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8 9	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
10	The Estate of Ana Mendieta	
11	And The Estate of Ana Mendieta Collection LLC	No 2:18-cv-01426
12	Plaintiff(s)	FIRST AMENDED COMPLAINT
13	V.	COPYRIGHT INFRINGEMENT
14	Amazon.com Service, Inc. Dba "Amazon Studios" and Amazon.com, Inc.	
15	Defendant(s)	JURY TRIAL REQUESTED
16		
17	Plaintiffs the Estate of Ana Mendieta and the Estate of Ana Mendieta Collection LLC, by	
18	and through their undersigned attorney	Barbara T Hoffman, the Hoffman Law Firm, alleges as
19	follows:	
20	I. <u>NATU</u>	URE OF THE ACTION
21	1. Plaintiffs the Estate of A	ana Mendieta and the Estate of Ana Mendieta Collection
22	LLC, (herein after "Plaintiffs") brings the	his action to recover damages resulting from copyright
23	infringements by defendant Amazon.co	om Services, Inc. dba "Amazon Studios" and
	AM. COMPLAINT – PAGE 1 7	The Hoffman Law Firm 330 W 72 Street

New York, NY 10023 T: 212-873-6200 F: 212-974-7245

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1 Amazon.com, Inc., (hereinafter collectively "Defendant"), of original works of art by Ana Mendieta ("Mendieta Images") created by her, and to enjoin future infringements by Defendant 2 of the Mendieta Images. Defendant Amazon Studios has reproduced, displayed, distributed and 3 otherwise displayed the Mendieta Images on the Amazon Studios website and induced others to 4 use the Mendieta Images without authorization. Defendant engaged in the unauthorized 5 transmittal, display, reproduction, and creation of derivative works, of two Mendieta Images 6 ("Infringing Images") in a trailer created by Defendant to advertise and market the film (the 7 "Trailer") by Luca Guadagnino (the "Film"). Such Infringing Images were made available for 8 9 distribution and reproduction, and display by the Defendant. 2. This unauthorized transmission, display, reproduction, and creation of derivative 10

10 2. This unauthorized transmission, display, reproduction, and creation of derivative
 11 works of the Mendieta Images in the Trailer without authorization constitutes violation of
 12 Plaintiffs' exclusive rights under 17 U.S.C. §106.

3. The images below are the two Mendieta Images, *Rape Scene* and *Untitled: Silueta Series, Mexico.*





Untitled: Silueta Series, Mexico, 1976

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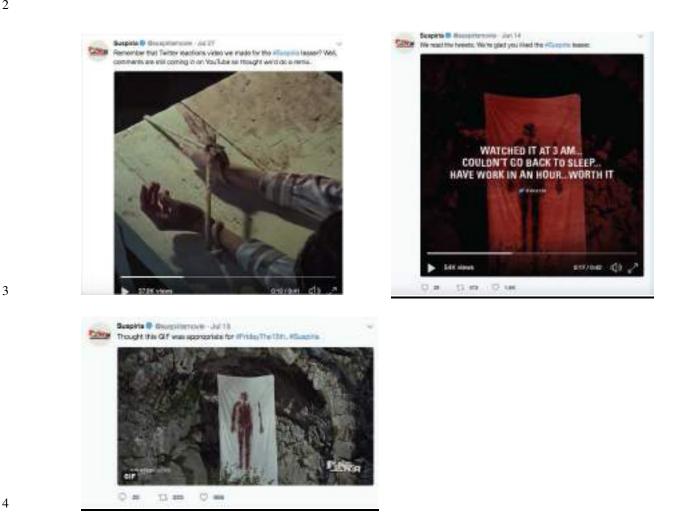
Rape Scene, 1973

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- 1 The images below are the Infringing Images in the Trailer.
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### II. <u>PARTIES</u>

The Estate of Ana Mendieta is the estate of the renowned Cuban-American artist
born 1948 who died tragically in 1985. The Estate of Ana Mendieta Collection, LLC is managed
by the artist's sister, Raquelín Mendieta, and her niece, Raquel Cecelia Mendieta, in close
cooperation with Galerie Lelong & Co., New York and Paris. The Estate overseas and
implements a stringent rights and reproductions policy. All requests to reproduce images of her

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1 work are submitted to the Estate for approval. In general, image permissions are only granted for art historical contexts such as academic journal articles and informational articles directly related 2 to the artist's work and practice. Permissions are not granted for commercial reproductions such 3 as on merchandise, and recreations of her artworks in film and print are never permitted. The 4 Estate of Ana Mendieta Collection, LLC always retains the copyright and intellectual property 5 6 rights. 5. Upon information and belief, Amazon.com Services, Inc., doing business as 7 Amazon Studios is a wholly owned subsidiary of Amazon.com, Inc., that specializes in 8 9 developing television series, and distributing and producing films. Amazon.com, Inc., doing business as Amazon, is an American electronic commerce and cloud computing company based 10 in Seattle, Washington. 11 12 III. JURISDICTION AND VENUE 13 6. This Court has jurisdiction over this action, pursuant to 28 U.S.C. §1331 and 14 1338(a), as this action involves claims brought under federal law, the Copyright Act, 17 U.S.C 15 §101, et seq. 16 7. 17 Defendant is subject to personal jurisdiction in this Court because the principal place of business of Amazon.com, Inc. is located in Seattle, Washington. 18 8. Venue is also proper in the Western District of Washington, pursuant to 28 U.S.C. 19 20 \$139 (b)(2) - (3), because, upon information and belief, a part of the events or omissions giving rise to the claims asserted in this Complaint occurred in the District and the legal address 21 provided for Amazon Studios is Seattle, Washington. Upon information and belief the Infringing 22 23 Images were distributed worldwide by Amazon Studios and its Italian co-producers, licensees, AM. COMPLAINT – PAGE 4

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1	and third parties under its control, or induced by it to reproduce, distribute, and display the
2	images. Intellectual Property matters are handled by Defendant in Seattle, Washington.
3	IV. FACTUAL BACKGROUND
4	9. Ana Mendieta was an iconic Cuban American performance artist, sculptor, painter
5	and visual artist best known for her earth body work since the late 1970's ("Mendieta");
6	Mendieta's untimely death in 1985 has contributed to her legacy as one of the leading artists of
7	her time. On or about July 7, 2018, the executor of the Estate and the Estate's copyright agent,
8	the Galerie Lelong, discovered the unauthorized reproduction/derivate images of two of her
9	iconic images, Untitled: Silueta Series, Mexico, 1976 and Rape Scene, 1973, in a trailer for the
10	Amazon Studios film, "Suspiria."
11	10. On July 16, the Estate wrote a cease and desist letter to Amazon.com's copyright
12	agent at the address below.
13	Copyright Agent
14	Amazon.com Legal Department
15	410 Terry Avenue N
16	Seattle, WA 98109-5210
17	(206) 266-4064
18	copyright@amazon.com
19	11. The letter enclosed two copies of the Mendieta Images, <i>Rape Scene</i> and <i>Untitled</i> :
20	Silueta Series, Mexico, attached hereto as Exhibit A informed the agent that the Estate had
21	applied for Copyright Registration for the Mendieta Images on July 12, 2018, and requested that
22	Amazon take down the Trailer with the Infringing Images.

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1	12. Upon information and belief, Suspiria is a 2018 Italian-American horror film inter		
2	alia co-produced and distributed by Defendant and a group in Italy ("Italian Copyright Holders")		
3	directed by Luca Guadagnino and written by David Kajganich, based on Dario Argento's 1977		
4	film. The plot focuses on a young American dancer who enrolls at a prestigious dance academy		
5	plagued by unusual occurrences.		
6	13. Dream sequences in the Film and the Trailer were created and filmed with the		
7	Infringing Images in Varese, Italy and Berlin, Germany.		
8	14. Suspiria premiered at the 75th Venice International Film Festival on September 1,		
9	2018. It is scheduled for a limited release by Amazon Studios in Los Angeles and New York on		
10	October 26, 2018, before opening wide on November 2, 2018. The Film has a budget of twenty		
11	(20) million dollars.		
12	15. On July 25, 2018, a lawyer from Los Angeles representing Amazon Studios		
13	contacted me. In a follow up letter that same day, the Estate's position was that the Trailer		
14	infringed copyright, as set forth in the letter on July 16, 2018, and that the Estate did not want the		
15	Mendieta Images to be used in Suspiria, the Film or Trailer.		
16	16. The Estate requested the Defendant to takedown the Trailer immediately.		
17	17. Several web sites commented on references to Luca Guadgnino's uses of the		
18	Mendieta Images in the Trailer. The Defendant on its website, Twitter, YouTube channel, and		
19	other accounts, continued to use the Trailer to advertise the Film and to authorize others to use		
20	the Trailer.		
21	18. The Defendant refused to contact third party websites for a take down.		
22	19. Plaintiffs' counsel contacted the Hollywood Reporter, the New York Times, and		
23	YouTube for take downs which were successful.		
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20. Not until August 23, 2018 did Defendant replace the Trailer with a new trailer
 without the two Infringing Images.

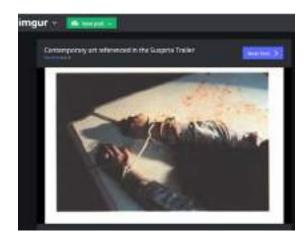
- 3 21. On or about August 28, 2018, the Trailer was available on the URL's attached
  4 hereto as Exhibit B.
- 5 22. Following the Venice Film Festival screening on September 1, 2018, Defendant 6 made available the Film to the Plaintiff. The Galerie Lelong agent reviewed the Film. The two 7 Mendieta Images had been removed.
- 8 23. Eight (8) images of varying degrees of similarity were identified as recreations
  9 and/or derivate of Mendieta Images in the Film ("Infringing Images").
- 10 24. The Galerie Lelong identified that the catalogue "She Got Love," the catalogue 11 for the exhibition Curated by Beatrice Merz and Olga Gambari in Turin, Italy, published in 2013 12 by Museo d'Arte Contemporanea, three years prior to the principal photography in Italy in 2016, 13 included the two Mendieta Images from the Trailer as well as the eight additional Mendieta 14 Images in the Film.
- 25. Application for U.S. registration was made for the eight Mendieta Images, which
  are alleged to be Infringing Images in the Film, on September 27, 2018. Copies of the images,
  applications, and receipts are attached as Exhibit C.
- 26. Amazon Studio's outside counsel has refused to issue take down notices to third
  parties or licenses in Italy.
- 20 27. Italian counsel has only achieved take downs for two YouTube Trailers.
- 21
- 28. Attached as Exhibit D are the Italian trailers which remain on web sites in Italy.

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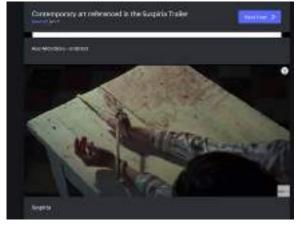
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1 29. At the time of filing this complaint, Amazon Studios has affirmatively authorized 2 the Trailer with the Infringing Images, attached hereto as Exhibit E response to a take down sent 3 by Italian counsel.

30. Blogs have commented on the use by the director, Luca Guadagnino, of not only
Mendieta's works but that of other female artists including Claude Cahun (1894-1954) and Gina
Pane (1939-1990). Below are images from a blog post on https://imgur.com/r/movies/h1ULbR1
from June 4, 2018.



Rape Scene, Ana Mendieta

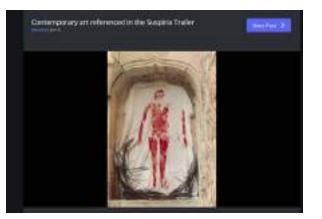


Suspiria

8

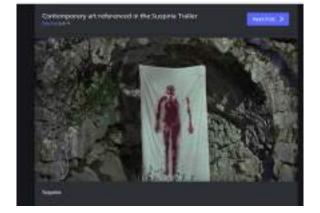
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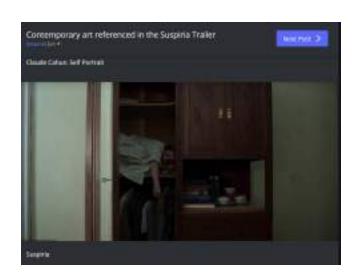
12 Untitled Silueta Series, Mexico, Ana Mendieta



Suspiria

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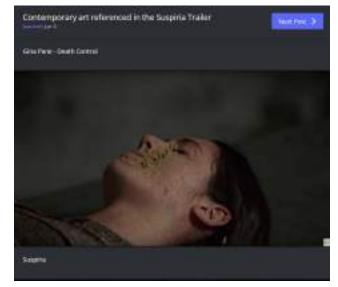
Self Portrait, Claude Cahun

Suspiria



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Death Control, Gina Pane



Suspiria

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1	31.	Social media and writers continued to identify the Trailer images with the two
2	Mendieta Images. See Exhibit F.	
3		
4		V. <u>FIRST CAUSE OF ACTION FOR DIRECT</u>
5		COPYRIGHT INFRINGEMENT
6	32.	Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein.
7	33.	The Plaintiffs at all relevant times have been, the owner of the copyright of the
8	Mendieta Im	ages.
9	34.	Each Mendieta Image is copyrightable subject matter under 17 U.S.C. §102 (a)(5)
10	35.	Plaintiffs have complied in all respects with the provisions of the Copyright Act
11	and all regulations thereunder.	
12	36.	Plaintiff(s) applied for copyright registration for the Mendieta Images of Rape
13	Scene and U	ntitled: Silueta Series, Mexico on July 12, 2018.
14	37.	On or about September 27, 2018, the Plaintiffs filed for the applications for the
15	5 registration of the eight images found in the Film.	
16	38.	As a direct and proximate result of the copyright infringement detailed herein, the
17	Plaintiffs hav	e been and continues to be damaged in an amount unknown at present and to be
18	determined a	t trial. Defendant has garnered and/or will garner infringing profits in an amount
19	presently unk	nown, which profits should be disgorged to Plaintiffs.
20	39.	Plaintiff has suffered and will continue to suffer substantial and irreparable
21	damage to he	r business reputation and goodwill as a result of Defendant's infringement. In
22	addition to it	s actual damages, Plaintiffs are entitled to an award of any profits made by
23	Defendant fro	om their wrongful acts pursuant to 17 U.S.C. §504.

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1	40.	Plaintiffs have no adequate remedy at law to protect her rights in the Mendieta
2	Images and to	prevent Defendant(s) from continuing to infringe the Mendieta Images and to
3	injure Plaintif	fs. Plaintiffs have suffered and continue to suffer irreparable injury from the
4	Defendant's conduct as alleged.	
5	41.	As a direct and proximate result of the copyright infringements detailed herein,
6	Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining	
7	Defendant from infringing the copyright.	
8	42.	Plaintiffs have no adequate remedy at law for Defendant's wrongful conduct in
9	that: (1) the su	ubject images are unique and valuable properties; (2) Defendants' infringements
10	interfere with	Plaintiffs' goodwill and customer relations; and (3) Defendant's infringements and
11	damage result	ing therefrom are continuing Plaintiffs are entitled therefore to injunctive relief
12	pursuant to 17	U.S.C. § 502, and an order impounding all infringing materials pursuant to 17
13	U.S.C. § 503.	
		VI. <u>SECOND CAUSE OF ACTION</u>
14		
14 15		CONTRIBUTORY COPYRIGHT INFRINGEMENT
	43.	
15	43. 44.	<b>CONTRIBUTORY COPYRIGHT INFRINGEMENT</b>
15 16	44.	<b>CONTRIBUTORY COPYRIGHT INFRINGEMENT</b> Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein.
15 16 17	44. and third parti	CONTRIBUTORY COPYRIGHT INFRINGEMENT Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein. Defendant disseminated the Infringing Images in the Trailer partners, licensees,
15 16 17 18	44. and third partic contributed to	CONTRIBUTORY COPYRIGHT INFRINGEMENT Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein. Defendant disseminated the Infringing Images in the Trailer partners, licensees, ies. Defendant has encouraged, assisted, induced, caused, and/or materially
15 16 17 18 19	44. and third partic contributed to	CONTRIBUTORY COPYRIGHT INFRINGEMENT Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein. Defendant disseminated the Infringing Images in the Trailer partners, licensees, ies. Defendant has encouraged, assisted, induced, caused, and/or materially a vast number of actual or imminent copyright infringements of the Infringing
15 16 17 18 19 20	44. and third parti contributed to Images in viol 45.	CONTRIBUTORY COPYRIGHT INFRINGEMENT Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein. Defendant disseminated the Infringing Images in the Trailer partners, licensees, ies. Defendant has encouraged, assisted, induced, caused, and/or materially a vast number of actual or imminent copyright infringements of the Infringing lation of 17 U.S.C. §§ 106 and §501.
15 16 17 18 19 20 21	44. and third parti contributed to Images in viol 45. display, and tr	CONTRIBUTORY COPYRIGHT INFRINGEMENT Plaintiff incorporates by reference paragraph 1 to 30 above as set forth herein. Defendant disseminated the Infringing Images in the Trailer partners, licensees, ies. Defendant has encouraged, assisted, induced, caused, and/or materially a vast number of actual or imminent copyright infringements of the Infringing lation of 17 U.S.C. §§ 106 and §501. Defendant has promoted and promotes infringement through the distribution,

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1	have license agreements that their display, transmission and reproduction of the Trailer	
2	constitutes copyright infringement. To the contrary, Defendant has authorized the continued	
3	infringements to the present, which infringements are worldwide.	
4	46. Defendant knows or has reason to know that Plaintiffs own the copyright in the	
5	Infringing Images yet, upon information and belief, have from its executive offices in Los	
6	Angeles and Seattle, authorized the continued infringement in the Trailer	
7	47. The infringements of the Mendieta Images that Defendant has encouraged,	
8	assisted, induced, caused and/or materially contributed to through the conduct described above is	
9	without Plaintiffs' consent and not otherwise permissible under the Copyright Act.	
10	48. The foregoing acts of infringement by Defendant have been willful, intentional,	
11	purposeful, and with indifference to Plaintiffs' rights under the Copyright Act.	
12	49. Plaintiffs are entitled to recover from Defendant the damages, including	
13	attorneys' fees, it has sustained and will sustain, and any gains, profits and advantages obtained	
14	by Defendant as a result of their acts of infringement alleged above. At present, the amount of	
15	such damages, gains, profits and advantages cannot be fully ascertained by Plaintiffs, but will be	
16	established according to proof at trial.	
17	50. Defendant has induced and promoted third parties' infringement of Plaintiffs'	
18	copyright.	
19	51. Defendant is liable for the acts of infringement that result from the third parties'	
20	uses of the Infringing Images.	
21	VII. <u>THIRD CAUSE OF ACTION</u>	

### 22 VICARIOUS COPYRIGHT INFRINGEMENT

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52. Plaintiffs repeat and re-allege the allegations of paragraph 1 through paragraph 48
 as if fully set forth herein.

53. At all times material hereto, Defendant derived a direct financial benefit from the 3 distribution of the Infringing Images and has failed to exercise its ability to supervise its 4 licensees to inform them of their infringing activities and request that such licensees cease and 5 desist from such infringing activities. 6 54. Upon information and belief, Defendant has derived and continues to derive direct 7 financial benefit from a variety of sources as a result of the infringement of the Mendieta Images. 8 55. 9 Defendant's actions alleged herein constitute vicarious copyright infringement in violation of the Copyright Act, 17 U.S.C. §§101 et seq. 10 56. The conduct of Defendant is intentional and calculated to injure the Plaintiffs. 11 57. As a result of the copyright infringements described above, Plaintiffs are entitled 12 to relief including but not limited to, injunctive relief, and actual damages for the activities of 13 Third Party Infringers. 14 15 VIII. PRAYER FOR RELIEF 16 WHEREFORE, Plaintiffs respectfully requests judgment as follows: 17 1. That the Court enter a judgment against Defendant finding that the reproduction, 18 creation of derivative works, transmission, and display by the Defendant of the Infringing 19 Images of the Mendieta Images have infringed Plaintiffs' copyright and; 20 2. That the Court enter an order, pursuant to 17 U.S.C. § 502 enjoining and 21 22 restraining Defendant, and any persons or entities controlled directly or indirectly by Defendant, 23 from engaging in the following conduct:

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1	a. Reproducing, distributing, displaying, creating derivative works, or making	
2	any other infringing uses of the Mendieta Images and the Infringing Images	
3	b. Assisting, aiding or abetting any other person or entity in engaging or	
4	performing any activities infringing the Mendieta Images;	
5	3. That the Court enter an order, pursuant to 17 U.S.C. §504 (b), declaring that the	
6	Defendant hold in trust, as constructive trustees for the benefit of the Plaintiffs, all profits	
7	received by Defendant's revenue from, the transmission, distribution, and display of the	
8	Infringing Images;	
9	4. That the Court order Defendant to pay damages to the Plaintiffs as follows:	
10	a. Actual damages suffered by Plaintiffs as a result of Defendant's	
11	infringements, including lost profits as a result of lost business from third	
12	party licenses of Amazon Studios and potential third party licenses;	
13	b. All profits of Defendant that are attributable to those infringements of the	
14	Mendieta Images, pursuant to 17 U.S.C. §504 (b); and	
15	c. For an award of statutory damages under DMCA 17 U.S.C. §1203 (c)(3)(B)	
16	for each violation of the DMCA 17 U.S.C. §1202(a) by Amazon Studios, its	
17	assignees and licensees.	
18	5. That the Court order prejudgment interest on the amount of any awards to Plaintiff;	
19	and	
20	6. That the Court grants to Plaintiffs such other and additional relief as is just and	
21	proper.	
22		
23	DATED this 27th day of September 2018	
	AM. COMPLAINT – PAGE 14 The Hoffman Law Fir 330 W 72 Street New York, NY 10023 T: 212-873-6200 F: 212-974- THE HOFFMAN LAW FIRM	

THE HOFFMAN LAW FIRM
 330 W 72 Street
 New York, NY 1023

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