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January 15, 2018

**VIA EMAIL**

Odell Beckham Jr.  
c/o Daniel E. Davillier  
[ddavillier@davillierlawgroup.com](mailto:ddavillier@davillierlawgroup.com)  
Davillier Law Group, LLC  
935 Gravier Street, Suite 1702  
New Orleans, LA 70112

**Re: Unauthorized Use of Photographs Owned by Splash News and Picture Agency, LLC**

We represent Splash News and Picture Agency, LLC, one of the world's largest celebrity photograph licensing companies. Our records show that Odell Beckham Jr. does not hold a valid license for use of a photographs owned by Splash, which were displayed as follows:

[www.instagram.com/p/BauSWwKDCid](http://www.instagram.com/p/BauSWwKDCid)

You are hereby notified that the unauthorized use of the photographs identified above is a violation of the U.S. Copyright Act, 17 U.S.C. § 106. The unauthorized usage affected the potential market and value of the photographs. Further, the usage received ample attention as evidenced by Mr. Beckham Jr.'s millions of followers and popularity.

The photographs are not in the public domain. Each was licensed by Splash or its agents to major news outlets including the Daily Mail and TMZ. Examples of legitimate usage can be seen here:

<http://www.dailymail.co.uk/news/article-4993752/Giants-Odell-Beckham-Jr-makes-post-surgery-appearance.html>

<http://www.tMZ.com/photos/2017/10/17/odell-beckham-jr-on-crutches-wearing-boot-cast/images/2017/10/17/odell-beckham-jr-on-crutches-wearing-boot-cast-photos-2-00-jpg>

The photographs are covered by a certificate for registration of the copyright issued by the U.S. Copyright Office. For your convenience, evidence of registration and the uploaded deposit are affixed hereto as Exhibits A and B. As you know, timely registration renders the photographs eligible for statutory damages and attorneys' fees (17 U.S.C. § 504(c)). For willful infringement, Splash can receive up to \$150,000 per infringement in statutory damages (17 U.S.C. § 504(c)(2)).

**EXHIBIT 1**



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Courts often grant large statutory damages to compensate copyright owners, punish infringers, and deter future infringement; even with no evidence of actual damages. *See Columbia Pictures Indus. v. Krypton Broad. Of Birmingham, Inc.*, 259 F. 3d 1186 (9th Cir. 2001), *cert denied*, 534 U.S. 1127 (2002). As part of her ruling in *Top Rank Inc. v. Allerton Lounge, Inc.*, then-U.S. District Court Judge and current Supreme Court Justice Sonia Sotomayor opined that “statutory damages must be sufficient enough to deter future infringements and should not be calibrated to favor a defendant by merely awarding minimum estimated losses to a plaintiff.” 1998 WL 35152791 (S.D.N.Y. 1998).

In addition to direct infringement, Mr. Beckham Jr. may also be responsible for contributory and vicarious infringement, as well as infringement by inducement, caused by other websites’ linking to the infringements. *See Corbis Corp. v. Starr*, Case No. 3:07CV3741, 2009 U.S. Dist. LEXIS 79626 (N.D. Ohio 2009) (“Given [defendant’s] control over its website’s content, and its financial interest in the images, I find it vicariously liable for [subcontractor’s] direct copyright infringement as a matter of law.”).

Mr. Beckham Jr.’s use of the photographs was not fair. First, the commentary was insubstantial. *See Murphy v. Millennium Radio Grp. L.L.C.*, 650 F.3d 295, 307 (3d Cir. 2011) (“The absence of any broader commentary — whether explicit or implicit — significantly undercuts the argument that [defendant’s] use gave any new meaning to the Image. Instead, it appears that [defendants] did not want to go to the trouble of creating their own eye-catching photo but simply appropriated the Image.”). In addition, Mr. Beckham Jr.’s use was in no way transformative or for a different purpose than Splash’s legitimate clients.

The unedited duplication of the photographs also weighs against fair use. “Qualitatively, the minimal cropping of each picture demonstrates that the ‘heart’ of each individual copyrighted picture was published. *Elvis Presley Enters.*, 349 F.3d at 630 (courts should ‘look to see whether the heart of the copyrighted work is taken.’)” *See Monge*, 688 F.3d at 1178. In this case, Mr. Beckham Jr. didn’t add anything new or crop the “heart” from the photographs.

Finally, the use of the photographs materially impaired their marketability. The timeliness of his postings certainly supplanted demand for my client’s photographs. Splash relies on a lack of exposure when licensing content.

The Second Circuit has ruled “an accused infringer has usurped the market for copyrighted works, including the derivative market, where the infringer’s target audience and the nature of the infringing content is the same as the original.” *Cariou v. Prince*, 714 F.3d 694 (2d Cir. 2013) *cert. denied* 134 S. Ct. 618 (2013). As discussed above, Mr. Beckham Jr. used the photographs in the same manner, to the same audience, and with the same purpose as Splash or its clients.

We must also consider “not only the extent of market harm caused by the particular actions of the alleged infringer, but also whether unrestricted and widespread conduct of the sort engaged in by the defendant would result in a substantially adverse impact on the potential



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market for the original.” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 590 (1994). If legitimate clients of Splash engaged in the same conduct, the future of my client’s licensing market would suffer. See *North Jersey Media Group Inc. v. Pirro and Fox News Network LLC*, 74 F.Supp.3d 605, 622 (S.D.N.Y. 2015):

[Defendant’s] interest in the Combined Image therefore poses a very real danger that other such media organizations will forego paying licensing fees for the Work and instead opt to use the Combined Image at no cost. Accordingly, given the predominance of the Work in the Combined Image, the posting on the [defendant’s] Facebook Page poses a much greater danger to [plaintiff] than simply the loss of licensing revenues from this one-time use.

See also *American Geophysical Union v. Texaco, Inc.*, 60 F.3d 913, 929 (2d Cir. 1995) (“It is indisputable that, as a general matter, a copyright holder is entitled to demand a royalty for licensing others to use its copyrighted work, and that the impact on potential licensing revenues is a proper subject for consideration in assessing the fourth factor.”) (internal citations omitted).

In sum, we believe Mr. Beckham Jr.’s use was not fair.

Splash is committed to investigating licensing infractions and copyright infringements to protect the interests of the photographers it represents. It vigorously enforces its intellectual property rights to safeguard the livelihood of artists whose work it owns and/or licenses. As such, Splash expects that your cooperation regarding this matter be expeditious and forthcoming.

Splash seeks to resolve this matter without resorting to costly litigation. Accordingly, Splash is willing to accept the fair and reasonable sum of \$40,000 as full and final settlement. This is a generous discount from potential attorneys’ fees and the \$150,000 statutory maximum per photograph.

This correspondence is a settlement offer and is subject to California Evidence Code sections 1152 and 1154, and Rule 408 of the Federal Rules of Evidence. Nothing contained or omitted from this letter shall be deemed to be an admission, waiver, or limitation of any kind. Splash expressly reserves all of its rights and remedies with respect to this matter.

We look forward to your response. If we do not hear from you by January 29, 2018, we will assume you are not interested in resolving this matter informally.

Thank you,

A handwritten signature in blue ink, appearing to read "Peter Perkowski", written over a horizontal line.

Peter Perkowski  
General Counsel



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# EXHIBIT A

## Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title =

EXCLUSIVE: \*\*STRICTLY NO WEB UNTIL 1am ET 10/18/17\*\*NO NY PAPERS\*\* NY Giants

Search Results: Displaying 1 of 1 entries



Labeled View

**Published Group of Photos, EXCLUSIVE: \*\*STRICTLY NO WEB UNTIL 1am ET...**

**Type of Work:** Visual Material

**Registration Number / Date:** VA0002082127 / 2018-01-09

**Application Title:** Published Group of Photos, EXCLUSIVE: \*\*STRICTLY NO WEB UNTIL 1am ET 10/18/17\*\*NO NY PAPERS\*\* NY Giants Star Odell Beckham Jr. seen for the First time after Horrific Ankle Injury - set number SPL1604321 - 12 images, published 2017-10-17.

**Title:** Published Group of Photos, EXCLUSIVE: \*\*STRICTLY NO WEB UNTIL 1am ET 10/18/17\*\*NO NY PAPERS\*\* NY Giants Star Odell Beckham Jr. seen for the First time after Horrific Ankle Injury - set number SPL1604321 - 12 images, published 2017-10-17.

**Description:** Electronic file (eService)

**Copyright Claimant:** Splash News and Picture Agency, LLC, Transfer: By written agreement. Address: 555 West 5th Street, Floor 35, Los Angeles, CA, 90013, United States.

**Date of Creation:** 2017

**Date of Publication:** 2017-10-17

**Nation of First Publication:** France

**Alternative Title on Application:** EXCLUSIVE: \*\*STRICTLY NO WEB UNTIL 1am ET 10/18/17\*\*NO NY PAPERS\*\* NY Giants Star Odell Beckham Jr. seen for the First time after Horrific Ankle Injury - set number SPL1604321 - 12 images

**Authorship on Application:** Miles Diggs; Domicile: United States. Authorship: photograph.

**Rights and Permissions:** Austin Raishbrook, Splash News and Picture Agency, LLC, 555 West 5th Street, Floor 35, Los Angeles, CA, 90013, United States, (310) 821-2666, arashbrook@splashnews.com

**Names:** [Diggs, Miles](#)

[Splash News and Picture Agency, LLC](#)



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# EXHIBIT B

Splash News and Picture Agency, LLC - Set Number SPL1604321

