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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 Case No. _____

9 CLAUDIA ECKELMANN,
10 Plaintiff,
11 v.
12 HIGBEE & ASSOCIATES,
13 Defendant.

**NOTICE OF REMOVAL BY
DEFENDANT HIGBEE &
ASSOCIATES**

[Filed concurrently with Civil Cover
Sheet, Notice of Interested Parties and
Corporate Disclosure Statement]

Complaint Filed: January 18, 2018

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17 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

18 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1331, 1441, 1446,
19 and 1454, Defendant Higbee & Associates, hereby removes this civil action from
20 the Superior Court of California for the County of Contra Costa, where it is
21 currently pending as Case No. MSC19-0072, to the United States District Court for
22 the Northern District of California.

23 This Court has original jurisdiction over this action under 28 U.S.C. § 1331
24 and § 1454 on the grounds that the Superior Court complaint seeks adjudication of
25 a copyright dispute solely arising under federal law, 17 U.S.C. §§ 101 *et seq.*

26 In accordance with 28 U.S.C. § 1446(a), set forth below is a statement of the
27 grounds for removal.
28

BACKGROUND

1
2 Non-party CartoonStock Ltd. (“CartoonStock”) owns a searchable database
3 of over 500,000 humorous and political cartoons, cartoon pictures and illustrations
4 by more than 1000 of the world's top cartoonists, all available for licensing and
5 download. Utilizing an intellectual property management company, PicRights Ltd.
6 (“PicRights”), CartoonStock discovered that one of its protected works (the
7 “Work”) was being used by Plaintiff Claudia Eckelmann without permission or
8 record of a license.

9 In November of 2018, CartoonStock and PicRights retained Defendant
10 Higbee & Associates, an intellectual property law firm, to send a cease and desist
11 letter to Eckelmann and to request payment of a retroactive license for unauthorized
12 use of the Work. On November 14, 2018 Higbee & Associates sent a letter stating,
13 in part, that if Eckelmann did not have a valid license, “we believe the use of the
14 [W]ork is a violation of The Copyright Act, Title 17 of the United States Code.”

15 After many attempts to resolve the matter, the parties could not come to a
16 resolution and, on January 11, 2019, Higbee & Associates considered the matter
17 closed. On January 18, 2019 Eckelmann filed a small claims action in the Superior
18 Court for the County of Martinez, Case no. MSC19-0072 (the “Superior Court
19 Action”). The Superior Court Action named Higbee & Associates as the sole
20 defendant.

21 On the Pleading form under the section labeled “[w]hy does the defendant
22 owe the plaintiff money,” Eckelmann stated:

23 “The defendant [Higbee & Associates] is claiming that [plaintiff Eckelmann]
24 owes \$500. This action is deemed to adjudicate that claim.”

25 On the Pleading form under the section labeled “[w]hen did this happen,”
26 Eckelmann listed November 14, 2018, which is the date that Higbee & Associates
27 sent the letter to Eckelmann alleging copyright infringement.

28 Attached hereto as Exhibit A is a true and correct copy of the Summons,
Pleading, and Proof of Service of the Superior Court Action.

1 On January 29, 2019, the Clerk of the Court mailed notice of the Superior
2 Court action to Higbee & Associates. The notice was received on January 31, 2019.

3 **GROUND FOR REMOVAL**

4 As set forth more fully below, this Court has exclusive subject matter
5 jurisdiction under 28 U.S.C. § 1331, which states that “the district courts shall have
6 original jurisdiction of all civil actions arising under the Constitution, laws, or
7 treaties of the United States,” and under 28 U.S.C. § 1454, which stated that “[a]
8 civil action in which any party asserts a claim for relief arising under any Act of
9 Congress relating to patents, plant variety protection, or copyrights may be removed
10 to the district court of the United States for the district and division embracing the
11 place where the action is pending.”

12 **I. The Superior Court Action Arises Under Federal Copyright Law.**

13 A state action can generally be removed if that action could have been
14 brought originally in federal court, i.e. if the District Court has original jurisdiction.
15 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 1454 (recognizing removal if an asserted
16 claim for relief arises under “patents, plant variety protection, or copyrights”). To
17 determine whether this Court has original jurisdiction, this Court “examine[s] the
18 ‘well pleaded’ allegations of the complaint and ignore[s] potential
19 defenses.” *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 6 (2003) (citations
20 omitted).

21 In this case, Eckelmann’s allegations arise directly out of the November 14,
22 2018 letter alleging copyright infringement of CartoonStock’s Work. In the letter to
23 Eckelmann, Higbee & Associates stated in part that “we believe the use of the
24 [W]ork is a violation of The Copyright Act, Title 17 of the United States Code” and
25 requested that Eckelmann pay a retroactive license fee. In the Superior Court
26 Complaint, Eckelmann stated that event giving rise to her claim occurred on
27 November 14, 2018, the date of the letter asserting copyright infringement.
28 Eckelmann also stated that Higbee & Associates alleged that Eckelmann owed

1 \$500, and stated that the Superior Court Complaint, “is deemed to adjudicate that
2 claim.” In other words, Eckelmann’s suit seeks to adjudicate whether she engaged
3 in copyright infringement as alleged in Higbee & Associates November 14, 2018
4 letter and therefore whether she owes the retroactive licensing fee.

5 Since the allegations in the Superior Court Complaint require adjudication of
6 a federal question, i.e. whether Eckelmann engaged in copyright infringement and
7 therefore is liable for damages in the form of a retroactive license fee, this case is
8 properly removable pursuant to 28 U.S.C. § 1331 and § 1454.

9 **II. The Other Prerequisites Of Removal Are Satisfied.**

10 This Notice of Removal is timely filed. The relevant statute provides that
11 “[e]ach defendant shall have 30 days after receipt ... of the initial pleading ... to file
12 the notice of removal.” 28 U.S.C. § 1446(b)(2)(B). The Superior Court Complaint
13 was filed on January 19, 2019, served by the Clerk on January 29, 2019, and
14 received by Higbee & Associates on January 31, 2019. As Higbee & Associates is
15 the only named defendant, no other party need consent to the filing of this Notice of
16 Removal.

17 This action is properly removed to the United States District Court for the
18 Northern District of California which is the district “embracing the place where
19 [the] action is pending.” 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 84(a) (listing the
20 counties within the Northern District of California).

21 Title 28 U.S.C. § 1446(a), requires a copy of all process, pleadings, and
22 orders served upon the removing defendant in the state court action to be included
23 with this Notice of Removal. Attached hereto as Exhibit A is a true and correct
24 copy of the Summons, Pleading, and Proof of Service of the Superior Court Action,
25 which were served on Higbee & Associates.

26 Pursuant to 28 U.S.C. § 1446(d), a Notice to Adverse Party of Removal to
27 Federal Court, attached hereto as Exhibit B, together with this Notice of Removal,
28 will be served upon Eckelmann and the Clerk for the Superior Court.