C. § 504(c) or actual damages pursuant to (504)(b).
- Awarding costs of litigation and reasonable attorney's fees, pursuant to 17 U.S.C. § 505;
- Enjoining the Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502(a); and
- Providing such other and further relief the Court deems just and proper under the circumstances.

Dated: _____

Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
OR License # 106514
HIGBEE & ASSOCIATES
1504 Brookhollow Dr, Ste 112
Santa Ana, CA 92705-5418
(714) 617-8350
FAX (714) 597-6729
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Vic Nicastro, hereby demands a trial by jury in the above matter.

Dated: _____

Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
OR License # 106514
HIGBEE & ASSOCIATES
1504 Brookhollow Dr, Ste 112
Santa Ana, CA 92705-5418
(714) 617-8350
FAX (714) 597-6729
Attorney for Plaintiff

EXHIBIT A1

ORIGINAL IMAGE

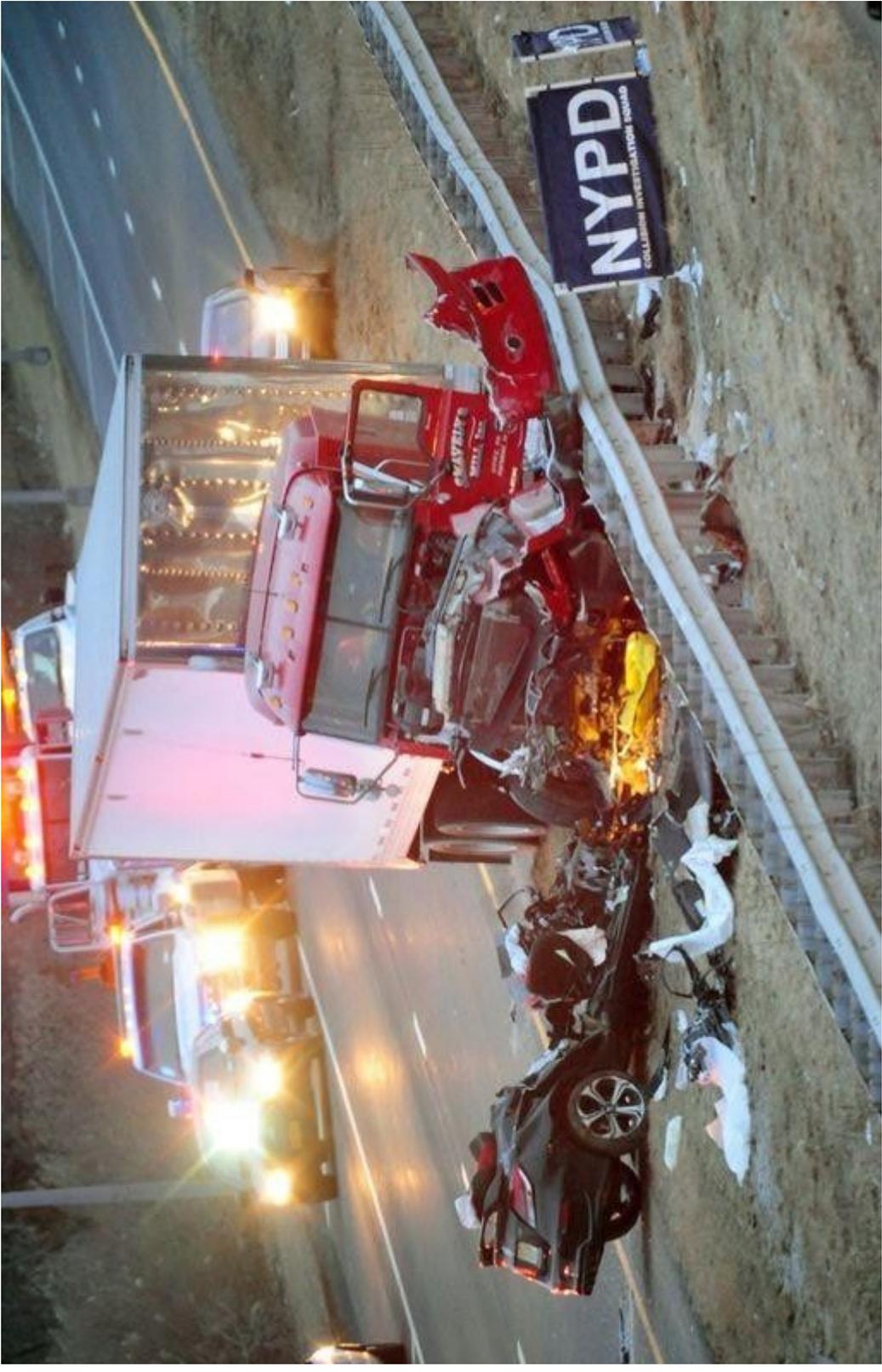


EXHIBIT B1

Copyright Registration Certificate

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Acting United States Register of Copyrights and Director

Registration Number

VA 2-141-408

Effective Date of Registration:

January 21, 2019

Copyright Registration for a Group of Published Photographs

Registration issued pursuant to 37 C.F.R. § 202.4(i)

For Photographs Published: January 15, 2015 to December 31, 2015

Title

- Title of Group:** Vic Nicastro Published Images 2015
Number of Photographs in Group: 113
- Individual Photographs:** 011515crash01VN.jpg, 011515crash02VN.jpg, 011615murderVN.jpg
Published: January 2015
 - Individual Photographs:** 021215Bob-Simon_s-death01VN.jpg, 021215Bob-Simon_s-death02VN.jpg, 021215Bob-Simon_s-death03VN.jpg
Published: February 2015
 - Individual Photographs:** 030315nypdVN.jpg, 030515bronx-apartmentVN.jpg, 030715ex-con01VN.jpg, 030715ex-con02VN.jpg, 030715ex-con03VN.jpg, 030715ex-con04VN.jpg, 030715ex-con05VN.jpg, 030715ex-con06VN.jpg, 031015carlisle-placeVN.jpg, 032215brooklyn-fire01VN.jpg, 032215brooklyn-fire02VN.jpg, 032215head-on-crash01VN.jpg, 032215head-on-crash02VN.jpg, 032515west-shore-expresswayVN.jpg
Published: March 2015
 - Individual Photographs:** 041115carbon-monoxide-poisoningVN.jpg, 041815bronx-car-crash01VN.jpg, 041815bronx-car-crash02VN.jpg, 041815bronx-car-crash03VN.jpg, 042315hillside-ave01VN.jpg, 042315hillside-ave02VN.jpg, 042515hillside-ave-shootingVN.jpg, 042515west-shore-expwy-crash01VN.jpg
Published: April 2015
 - Individual Photographs:** 050215child-endangerment01VN.jpg, 050215child-endangerment02VN.jpg, 050215child-endangerment03VN.jpg, 050215child-endangerment04VN.jpg, 051215elderly-man-pinned-by-car01VN.jpg, 051215elderly-man-pinned-by-car02VN.jpg, 051215elderly-man-pinned-by-car03VN.jpg, 051715brooklyn-chinese-restaurantVN.jpg, 052715casino01VN.jpg, 052715casino02VN.jpg, 052715casino03VN.jpg, 052715casino04VN.jpg, 052715makayla-mannersVN.jpg, 052815bicyclist01VN.jpg, 052815bicyclist02VN.jpg, 052815bicyclist03VN.jpg, 052815david-letterman01VN.jpg, 052815david-letterman02VN.jpg, 052815david-letterman03VN.jpg, 052815david-letterman04VN.jpg
Published: May 2015
 - Individual Photographs:** 061215forest-park01VN.jpg, 061215forest-park02VN.jpg, 061215stabbed01VN.jpg, 061215stabbed02VN.jpg, 061215stabbed03VN.jpg



061215stabbed04VN.jpg, 061215stabbed05VN.jpg, 061315gunman-arrestedVN.jpg, 062515gunman01VN.jpg, 062515gunman02VN.jpg, 062515gunman03VN.jpg, 062715motorcycleVN.jpg

Published: June 2015

- **Individual Photographs:** 070515kingsborough-housesVN.jpg, 070515nychaVN.jpg, 070915car-accident01VN.jpg, 070915car-accident02VN.jpg, 071015trainVN.jpg, 071615diner01VN.jpg, 071615diner02VN.jpg, 071915robbery01VN.jpg, 071915robbery02VN.jpg, 072415bob-simon01VN.jpg, 072515motorcyclist01VN.jpg, 072515motorcyclist02VN.jpg, 073115speedingVN.jpg

Published: July 2015

- **Individual Photographs:** 080315brooklyn-house-party01VN.jpg, 080315brooklyn-house-party02VN.jpg, 080315brooklyn-house-party03VN.jpg, 080315brooklyn-house-party04VN.jpg

Published: August 2015

- **Individual Photographs:** 090815hit-run-accidentVN.jpg, 091815cab-driver-stabbedVN.jpg, 092115cab-driver-shotVN.jpg, 092615chinatown-housing-projectVN.jpg, 092615staten-island-crashVN.jpg

Published: September 2015

- **Individual Photographs:** 100115engine-co64-01VN.jpg, 100115engine-co64-02VN.jpg, 100615bronx-man-nabbed01VN.jpg, 100615bronx-man-nabbed02VN.jpg, 101315hip-hop-producerVN.jpg, 101315nightclub-shooting01VN.jpg, 101315nightclub-shooting02VN.jpg, 102315angeldocsVN.jpg, 102415struck-by-7-trainVN.jpg

Published: October 2015

- **Individual Photographs:** 111815firefighter01VN.jpg, 111815firefighter02VN.jpg, 112215evidenceVN.jpg, 112215tree-crashVN.jpg, 112715parked-truck01VN.jpg, 112715parked-truck02VN.jpg, 112915electrical-fireVN.jpg

Published: November 2015

- **Individual Photographs:** 120115apartment-shooting01VN.jpg, 120115apartment-shooting02VN.jpg, 121215strike10lanes01VN.jpg, 121215strike10lanes02VN.jpg, 121215two-car-hit01VN.jpg, 121215two-car-hit02VN.jpg, 121715-9-story-fallVN.jpg, 121915pedestrian-hitVN.jpg, 122515jerome-ave-shootingVN.jpg, 122515queens-stabbingVN.jpg, 122615jamaica-homicide01VN.jpg, 122615jamaica-homicide02VN.jpg, 123115four-seasonsVN.jpg, 123115jamaica-shooting01VN.jpg, 123115jamaica-shooting02VN.jpg

Published: December 2015

Completion/Publication

Year of Completion: 2015
Earliest Publication Date in Group: January 15, 2015
Latest Publication Date in Group: December 31, 2015
Nation of First Publication: United States

Author

- **Author:** Vic Nicastro

Author Created: photographs
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Vic Nicastro
36-25 170th Street #3, 36-25 170th Street #, Flushing, NY, 11358-2219, United States

Rights and Permissions

Name: Vic Nicastro
Email: fd29@aol.com

Certification

Name: Naomi Sarega
Date: January 21, 2019

Copyright Office notes: Regarding title information: Deposit contains complete list of titles that correspond to the individual photographs included in this group.

Regarding group registration: A group of published photographs may be registered on one application with one filing fee only under limited circumstances. ALL of the following are required: 1. All photographs (a) were created by the same author AND (b) are owned by the same copyright claimant AND (c) were published in the same calendar year AND 2. The group contains 750 photographs or less AND 3. A sequentially numbered list of photographs containing the title, file name and month of publication for each photograph included in the group must be uploaded along with other required application materials. The list must be submitted in an approved document format such as .XLS or .PDF. The file name for the numbered list must contain the title of the group and the Case Number assigned to the application.

EXHIBIT C1

**Screenshots of
Defendant's Use**

FROM THE TRENCHES WORLDREPORT.COM

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Posted on March 20, 2015 by ADRIAN NG

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