	ase 2:16-cv-01316-SJO-KS Document 1	1 Filed 02/25/16 Page 1 of 7 Page ID #:1					
1 2 3 4	Christopher Seidman (SBN 98884) Harmon & Seidman LLC 101 South Third Street, Suite 265 Grand Junction, Colorado 81501 970-245-9075 chris@harmonseidman.com						
5 6 7	Alex Rice Kerr (SBN 264821) Harmon & Seidman LLC PO Box 3097 Jackson, WY 83001 970-270-4718 alex@harmonseidman.com						
8	Attorneys for Plaintiff Joseph Sohm						
9		ATES DISTRICT COURT					
0	JOSEPH SOHM,	STRICT OF CALIFORNIA )					
1	Plaintiff,	) Case No. 16-cv-1316					
2	V.	) COMPLAINT					
3							
4	MCGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC and MCGRAW-HILL SCHOOL EDUCATION HOLDINGS, LLC	) DEMAND FOR JURY TRIAL					
.5	Defendants.	)					
7	Plaintiff Joseph Sohm, ("Sohm")	for his Complaint against Defendants McGraw-Hill					
8	Global Education Holdings, LLC and McGr	raw-Hill School Education Holdings, LLC (collectively					
9	"MHE") alleges:						
20							
21	1. This is an action for copyright infringement brought by Sohm, the owner of						
2	copyrights to the photographs described hereafter and originally licensed for limited use by MHE,						
3							
4	against MHE for unauthorized uses of his photographs. PARTIES						
5							
6	2. Joseph Sohm is a professional photographer who licenses photographic images to						
27	publishers, including MHE. He is a resident of Oak View, California.						
28							
		1					
	Complaint	16-cv-1316					

1 3. MHE is a sophisticated global publisher incorporated in Delaware. MHE sells and 2 distributes its publications in the Central District of California, throughout the United States, and 3 overseas, including the publications and ancillary materials in which Plaintiff's photographs are 4 unlawfully reproduced. At all times pertinent to the allegations herein, MHE acted through or in 5 concert with its various imprints, divisions, subsidiaries, affiliates, and/or third parties. 6 **JURISDICTION** 7 This is an action for injunctive relief, statutory damages, monetary damages, and 4. 8 interest under the copyright laws of the United States. This Court has jurisdiction over the subject 9 matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (copyright). 10 VENUE 5. 11 Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(a) and (b) and 28 U.S.C. § 1400(a). 12 13 FACTS COMMON TO ALL COUNTS 14 6. Sohm is the owner of copyrights in the attached photographic images ("Photographs") depicted in Exhibits 1, 2, 3, 4, 5, 6, and 7. 15 7. As set forth in Exhibits 1-7, the Photographs have been registered with the United 16 17 States Copyright Office. 8. 18 Between 1993 and 2012, in response to permission requests from MHE, Sohm – 19 either directly or by conducting business through his solely owned corporations, Chromosohm, Inc. and Visions of America ("VOA") - sold MHE limited licenses to use copies of the Photographs in 20particular educational publications identified in MHE's requests. The licenses granted MHE were 21 22 expressly limited by number of copies, distribution area, language, duration, and/or media, as summarized in Exhibit 1. 23 24 9. In addition to Photographs Sohm directly licensed to MHE or licensed through his solely owned corporations, Sohm also entered into agreements with stock photography agencies 25 Corbis Corporation, Jupiter Images Corporation, Photo Researchers, Inc., Picture Quest, Stock 26 27 28

## Case 2:16-cv-01316-SJO-KS Document 1 Filed 02/25/16 Page 3 of 7 Page ID #:3

1	Boston, Inc., and The Image Works ("Agencies"), authorizing them to grant limited licenses for
2	use of the Photographs to MHE, summarized in Exhibits 2-7 respectively.

3 10. After obtaining the licenses, MHE exceeded the licenses and infringed Sohm's 4 copyrights in the Photographs in various ways, including: 5 printing more copies of the Photographs than authorized; a. 6 distributing publications containing the Photographs outside the authorized b. 7 distribution area; 8 publishing the Photographs in electronic, ancillary, or derivative publications c. without permission; 9 publishing the Photographs in international editions and foreign publications d. 10 without permission; and/or

e. publishing the Photographs beyond the specified time limits.

11. After obtaining access to the Photographs, MHE also used them without any license or permission in additional publications that have not yet been identified. Because MHE alone knows of these wholly unauthorized uses, Sohm cannot further identify them without discovery.

12. MHE alone knows the full extent to which it has infringed Sohm's copyrights by making unauthorized uses of the Photographs, but it has not shared this knowledge with Sohm.

13. More than two dozen other photographers and stock photography agencies have brought copyright infringement actions against MHE based on the same practice that Sohm alleges here.

14. The following examples of unauthorized printings illustrate MHE's practice of infringing copyrights in photographs:

- a. MHE licensed to print 100,000 copies of images in *Algebra 1* 2003. It printed 1,213,373 copies.
- b. MHE licensed to print 100,000 copies of images in *Pre-Algebra* 2003. It printed 837,783 copies.
- c. MHE licensed to print 300,000 copies of images in *Everyday Math* 2007. It printed 779,281 copies.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

	ase 2:16-cv-01316-SJO-KS Document 1 Filed 02/25/16 Page 4 of 7 Page ID #:4		
1	d. MHE licensed to print 60,000 copies of images in <i>Macmillan Health and Wellness</i> , Grade 3. It printed 345,050 copies.		
2 3	e. MHE licensed to print 60,000 copies of images in <i>Macmillan Health and Wellness</i> , Grade 4. It printed 365,000 copies.		
4 5	f. MHE licensed to print 60,000 copies of images in <i>Macmillan Health and Wellness</i> , Grade 5. It printed 358,000.		
6	g. MHE licensed to print 100,000 copies of images in <i>Science 2008</i> – California Grade 4. It printed 249,533.		
7 8	h. MHE licensed to print 100,000 copies of images in <i>Biology</i> 10e 2009. It printed 195,958.		
9 10	i. MHE licensed to print 105,000 copies of images in <i>Physics: Principles &amp; Problems</i> 2002. It printed 289,449.		
11 12	j. MHE licensed to print 100,000 copies of images in <i>Physics: Principles &amp; Problems</i> 2005. It printed 594,608.		
13	k. MHE licensed to print 100,000 copies of images in <i>Glencoe Science</i> 2005. It printed 580,377.		
14 15	1. MHE licensed to print 100,000 copies of images in <i>The World and Its People</i> 2005. It printed 298,178.		
16	15. In a parallel case, Grant Heilman Photography, Inc. v. McGraw-Hill School		
17	Education Holdings, LLC, et al., No. 5:12-cv-2061-MMB, MHE conceded liability for 1,092 claims		
18	of copyright infringement pertaining to a single licensing agency. See Exhibit 8.		
19	16. In the fall of 2014 in the same case, a jury sitting in the Eastern District of		
20	Pennsylvania found MHE liable for infringement of 38 photographs in 11 textbooks by committing		
21	the same scheme Sohm alleges here. See Heilman, No. 5:12-cv-2061-MMB (Doc. 180, Judgment).		
22	The jury awarded \$127,087 in actual damages and profits to that stock photography agency.		
23	17. On November 25, 2014, Judge Rebecca Pallmeyer in the Northern District of		
24	Illinois found MHE liable on summary judgment for 81 counts of copyright infringement for		
25	engaging in the same scheme Sohm alleges here (" McGraw-Hill violated the licensing		
26	agreements in three distinct ways: print overruns, distribution outside the authorized geographic		
27	areas, and unlicensed reproductions in electronic media."). See <i>Panoramic Stock Images, Ltd. v.</i>		
28			

McGraw-Hill Global Education Holdings, LLC et al., No. 1:12-cv-09881 (Doc. 85, Memorandum Opinion and Order, p. 13).

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

## Indirect Copyright Infringement

18. Upon information and belief, MHE facilitated the international distribution of the Photographs by transmitting them to other entities, subsidiary companies, divisions, affiliates, and/or third parties ("Third Parties"). MHE encouraged the Third Parties to distribute MHE's publications containing the Photographs in new territories, to translate its publications into new languages, and to adapt its publications for distribution in additional territories.

19. MHE materially contributed to the international distribution of publications containing the Photographs through its offices in Asia, Europe, Latin America and India that "serve customers worldwide." (Exhibit 9.) "Each international group has its own sales, marketing, and editorial staffs, distribution center, and customer service operation. All distribute the full range of books produced by the McGraw-Hill Education Group -- either in English or in translated editions...." (Id.)

20. Upon information and belief, the Third Parties, after receiving the Photographs from MHE, translated the publications at issue into additional languages or published them in local adaptations or reprints and included the Photographs in these publications without Sohm's permission. For example, MHE reproduced and distributed one or more photographs it obtained from Sohm and/or his agencies to the Third Party publisher, McGraw-Hill Interamericana Editores, S.A. DE C.V., for use in unauthorized Spanish translation Understanding Human Sexuality 9th Edition. (Exhibit 10.)

21. Upon information and belief, MHE's unauthorized reproduction and distribution to the Third Parties took place in the United States.

24 22. Without discovery, Sohm has no way of comprehensively learning which Photographs MHE transmitted to Third Parties. Upon information and belief, MHE has, and could 26 easily produce, documents evidencing the terms of its agreements with Third Parties and its transmission and distribution of the Photographs.

28

27

23.	Upon information and belief, MHE knew, when it reproduced and distributed the	
Photographs	to the Third Parties – which MHE did not have the right to do – that the Third Parties	
would subsec	quently reproduce and distribute the Photographs without Sohm's authorization.	
24.	Upon information and belief, MHE knew that the Third Parties were continuing to	
reproduce an	d distribute Sohm's Photographs without authorization.	
25.	Upon information and belief, MHE had the right and ability to control the Third	
Parties' use of the Photographs.		
26.	Upon information and belief, MHE directly profited from its transmission of the	
hotographs	to the Third Parties since the Third Parties paid MHE for access to the content in its	
publications,	which included the Photographs.	
27.	Exhibits 1-10 attached hereto are incorporated into this Complaint by this reference.	
	COUNT I Copyright infringement against MHE	
28.	Plaintiff incorporates herein by this reference each and every allegation contained in	
he paragraph	ns set forth above.	
29.	The foregoing acts of MHE constitute infringements of Plaintiff's copyrights in the	
Photographs	in violation of 17 U.S.C. §§ 501 et seq.	
30.	Plaintiff suffered damages as a result of MHE's unauthorized use of the	
Photographs.		
	COUNT II	
	Contributory and/or vicarious copyright infringement against MHE	
31.	Plaintiff incorporates herein by this reference each and every allegation contained in	
each paragraj	ph above.	
32.	The foregoing acts of MHE constitute contributory and/or vicarious infringement of	
Plaintiff's co	pyrights in the Photographs in violation of 17 U.S.C. §§ 501 et seq.	
33.	Plaintiff suffered damages as a result of the unauthorized use of the Photographs.	
WHE	<b>CREFORE</b> , Plaintiff requests the following:	
	6	
COMPLAINT	16-cv-1316	

- A preliminary and permanent injunction against Defendants and anyone working in
   concert with Defendants from copying, displaying, distributing, selling or offering to sell Plaintiff's
   Photographs described in this Complaint and Plaintiff's photographs not included in suit.

I

2. As permitted under 17 U.S.C. § 503, impoundment of all copies of Plaintiff's Photographs used in violation of Plaintiff's exclusive copyrights as well as all related records and documents and, at final judgment, destruction or other reasonable disposition of the unlawfully used Photographs, including digital files and any other means by which they could be used again by Defendants without Plaintiff's authorization.

3. An award of Plaintiff's actual damages and all profits derived from the unauthorized use of Plaintiff's Photographs or, where applicable and at Plaintiff's election, statutory damages.

4.

- An award of Plaintiff's reasonable attorneys' fees.
- 12 5. An award of Plaintiff's court costs, expert witness fees, interest and all other
  13 amounts authorized under law.
  - 6. Such other and further relief as the Court deems just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues permitted by law.

DATED: February 25, 2016

Plaintiff Joseph Sohm, by his attorneys,

26 27	E-mail: alex@harmonseidman.com	
25 26	Tel: 970-270-4718	
24	Alex Rice Kerr (SBN 264821) Harmon & Seidman LLC PO Box 3097 Jackson, WY 83001	
22	E-mail: chris@harmonseidman.com	
21 22	101 South Third Street, Suite 265 Grand Junction, Colorado 81501 Tel: (970) 245-9075	
20	Christopher Seidman (SBN 98884) Harmon & Seidman LLC 101 South Third Street, Suite 265	
19	/s/ Christopher Seidman	