



**PARTIES**

2. Plaintiff Getty Images is a New York corporation with its principal place of business in New York, New York.

3. Defendant Gestalt Ventures is a Texas corporation with its principal place of business in San Antonio, Texas. Gestalt Ventures has registered the assumed name of Elemental Consulting with the Bexar County Clerk in San Antonio, Texas. Elemental Consulting is the registered owner of the website [www.goelemental.com](http://www.goelemental.com). Upon information and belief, Elemental Consulting directly participated in the wrongful conduct alleged in this Complaint, and/or had the right and ability to supervise, direct and control the wrongful conduct of others, and derived a direct financial benefit from that wrongful conduct.

**JURISDICTION AND VENUE**

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this action involves claims brought under federal law, the Copyright Act, 17 U.S.C. § 101, *et seq.*

5. Defendant Elemental Consulting is subject to personal jurisdiction in this Court because it is a resident of the State of Texas and/or purposefully aimed its activities at the State of Texas from which the claims asserted in this Complaint arise. Additionally, Elemental Consulting displays its website, [www.goelemental.com](http://www.goelemental.com), throughout the State of Texas, purposefully directs that website to residents of the State of Texas, and otherwise is engaged in business in the State of Texas.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a), as Elemental Consulting or its agent resides or may be found in this District. Upon information and belief, venue is also proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in the District.

### **FACTUAL BACKGROUND**

7. Getty Images is one of the world's leading digital content providers, supplying imagery, video and music to business customers. Getty Images licenses content for a wide variety of uses, including use online, in websites, books, newspapers, magazines, television and film productions; advertisements, marketing materials, products and packaging. Getty Images generates revenue from licensing the rights to use its content, including imagery, and from providing related services.

8. Getty Images was the first company to license imagery via the Internet and today delivers virtually all of its visual content digitally. Visitors to Getty Images' website, [www.gettyimages.com](http://www.gettyimages.com), can search through and view millions of images and obtain licenses for those images online.

9. Getty Images owns some of the content that it licenses. Getty Images also acts as the distributor for more than 150,000 content suppliers – contributors, such as individual photographers, illustrators, filmmakers, media organizations, other stock photo agencies, and independent musicians. Content suppliers typically prefer to retain ownership of their work and, as a result, copyright to content remains with the artists in most cases, while Getty Images obtains by contract the right to market, distribute, and license that content to third parties. Some of this content is licensed to Getty Images on an exclusive basis.

10. In or about July 2011, Getty Images identified a photographic image, with the catalog description “200187319-004 (RM) Three leafcutter ants (*atta cephalotes*) carrying leaves, close-up,” that had been reproduced, displayed, and distributed by Defendant Elemental Consulting on its website, [www.goelemental.com](http://www.goelemental.com), without authorization. The identified image was at that time and is still today exclusively licensed to Getty Images.

11. The photographic image described in the preceding paragraph is the subject of copyright Certificate of Registration VA 1-876-258 (dated September 23, 2013). Attached as Exhibit A is a true and correct copy of the Certificate of Registration.

12. Getty Images brings this action to recover damages for the harm it has sustained, and for such further relief as sought herein.

#### **COUNT I**

#### **(Copyright Infringement, 17 U.S.C. § 501, et seq.)**

13. Getty Images repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 12, inclusive.

14. Getty Images is the exclusive licensee of the photographic image that is the subject of this action. Among the rights granted to Getty Images is the exclusive right to market and sublicense the right to copy, reproduce and display the image. Additionally, Getty Images is granted the exclusive right to make and control claims related to infringements of copyrights in the image. A copy of the copyright Certificate of Registration VA 1-876-258 issued by the United States Copyright Office, for the subject image, is attached as Exhibit A.

15. Defendant Elemental Consulting has reproduced, displayed, distributed and made other infringing uses of the protected image, without authorization by Getty Images, including Defendant’s infringing use of that image on [www.goelemental.com](http://www.goelemental.com).

16. As a result of its conduct, Elemental Consulting is liable to Getty Images for copyright infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Getty Images respectfully requests that this Court grant the following relief:

a. That the Court enter a judgment against Defendant finding that it has infringed Getty Images' rights in the photographic image listed in Exhibit A;

b. That the Court enter an order, pursuant to 17 U.S.C. § 504(b), declaring that Defendant holds in trust, as constructive trustees for the benefit of Getty Images, all profits received by Defendant from its reproduction, distribution, display or other infringing uses of the photographic image listed in Exhibit A, and requiring Defendant to provide Getty Images a full and complete accounting of all profits received by Defendant;

c. That the Court order Defendant to pay damages to Getty Images, in an amount to be proved at trial, including an award of actual damages suffered by Getty Images as a result of the infringements and all profits of Defendant that are attributable to those infringements, pursuant to 17 U.S.C. § 504(b);

d. That the Court order prejudgment interest on the amount of any award to Getty Images; and

e. That the Court grant to Getty Images such other and additional relief as is just and proper.

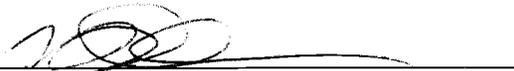
Dated: January 17, 2014.

Respectfully submitted,

**DAVIS, CEDILLO & MENDOZA, INC.**

McCombs Plaza, Suite 500  
755 E. Mulberry Avenue  
San Antonio, Texas 78212  
Telephone: (210) 822-6666  
Facsimile: (210) 822-1151

By



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ATTORNEYS FOR PLAINTIFF  
GETTY IMAGES (US), INC.

EXHIBIT A

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number  
**VA 1-876-258**

Effective date of  
registration:

September 23, 2013

## Title \_\_\_\_\_

Title of Work: Three leafcutter ants (atta cephalotes) carrying leaves, close-up (200187319-004)

## Completion/Publication \_\_\_\_\_

Year of Completion: 2005

Date of 1st Publication: September 3, 2005

Nation of 1st Publication: United States

## Author \_\_\_\_\_

■ Author: Tim Flach Photography Ltd.

Author Created: photograph(s)

Work made for hire: Yes

Citizen of: United Kingdom

## Copyright claimant \_\_\_\_\_

Copyright Claimant: Tim Flach Photography Ltd.

58 Great Eastern Street, London, EC2A 3QR, United Kingdom

Transfer Statement: By written agreement

## Rights and Permissions \_\_\_\_\_

Organization Name: GETTY IMAGES (US), INC.

Email: copyright@gettyimages.com

Telephone: 206-925-5000

Address: 605 5th Avenue S, Suite 400

Seattle, WA 98104

## Certification \_\_\_\_\_

Name: Cynthia Sharp, Getty Images

Date: September 23, 2013

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> GETTY IMAGES (US), INC., a New York corporation</p> <p>(b) County of Residence of First Listed Plaintiff <u>New York</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i>  SEE ATTACHMENT</p>	<p><b>DEFENDANTS</b> GESTALT VENTURES, INC., d/b/a ELEMENTAL CONSULTING, a Texas corporation</p> <p>County of Residence of First Listed Defendant <u>Bexar</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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SA14CA0061 H

<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input checked="" type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><b>Other:</b></p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>		

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
17 U.S.C. Sec. 501, et seq.

Brief description of cause:  
Claim for damages for infringement of copyrights

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:     Yes     No

**VIII. RELATED CASE(S) IF ANY**    *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE 1/17/14    SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT pd    APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_ M.I.P.M.A.



INTAKE COPY

# FILING FEE RECEIPT COPY

DUPLICATE

Court Name: TEXAS WESTERN  
Division: 5  
Receipt Number: 500023823  
Cashier ID: dgarcia  
Transaction Date: 01/17/2014  
Payer Name: DAVIS CEDILLO MENDOZA, INC.

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CIVIL FILING FEE  
For: DAVIS CEDILLO MENDOZA, INC.  
Amount: \$400.00  
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CHECK  
Check/Money Order Num: 29255  
Amt Tendered: \$400.00  
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Total Due: \$400.00  
Total Tendered: \$400.00  
Change Amt: \$0.00  
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SA-14-CA-061. GETTY IMAGES (US),  
INC., A NEW YORK CORPORATION V.  
GESALT VENTURES, INC., D/B/A  
ELEMENTAL CONSULTING, A TEXAS  
CORPORATION.