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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

8 SUMMIT KAIJU LLC d/b/a SUMMIT)
9 KAIJU INTERNATIONAL,)

10 Plaintiff,)

11 v.)

12 LEGEND PICTURES, LLC, d/b/a)
13 LEGENDARY ENTERTAINMENT)

14 Defendant.)
15 _____)

Case No. 21-cv-9779

COMPLAINT

DEMAND FOR JURY TRIAL

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17 **NATURE OF THE ACTION**

18 Plaintiff Summit Kaiju LLC d/b/a Summit Kaiju International (“Summit Kaiju”) brings suit to
19 recover damages for copyright infringement and false designation of origin by Defendant Legend
20 Pictures, LLC, d/b/a Legendary Entertainment (“Legend Pictures”), in its theft of Summit Kaiju’s
21 original Godzilla-verse mountain kaiju character, Batholith, and unauthorized depiction of the same in
22 its film and novel, *Godzilla: King of the Monsters* as the character Methuseloh.

23 Godzilla is one of the most iconic fictional characters in the history of motion pictures. Toho
24 Co. Ltd. (“Toho”), copyright owner of the Godzilla character and franchise of films, partnered with
25 Defendant Legend Pictures, to produce a 2014 motion picture entitled *Godzilla* (“the 2014 Godzilla
26 Film”). The 2014 Godzilla Film was one of the most successful films of 2014, generating more than
27 \$200,000,000 in domestic box revenue and more than \$500,000,000 in worldwide box office revenues.
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1 Toho and Defendant Legend Pictures subsequently partnered to produce and distribute a follow-
2 up blockbuster, the subject of the present copyright dispute, *Godzilla: King of the Monsters* (“*Godzilla:*
3 *KOTM*”) which was released on May 31, 2019 in the United States and which grossed over \$380,000,000
4 in worldwide revenues.

5 The essential premise of *Godzilla: KOTM* is that dozens of monsters were intentionally awakened
6 at once to wreak havoc on the planet. To achieve this, Defendants needed numerous individualized,
7 charismatic monsters which then continue to exist as part of the Godzilla universe of characters. The
8 catch that led to the present dispute is that Legend Pictures did not have the budget to license from
9 Toho some of the characters it initially wanted to include. Instead, Defendant opted for the cheaper
10 option of using without any license or compensation Plaintiff’s copyrighted character.

11 There is nothing subtle about Defendant’s conduct. That anyone would engage in such blatant
12 infringement of another’s intellectual property is wrong enough. That defendant, who is in the business
13 of creating, protecting, and profiting from its own copyrights, would blatantly take Plaintiff’s copyright
14 without permission or consideration is extreme and precisely what the Copyright Act prohibits.

15 In support Plaintiff alleges the following:

16 **STATEMENT OF ACTION**

17 1. This is an action for copyright infringement brought by Summit Kaiju, the owner of the
18 copyrights described hereafter, for unauthorized uses by Defendants.

19 **PARTIES**

20 2. Summit Kaiju is a Colorado limited liability company with its principal place of business
21 located in Denver, Colorado.

22 3. On information and belief, Defendant Legend Pictures is a corporation incorporated and
23 existing under the laws of the State of Delaware with its principal place of business at 2900 W. Alameda
24 Ave., Burbank, CA 91505.

25 **JURISDICTION**

26 4. This is an action for injunctive relief, statutory damages, monetary damages, and interest
27 under the copyright laws of the United States. This Court has jurisdiction over the subject matter of
28 this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (copyright).

1 11. Through Summit Kaiju’s activities in the Godzilla-fan community, and in particular
2 through Summit Kaiju’s promotion of charity activities, Summit Kaiju has developed professional
3 relationships with many prominent companies within the Godzilla-fan community, including premium
4 statute and toy manufacturer X-Plus Co. Ltd., and the owner of Godzilla, Defendant Toho.

5 12. In 2017, Summit Kaiju hired an artist, Joe Lucchese a/k/a DopePope, to develop designs
6 as work made for hire for Summit Kaiju’s original kaiju concepts, including a living mountain kaiju called
7 Batholith, The Summit Kaiju (“Batholith”). (The Japanese term “kaiju” translates as “strange beast” in
8 English and is a staple of the Godzilla-fan community lexicon. In the United States, kaiju are also called
9 “Titans”.)

10 13. Batholith, as a living mountain kaiju made in part of stone is wholly original within the
11 Godzilla universe. Summit Kaiju owns all rights, title, and interest related to Batholith. Summit Kaiju
12 registered its copyright in the “Character Design” of Batholith on July 7, 2017 with the U.S. Copyright
13 Office (Reg. No. VAu 1-307-624).

14 14. One week later, on or about July 15, 2017, Summit Kaiju unveiled Batholith publicly at
15 the annual G-Fest (Godzilla Festival) convention in Chicago using a video presentation of Batholith and
16 presenting a prototype of Summit Kaiju’s intended toy merchandise of the character.



Summit Kaiju Team at G-Fest 2017 introducing Batholith

1 15. At that time Summit Kaiju began publicly promoting its planned release of an animated
2 series called The Legend of Summit Kaiju, and marked its promotions as registered copyright “© 2017
3 Summit Kaiju All Rights Reserved.”



22 *Cover art for The Legend of Summit Kaiju animated series released in 2018*

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24 16. Summit Kaiju promoted Batholith and The Legend of Summit Kaiju consistently on
25 various social media platforms, such as Instagram, Facebook, and Twitter, from that time on, including
26 making regular posts to various Godzilla-fan social media groups.

27 17. DopePope also promoted initial sketches and final renderings of Batholith on his social
28 media accounts as well.

1 18. Batholith’s physical and conceptual qualities are consistently recognizable as a living
2 mountain kaiju, with recognizable character traits and distinctive and unique elements of expression.

3 **Defendants unlawfully copied Batholith and included the copy in its next Godzilla movie.**

4 19. Defendant Legend Pictures produced the film *Godzilla: KOTM* which was released on
5 May 31, 2019 in the United States.

6 20. Warner Bros. Pictures d/b/a Warner Bros. Pictures Group (“Warner Bros.”) distributed
7 *Godzilla: KOTM* in the United States and worldwide, except for Japan, where the film was distributed by
8 Toho.

9 21. The film was converted into an official movie novelization, also titled *Godzilla: King of the*
10 *Monsters*, that was published and distributed by Titan Publishing Group Ltd. d/b/a Titan Books (“Titan
11 Books”).

12 22. Both the film and the book include a living mountain kaiju character called Titanus
13 Methuselah (“Methuselah”). Without permission or authorization from Summit Kaiju, Defendant
14 copied Batholith in order to produce Methuselah for use in the *Godzilla: KOTM* film and book.

15 23. On information and belief, development of the film began as early as 2014 when
16 Defendant licensed rights from Toho for use of additional kaiju characters, including King Ghidorah,
17 Mothra, and Rodan. But problems arose with writing and directing the film, and in late 2016 Defendant
18 hired Michael Dougherty and Zach Shields to rewrite the screenplay and then in early 2017, Dougherty
19 was hired to direct the film as well.

20 24. According to public statements by Dougherty, Defendant wanted to include additional
21 kaiju licensed from Toho, such as Gigan, but could not afford the license from Toho. Instead, Defendant
22 decided to include kaiju that were not licensed from Toho. One such kaiju ultimately became
23 Defendant’s character Methuselah.

24 25. On information and belief, Defendant replaced the intended role of Gigan with the
25 legend of the Summit Kaiju, Batholith, a mountain kaiju copied from Summit Kaiju and called
26 Methuselah. By way of example, concept art depicting the final scene of *Godzilla: KOTM*—in which all
27 awakened kaiju rally to their new king, Godzilla—Toho’s Gigan is present.
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Concept art showing Gigan in the final scene, (The Art of Godzilla: King of the Monsters, published by Titan Books, 2019).

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26. But in the film, that kaiju is replaced with Methuselah.



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Actual Godzilla: KOTM final scene showing Methuselah instead of Gigan (right)

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Defendant had access to Batholith while producing *Godzilla: KOTM*.

27. On information and belief, Methuselah was not produced until on or about July 2018, one year after Summit Kaiju published Batholith.

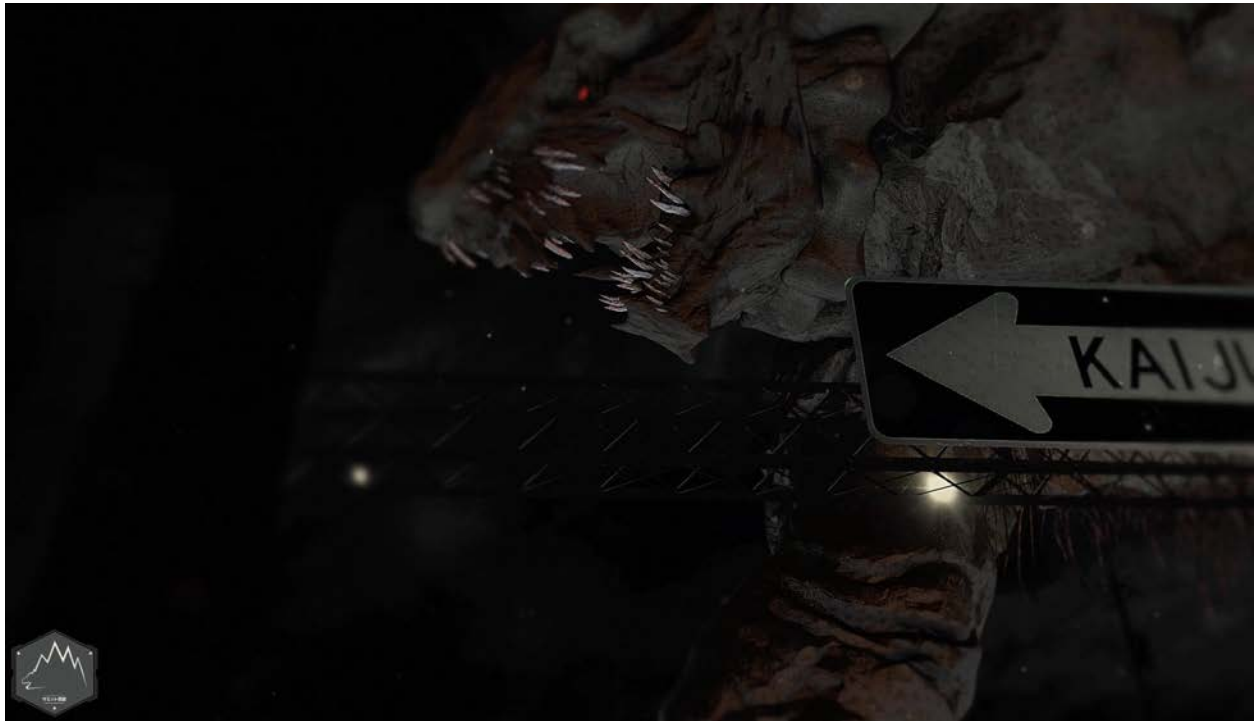
28. On information and belief, during the time when Defendant produced Methuselah, its employees who worked directly on Methuselah were aware of and had access to Batholith. Specifically, Summit Kaiju actively promoted Batholith, and The Legend of Summit Kaiju, on social media including by authorizing display of Batholith on the social media and artist accounts of DopePope. Several of Defendants' designers who worked on Methuselah have been online followers of DopePope's accounts

1 since before the creation of Batholith. On information and belief, Defendants’ designers had direct
2 access to, and did view, Batholith before beginning production of Methuselah.

3 29. On information and belief, Dougherty pays attention to, and follows, artists both online
4 and at conventions who work in the kaiju genre and was also aware of Batholith. For example, in 2018
5 Dougherty reviewed DopePope’s portfolio that included Batholith during a horror movie convention.

6 **Defendant’s Batholith-copy, Methuselah, is substantially similar to Batholith.**


7 30. According to public statements by Dougherty, as of October 2017, he still needed to
8 decide on the non-Toho kaiju to be included in the film. Also at that time, October 2017, Summit Kaiju
9 promoted Batholith (marked as copyright 2017) rampaging through a city street in a close, upward angle
10 on Batholith’s head.



23 31. Subsequently, *Godzilla: KOTM* depicts Methuselah the same way.
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👍 Like 💬 Comment ➦ Share

32 people reached > Boost Post

❤️👍😮 Alfredo Castillo and 4 others

 **Alan Farre**
Yes please! It's a very cool creature design.
5m Like Reply Message

 **Thomas J. Nero**
I would love all of them as figures.
8m Like Reply Message

 **Abdul Taylor**
Isn't that one of the Titans from Godzilla KOTM
9m Like Reply Message

35. In fact, the degree of confusion became so pronounced and widespread that people began accusing Summit Kaiju of copying Defendant, for example posting, “That’s a Methuselah knock off”!

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36. But this case will show that Methuselah is a Batholith knock off.

37. As a result of this confusion over ownership and rights to the character Batholith, Summit Kaiju has been prevented from developing merchandise—such as toys—for Batholith as well as the planned animated series *The Legend of Summit Kaiju*.

38. Defendant has failed to properly attribute Summit Kaiju as the origin of the Batholith character in either the film or novelization *Godzilla: KOTM*.

CAUSES OF ACTION

COUNT I

Direct copyright infringement against Legend Pictures

39. Summit Kaiju incorporates and re-alleges all paragraphs above.

40. Defendant unlawfully and without permission copied Batholith, willfully infringing Summit Kaiju's exclusive rights in violation of the Copyright Act, including at least reproduction of Batholith, preparing derivative works from Batholith, and distributing copies of Batholith, in the form of the character Methuselah in the film and novelization of *Godzilla: KOTM*.

41. The foregoing acts of Legend Pictures constitute infringements of Plaintiff's copyrights in violation of 17 U.S.C. §§ 501 *et seq.*

42. Plaintiff suffered damages as a result of Legend Pictures' unauthorized use of Plaintiff's copyrights.

COUNT II

Indirect copyright infringement by Legend Pictures.

43. Summit Kaiju incorporates and re-alleges all paragraphs above.

44. With respect to distribution of the infringing film by Warner Bros. and Toho, as well as distribution of the infringing novelization by Titan Books, (collectively, the "Distributors") each of which reproduction and distribution constitutes an act of infringement of Summit Kaiju's exclusive rights under the Copyright Act, Defendant knowingly and materially contributed to such infringement.

45. Defendant had actual knowledge of the Distributors' infringement. Defendant contracted the Distributors in order to promote and distribute the infringing film and novelization *Godzilla: KOTM* containing the Batholith-derived-and-copied character Methuselah. Defendant was aware of Summit Kaiju's registered copyrights on Batholith and never sought permission to use Summit Kaiju's copyrighted material. Still, Defendant contracted with the Distributors to spread the infringing material, knowing neither it nor the Distributors had rights to reproduce or distribute Batholith.

46. Defendant materially contributed to the infringing activity by preparing and supplying the infringing copy, Methuselah, to the Distributors. On information and belief, Defendant gave assurances to the Distributors that it had the right to do so.

47. Defendant also intentionally induced infringement of Summit Kaiju's exclusive

1 copyrights in Batholith by intentionally inducing the Distributors to reproduce and distribute copies of
2 the film and novelization *Godzilla: KOTM* containing the infringing work Methuselah.

3 48. Defendant's knowing and material contribution to the infringement, and intentional
4 inducement of infringement, of Summit Kaiju's rights in Batholith constitute separate and distinct acts
5 of infringement for which Defendant is liable.

6 49. Defendant's knowing and material contribution to the infringement, and intentional
7 inducement of infringement, of Summit Kaiju's rights in Batholith was willful, intentional, and
8 purposeful, and in utter disregard of Summit Kaiju's rights.

9 50. As a direct and proximate result of Defendant's infringement, Summit Kaiju is entitled
10 to damages and Defendant's profits in amounts to be proven at trial.

11 51. Alternatively, at Summit Kaiju's election, it is entitled to statutory damages, up to the
12 maximum amount of \$150,000 per infringed work, by virtue of Defendant's willful infringement, or for
13 such other amount as may be proper under 17 U.S.C. § 504.

14 52. Summit Kaiju is further entitled to recover its attorney's fees and full costs pursuant to
15 17 U.S.C. § 505.

16 53. As a direct and proximate result of the foregoing acts and conduct, Summit Kaiju has
17 sustained and will continue to sustain substantial irreparable injury, for which there is no adequate
18 remedy at law. Unless enjoined and restrained by this Court, Defendant will continue to infringe Summit
19 Kaiju's rights in Batholith. Summit Kaiju is entitled to injunctive relief under 17 U.S.C. § 502.

20 **COUNT III**

21 ***Infringement of Moral Rights under 17 U.S.C. § 106A(a) by Legend Pictures***

22 54. Summit Kaiju incorporates and re-alleges all paragraphs above.

23 55. Summit Kaiju is the author and creator of its original living mountain kaiju, Batholith.

24 56. In addition to committing the direct and indirect acts of infringement of copying
25 Batholith for preparing Methuselah in the film and novelization *Godzilla: KOTM*, Defendant has
26 infringed Summit Kaiju's moral rights under 17 U.S.C. § 106A(a) by not attributing Summit Kaiju as the
27 author and creator of Batholith in the film and novelization of *Godzilla: KOTM*.

28 57. As a direct and proximate result of the foregoing acts and conduct, Summit Kaiju has

1 sustained and will continue to sustain substantial irreparable injury, for which there is no adequate
2 remedy at law. Unless enjoined and restrained by this Court, Defendant will continue to infringe Summit
3 Kaiju's rights in Batholith. Summit Kaiju is entitled to injunctive relief under 17 U.S.C. § 502.

4 58. The foregoing acts of Titan Books constitute infringements of Plaintiff's copyrights in
5 violation of 17 U.S.C. §§ 501 *et seq.*

6 59. Plaintiff suffered damages as a result of Titan Books unauthorized use of Plaintiff's
7 copyrights.

8 **COUNT IV**

9 ***False Designation of Origin under 15 U.S.C. § 1125(a) by Legend Pictures***

10 60. Summit Kaiju incorporates and re-alleges all paragraphs above.

11 61. Batholith, The Summit Kaiju, is a recognizable symbol associated with Summit Kaiju.

12 62. Defendant Legend Pictures used the Batholith symbol in its film and novelization
13 *Godzilla: KOTM* in a manner that falsely designates its origin by calling it Methuselah and treating it as a
14 kaiju unique to Defendant when in fact the symbol originated with Summit Kaiju.

15 63. As a direct and proximate result of Defendant's false designation of origin, Summit Kaiju
16 has been unable to develop merchandise, such as toys, or its planned animated series The Legend of
17 Summit Kaiju, with partners located across state and international boundaries with Summit Kaiju.

18 64. Further, as a direct and proximate result of Defendant's false designation of origin,
19 substantial confusion among the consuming public has occurred, even to such an extent that portions
20 of Summit Kaiju's potential customer base believe Summit Kaiju's Batholith is a knock-off of
21 Defendant's Methuselah.

22 65. Defendant was aware of Summit Kaiju's as the source of Batholith since it first became
23 aware of Batholith. Defendant's acts of false designation were willful, in disregard of and with
24 indifference to Summit Kaiju's rights.

25 66. As a direct and proximate result of Defendant's false designation of origin, Summit Kaiju
26 is entitled to damages and Defendant's profits, as well as full costs in the action, in amounts to be proven
27 at trial pursuant to 15 U.S.C. § 1117.

28 67. By virtue of Defendant's willful violation of Summit Kaiju's rights, Summit Kaiju is

1 entitled to an increase in the damages award to up to three times and this constitutes an exception case
2 such that Summit Kaiju is entitled to recover its attorney's fees.

3 68. As a direct and proximate result of the foregoing acts and conduct, Summit Kaiju has
4 sustained and will continue to sustain substantial irreparable injury, for which there is no adequate
5 remedy at law. Unless enjoined and restrained by this Court, Defendant will continue to violate Summit
6 Kaiju's rights in Batholith. Summit Kaiju is entitled to injunctive relief under 15 U.S.C. § 1116.

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8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff requests the following:

10 1. An order declaring that Defendants infringed Summit Kaiju's copyrights in Batholith,
11 directly and/or indirectly;

12 2. An order declaring that Defendants willfully infringed Summit Kaiju's copyrights in
13 Batholith;

14 3. An order awarding Summit Kaiju monetary damages for copyright infringement
15 consisting of actual damages and Defendants' profits, to be determined at trial; or alternatively at Summit
16 Kaiju's election, for maximum statutory damages or for such other amounts as may be proper pursuant
17 to 17 U.S.C. § 504;

18 4. An order enjoining Defendants from any future reproduction or distribution of the
19 Batholith character including as depicted in the film or novelization of *Godzilla: KOTM*;

20 5. An order awarding Summit Kaiju attorney's fees and full costs incurred in this action
21 pursuant to 17 U.S.C. § 505;

22 6. An order declaring that Defendant Legend Pictures infringed Plaintiff's moral rights
23 under 17 U.S.C. § 106A(a).

24 7. An order declaring that Defendants is liable for false designation of origin under 15
25 U.S.C. § 1125;

26 8. An order awarding Summit Kaiju monetary damages in an amount to be established at
27 trial and an injunction for false designation of origin pursuant to 15 U.S.C. § 1125;

28 9. An order awarding prejudgment and postjudgment interest; and

