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GEORGE GUTENBERG

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GEORGE GUTENBERG,

Plaintiff,

v.

MOVE, INC.,

Defendant.

Case No.:

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

Demand for Jury Trial

COMPLAINT FOR COPYRIGHT INFRINGEMENT

(INJUNCTIVE RELIEF DEMANDED)

Plaintiff George Gutenberg (“Gutenberg”) by and through undersigned counsel, brings this Complaint against Defendant Move, Inc. (“Move,” or the “Defendant”) for damages and injunctive relief, and in support thereof states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Gutenberg is a professional photographer who resides in Palm Desert, California. As part of his profession, Gutenberg takes photographs of the interior and exterior of houses which, for a fee, he then licenses limited reproduction, display, and distribution rights.

2. Defendant Move is a for-profit company organized and existing under the laws of the State of Delaware, with its principal place of business at 30700 Russell Ranch Road, Westlake Village, CA 91362. Move does business in California as “Move Holdings.” Move may be served through its registered agent, C T Corporation System at 818 West Seventh Street, Suite 930, Los Angeles, CA 90017.

3. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq. This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (copyright jurisdiction).

4. This Court has personal jurisdiction over the Defendants by virtue of their presence in this District and their transacting, doing, and soliciting business in this District.

5. Venue is proper under 28 U.S.C. §§ 1391 (b)(1), (c), and (d) and 1400(a).

OPERATIVE FACTS

6. George Gutenberg is a full-time professional photographer with over twenty years of experience specializing in the field of Architecture and Interior Design. For more than fifteen years, most of his work has been in the built environment of luxury residential properties. He has 100+ magazine covers to his

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1 name, and his images have been featured in countless domestic and international
2 publications. His images have also been included in several architectural and interior
3 design-type coffee table books.

4 7. Attached hereto as Exhibit 1 is a list of 1,541 photographs (each a
5 “Photograph,” collectively the “Photographs”) at issue in this case.

6 8. All the Photographs at issue in this case were taken by Gutenberg
7 between the years 2011 and 2019.

8 9. Gutenberg is the author and copyright owner of the Photographs pursuant
9 to 17 U.S.C. § 201.

10 10. The Photographs in perspective, orientation, positioning, lighting, and
11 other details are entirely original to Gutenberg.

12 11. The Photographs are protectable subject matter under the Copyright Act.

13 12. Gutenberg has fully complied with the Copyright Act of 1976, 17 U.S.C.
14 § 101 et seq., as amended, and all other laws and regulations governing copyrights and
15 has secured the exclusive rights and privileges in and to the copyrights for the
16 Photographs.

17 13. The Register of Copyrights for the U.S. Copyright Office issued to
18 Gutenberg Certificates of Registrations for the copyrights to the Photographs and
19 other images, numbered as follows:

- 20 • VAu 1-325-407
- 21 • VAu 1-149-923
- 22 • VAu 1-360-156
- 23 • VAu 1-337-399
- 24 • VAu 1-300-462
- 25 • VAu 1-160-748
- 26 • VAu 1-120-654
- 27 • VAu 1-106-100
- 28 • VAu 1-095-144
- VA 2-114-966

1 True and correct copies of the registration certificates referenced above are attached
2 collectively as Exhibit 2.

3 14. Gutenberg has never transferred ownership of copyright to his
4 Photographs to anyone.

5 **GUTENBERG’S REAL ESTATE PHOTOGRAPHY LICENSE**

6 15. At all relevant times, Gutenberg provided residential real estate
7 photography services for multiple real estate agents in and around Palm Springs,
8 California and surrounding areas.

9 16. The real estate agents who commissioned Gutenberg did so with the
10 intent to use his photographs to market and sell the property depicted in each of the
11 Photographs because those real estate agents had obtained listing agreements from the
12 owners of the property to represent those owners in the marketing and sale of their
13 real estate.

14 17. Gutenberg photographed the exterior and interior of houses, edited the
15 resulting images, and then licensed the photographs to the real estate agents who
16 engaged him.

17 18. Gutenberg provided multiple relevant photographs from each property to
18 the real estate agents who engaged him, but never dictated how many of that group
19 would be used for the listing, or in what order they needed to be displayed.

20 19. Gutenberg retained all the copyright rights to his Photographs and only
21 issued limited licenses to his real estate agent clients.

22 20. Each of Gutenberg’s real estate photographs have individual value
23 beyond their intended use by his real estate agent clients and therefore it was
24 important to Gutenberg that he retain all ownership rights in his photographs,
25 including rights to control the use of those individual photographs in the future.

26 21. Gutenberg’s licenses to his real estate agent clients granted them the
27 rights to copy and display each of the respective Photographs to market the properties
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1 depicted in the Photographs to prospective buyers for the period of one year. The
2 licenses did not allow for third party use and were not transferable.

3 22. Gutenberg’s license to his real estate agent clients did not permit those
4 clients to sublicense rights to any of the Photographs for any purposes unrelated to the
5 sale of the real estate agent’s listing.

6 23. The license Gutenberg granted to his real estate agent clients for the
7 Photographs terminated one year from the payment of his invoice for the photography.

8 24. The cost of the licenses Gutenberg sold to the real estate agent clients
9 reflected this limitation of usage scope and term granted to them.

10 **MOVE, INC.’S INFRINGEMENTS**

11 25. Realtor.com is a website that displays Multiple Listing Service (“MLS”)
12 listings on the internet.

13 26. Realtor.com is operated by Move, Inc. under license from the non-party
14 National Association of Realtors which owns the trademark REALTOR.

15 27. Realtor.com, like other websites that display MLS listings, displays
16 listings by IDX feed received from an MLS.

17 28. The owner and operator of Realtor.com is not a real estate broker.

18 29. Only real estate brokers can be participants in an MLS.

19 30. Non-participants in an MLS, such as the owner and operator of
20 Realtor.com, are required to obtain a license from an MLS to display an IDX feed.

21 31. The licenses granted by an MLS to a non-participant are generally
22 subject to written terms and conditions.

23 32. The written terms and conditions of licenses between an MLS and a non-
24 participant generally require the non-participant refresh all MLS downloads and IDX
25 displays automatically fed by those downloads at least once every 12 hours.

26 33. The written terms and conditions of licenses between an MLS and a non-
27 participant generally do not permit the non-participant to copy, display or distribute
28

1 real estate listing information and associated photographs for real estate listings that
2 have expired, been withdrawn, or been sold.

3 34. The written terms and conditions of licenses between an MLS and a non-
4 participant are generally consistent with the rules and regulations for MLS and IDX
5 use applicable to participants.

6 35. Sometime in summer 2019, Gutenberg discovered that Move, Inc. was
7 actively displaying all 1,541 of his Photographs on Realtor.com despite the licenses to
8 each of the Photographs being granted more than a year prior, and despite the
9 properties no longer being listed for sale.

10 36. At the time of the filing of this lawsuit, all 1,541 Photographs are still
11 active on Realtor.com, as listed and described in Exhibit 1.

12 37. Gutenberg never authorized any party, including Move, Inc. to use any of
13 the Photographs for any purpose beyond the one-year license granted to Gutenberg’s
14 real estate clients for marketing of the properties.

15 38. Move displayed the Photographs on the Realtor.com website beyond the
16 term of the license expressly granted to it.

17 39. Move’s volitional continued display of the Photographs under the
18 circumstances alleged herein was the proximate cause of Gutenberg’s loss.

19 40. Gutenberg further discovered that Move, Inc. was displaying the
20 Photographs for purposes other than marketing the properties depicted in the
21 Photograph.

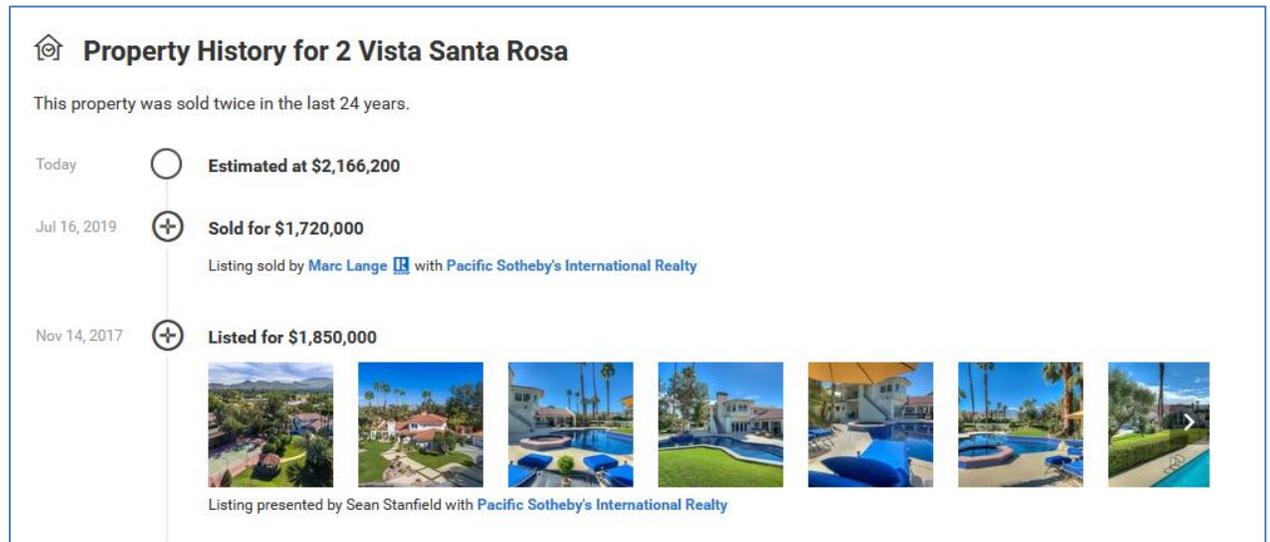
22 41. Move, Inc. displayed the Photographs as part of a property summary
23 page as content for users to view general information about the property despite that
24 property not being for sale. An example is shown in part here:

25 ///

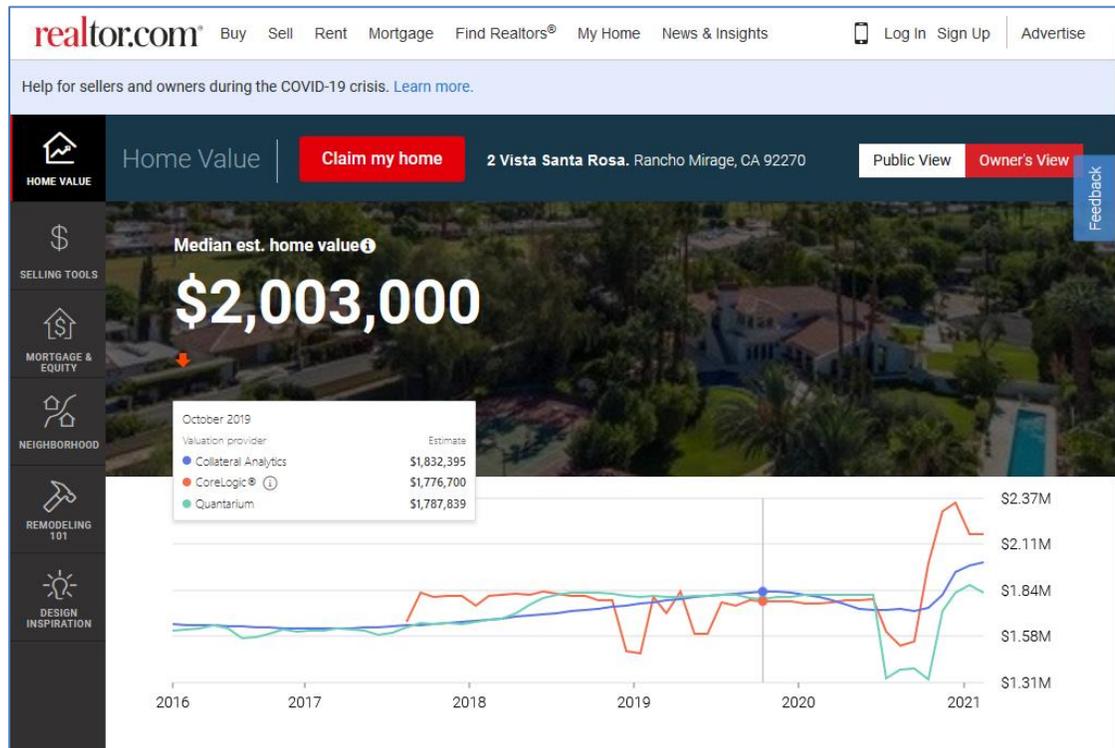
26 ///

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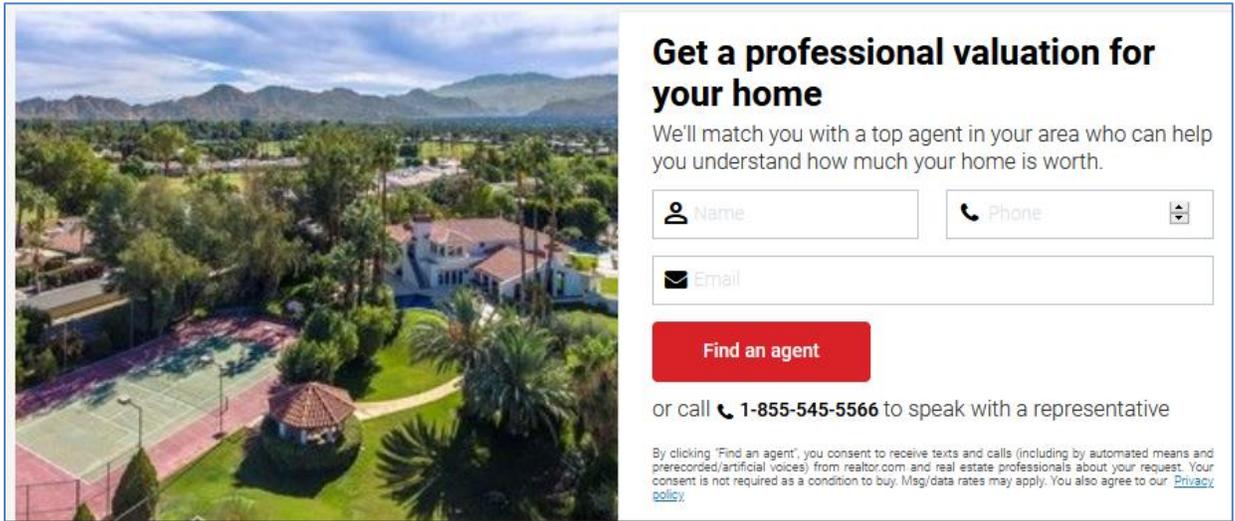


42. Move, Inc. displayed some of the Photographs as part of a “Track My Home” page that allowed homeowners to monitor their home’s value, despite that property not being for sale. An example is shown in part here:



43. Move, Inc. displayed some of the Photographs as part of a “Find an Agent” page that assisted homeowners with finding an agent, selling that information

1 to agents who paid Move for the service, despite that property not being for sale. An
2 example is shown in part here:



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12 44. Move, Inc. displayed some of the Photographs on a “Similar Homes
13 Nearby” page which used some of the Photographs to provide homeowners with a
14 comparison of values with other homes currently on the market, even if their own
15 home was not currently listed.

16 **FIRST CAUSE OF ACTION**

17 **(Copyright Infringement – 17 U.S.C. §§ 101 et seq.)**

18 45. Gutenberg re-alleges and incorporates by reference paragraphs 1 through
19 44 above.

20 46. Move violated Gutenberg’s exclusive rights granted in 17 U.S.C. § 106,
21 specifically his exclusive rights to: (1) reproduce the copyrighted work in copies; (2)
22 prepare derivative works based on the copyrighted work; (3) distribute copies of the
23 copyrighted work to the public by sale or other transfer of ownership, or by rental,
24 lease, or lending; and (4) display the copyrighted work publicly.

25 47. As Gutenberg discovered in the summer of 2019 that Move continued to
26 display the Photographs after the listings expired, all claims of infringement are within
27 the three-year statute of limitations period pursuant to 17 U.S.C. § 507(b).
28

1 48. As a direct and proximate result of their wrongful conduct Move has
2 realized and continues to realize profits and other benefits rightfully belonging to
3 Gutenberg for the Photographs. Accordingly, Gutenberg is entitled to and seeks
4 awards of actual damages and profits pursuant to 17 U.S.C. § 504(b).

5 49. In the alternative, Gutenberg is entitled to and seeks statutory damages
6 for Move’s infringements of the Photographs, including attorneys’ fees and costs,
7 pursuant to 17 U.S.C. §§ 504(c)(1) and 505.

8 50. The infringements by Move were willful and performed with knowledge
9 that the reproductions, displays, and distributions of the Photographs were
10 unauthorized; Gutenberg is therefore entitled to the recovery of enhanced statutory
11 damages pursuant to 17 U.S.C. 504 (c)(2).

12 **PRAYER FOR RELIEF**

13 WHEREFORE Plaintiff Gutenberg prays for judgment as follows:

- 14 a. Order that Move’s unauthorized conduct violates Gutenberg’s rights
15 under the Federal Copyright Act at 17 U.S.C. §101, et seq.;
- 16 b. Order Move to account to Gutenberg for all gains, profits, and
17 advantages derived from the unauthorized use of the Photographs;
- 18 c. Award Gutenberg all profits and actual damages in such amount as may
19 be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal
20 rate) for the infringements of Gutenberg’s copyright in the Photographs; alternatively,
21 maximum statutory damages in the amount of \$30,000 for Move’s infringements of
22 the Photographs pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be
23 proper pursuant to 17 U.S.C. § 504;
- 24 d. Award Gutenberg maximum statutory damages in the amount of
25 \$150,000 for each of Move’s infringements of Gutenberg’s copyrights in the
26 Photographs pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be
27 proper pursuant to 17 U.S.C. § 504;
- 28

1 e. Award Gutenberg his costs of litigation, reasonable attorneys’ fees and
2 disbursements in this action, pursuant to 17 U.S.C. §§ 505;

3 f. Order Move to deliver to Gutenberg all copies of the Photographs and all
4 other materials containing such infringing copies of the Photographs in their
5 possession, custody or control;

6 g. Order Move and its respective agents and servants, to be enjoined during
7 the pendency of this action and permanently from infringing the copyrights of
8 Gutenberg in any manner and from reproducing, distributing, displaying, or creating
9 derivative works of the Photographs; and

10 h. For such other and further relief as this Honorable Court deems just and
11 proper

12 **JURY DEMAND**

13 Plaintiff hereby demands a trial by jury of all issues so triable.

14
15 DATED: March 17, 2021

Respectfully submitted,

16
17 /s/ Jonah A. Grossbardt
18 JONAH A. GROSSBARDT
19 SRIPLAW

20 /s/ Evan A. Andersen
21 Evan A. Andersen
22 **Evan Andersen Law, LLC**
23 *(Pro hac vice forthcoming)*

24 *Attorneys for Plaintiff George Gutenberg*
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