

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

TONY LUDOVICO, LLC.,
a Florida limited liability company,

Plaintiff,

v.

PELAGIC, INC.,
a California Corporation,

Defendant,
_____ /

Case No. _____

JURY TRIAL REQUESTED

COMPLAINT FOR WILLFUL COPYRIGHT INFRINGEMENT

Plaintiff TONY LUDOVICO, LLC (“TLL”) hereby sues Defendant PELAGIC, INC. (“Pelagic”) for willful copyright infringement. In support, TLL hereby alleges:

THE PARTIES

1. TLL is a Florida limited liability company located at 8517 South US 1, Port St. Lucie, Florida 34952. Formed and organized in June 2009, TLL offers a variety of unique, distinctive and highly creative marine photographs taken by renowned and acclaimed marine photographer Tony Ludovico (“Mr. Ludovico”). TLL’s photographs, as taken by Mr. Ludovico, have been featured on the cover of over fifty magazines and received national attention.

2. Pelagic is a California corporation located at 1660 Placentia Avenue, Costa Mesa, California 92627. Pelagic is owned and managed by its President Ron Kawaja (“Mr. Kawaja”). Mr. Kawaja formed and organized Pelagic with the state of California in October 2006. Pelagic markets, advertises, sells, and offers for sale sport fishing, diving and related water sports apparel through its website www.PelagicGear.com (the “Pelagic Website”) as well as through third-party retailers including Dick’s Sporting Goods, Bealls Outlets, West Marine, and Diver’s Direct.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338. This Court has supplemental jurisdiction over TLL's state law claims pursuant to 28 U.S.C. §1367.

4. Venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to underlying copyright infringement claim occurred in this judicial district and Defendant transacts business in this district, including but not limited through the sale of its infringing apparel (the "Dorado Apparel Line") at various brick-and-mortar stores including at:

- Bealls Outlet at 2313 S. Federal Highway, Fort Pierce, FL 34982;
- Bealls Outlet at 3215 SW Port St Lucie Blvd., Port St. Lucie, FL 34953;
- Bealls Outlet at 9300 US 1, Port St. Lucie, FL 34952;
- Bealls Outlet at 1169 SE Port St. Lucie Blvd., Port St. Lucie, FL 34952;
- West Marine at 1463 Old US Highway 1, Fort Pierce, FL 34950;
- West Marine at 3554 NW Federal Highway, Jensen Beach, FL 34957;
- West Marine at 2506 SE Federal Highway, Stuart, FL 34994;
- Diver's Direct at 4074 Northlake Blvd., Palm Beach Gardens, FL 33410; and
- Dick's Sporting Goods at 8821 Southern Blvd., West Palm Beach, 33411

In addition, TLL resides in the district where it sells Mr. Ludovico's photography through brick-and-mortar stores, related galleries (including those located within this district), and through TLL's on-line e-commerce websites www.TonyH20.com and www.TonyLudovico.com.

5. All conditions precedent to the filing of this action have occurred or have been waived or excused by law.

GENERAL ALLEGATIONS

Mr. Ludovico's Unique Methods and Artistry in Capturing Marine Life

6. Throughout the last fifteen years, Mr. Ludovico has become one of the world's leading and most recognized marine photography artists. His works have graced the covers of *Florida Sportsman*, *Tuna Coast*, *The Bite*, *Turks and Caicos*, *Sport Fishing*, *Costal Angler*, *Saltwater Angler* and *Bisbee's Marlin World*.

7. Mr. Ludovico creates his eye-catching works of art through the unique manner in which he photographically captures marine life. First and foremost, Mr. Ludovico takes his marine photography while free diving (underwater diving that relies on the diver's ability to hold their breath until resurfacing) rather than scuba diving, to gain mobility and dexterity to obtain the perfect shot:



Mr. Ludovico Free Diving to Capture Marine Photography

Mr. Ludovico is trained to hold his breath for up to four (4) minutes, to dive and capture his photographic works.

8. Mr. Ludovico's photography is aided by his unique underwater camera assembly and related camera settings. He typically sets his camera to only capture ambient light and does not use any form of flash. In addition, Mr. Ludovico pre-selects his shutter speeds based upon the nature of the water and outside light conditions, and takes photographs within nine feet of

the water's surface. He makes specific adjustments to his camera prior to placing it in an underwater SUBAL housing as shown below:



Mr. Ludovico setting up his underwater camera assembly

9. Mr. Ludovico initially captures pictures as negatives, then he significantly adjusts them, using Adobe Photoshop, to visually enhance the artistic works. Mr. Ludovico's work includes bringing certain colors out, adjusting the saturation and contrast, as well as removing any lures or hooks from the image if the subject matter was previously line caught. The confluence of Mr. Ludovico's free diving skill, selection of shutter speed, the selection of equipment, the use of ambient light, as well as the extensive post-capture enhancements result in fascinating imagery of marine life:



“Close Call”



“Buddy”



“Blue”

10. In short, Mr. Ludovico's photographs are highly original works of authorship each being an independent creation having more than a modicum of creativity. Each marine photograph is created through Mr. Ludovico's artistic judgment, including selection of lighting, shading, timing and angle of the natural objects that he photographs. Moreover, Mr. Ludovico exercises his artistry not only through the capture of these natural images, but also through digital enhancement, including re-touching the images through Adobe Photoshop.

11. Mr. Ludovico's unique methods have led to numerous awards for his underwater photography and artistry including:

- Artist of the Year, Roff's Ocean Fishing Forecasting Service (2006);
- Best Booth Display, Miami International Boat Show (2009); and
- Artist of the Year, The Billfish Foundation (2014).

He is routinely asked to do "meet the artist" presentations at retail stores including Bass Pro Shops and West Marine. His works are exhibited at numerous art galleries throughout Florida and California, as well as internationally in Panama and Guatemala.

Portrait of a Bull

12. In May 2006, Mr. Ludovico traveled to El Salvador for one of his many expeditions to photograph marine life. During that trip, he free-dove under a large amount of floating debris known to commonly hold mahi-mahi (known as "dolphin" or "dorado"). Prior to taking the subject photograph, Mr. Ludovico set up his camera in raw format (to take negative images), chose a wide-angle lens, as well as picked his aperture and shutter speeds for the underwater session. While Mr. Ludovico was in the water a "bull dolphin" or older/dominant male mahi-mahi was caught on line by an angler on the boat, and Mr. Ludovico captured an underwater close-in image of the bull dolphin.

13. Once back on dry land, Mr. Ludovico downloaded the raw images from his

camera to a hard drive, opened the negative image using Adobe Bridge and then set the raw files as to recovery, light fill, brightness, contrast, clarity, vibrancy and saturation.

14. As a second phase of his digital editing, Mr. Ludovico used Adobe Photoshop to remove the hook and line from the dorado's mouth:



15. As a third step, Mr. Ludovico used Adobe Photoshop to adjust the contrast, color levels, color curves, exposure, vibrancy, saturation and color balance. The result is one of Mr. Ludovico's most well recognized and acclaimed works, which he entitled "Portrait of a Bull" (hereinafter the "Bull Photograph"):



16. The Bull Photograph is protected through United States Copyright Registration No. VA 1-945-550 which is assigned to TLL (hereinafter the “Copyright-in-Suit”). A true and correct copy of the Copyright-in-Suit is attached as **Exhibit A** hereto.

17. To date, TLL has sold hundreds of copies of the Bull Photograph to art collectors, galleries, and others interested in marine photography.

Pelagic’s Interest in Tony Ludovico’s Artists Works

18. By May 2008, Mr. Ludovico had been introduced to Mr. Kawaja on several occasions, including in February 2008 at the Miami International Boat Show. During those exchanges there were general discussions regarding the potential use of Mr. Ludovico’s unique and distinctive photography for use with Pelagic’s trade show booths and other advertising. Messrs. Ludovico and Kawaja also discussed selling a line of Pelagic apparel with licensed copies of Mr. Ludovico’s marine images. Mr. Kawaja stated, in a May 6, 2008 email to Mr. Ludovico:

Still looking at launching [Pelagic's] new website in June – I am waiting for the final details from the web guys and then I will get you all the details and at that point we will discuss together with [Mr. Ludovico's licensing attorney] Tony Tempano to see how we can sell stuff for you.

A true and correct copy of this email thread is attached as **Exhibit B** hereto.

19. On May 9, 2008, Mr. Ludovico circulated a copy of one of his newest works entitled “The Chase” to follow up regarding such opportunity for a licensing relationship:



In response, Mr. Kawaja noted the photograph was “cutting edge” and remarked that he could not “wait to get one with some Pelagic logos.” *See id.*

20. In October 2009, the discussions continued between Mr. Ludovico and Mr. Kawaja. Mr. Ludovico shared his new website www.RealUnderwaterImages.com featuring the Bull Photograph. A true and correct copy of this email exchange is provided at **Exhibit C** hereto. In response, Mr. Kawaja noted that “I will start making some designs for clothing with this . . .” *See id.* Mr. Ludovico confirmed on October 9, 2009 that if Mr. Kawaja needed high

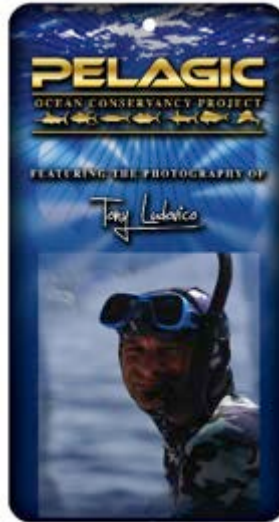
resolution images of his artwork, including the Bull Photograph, then he could provide such files to further the licensing discussion. *See id.*

21. In early 2010, Mr. Ludovico circulated via email one of his newest photographs of a hooked dorado to Mr. Kawaja:



A true and correct copy of this email exchange is provided at **Exhibit D** hereto. In response, Mr. Kawaja noted the image was “insane” and that when Mr. Ludovico had a moment to send “a list of all the latest shots . . . with the sizes they can be printed.” *See id.*

22. By early July 2010, Mr. Kawaja exchanged sample t-shirt designs that would include Mr. Ludovico’s photographs, as well as the following hang tag for use with the series:



A true and correct copy of this email exchange is provided at **Exhibit E** hereto. As noted in **Exhibit E**, Mr. Kawaja noted that the other side of the hang tag would read:

with his unique style of photography, [Mr. Ludovico] brings to life the amazing creatures in the ocean, raising the level of awareness for these species and bringing to the forefront the need to conserve the precious resources of the ocean.

See id.

23. By August 2010, both Mr. Ludovico and Pelagic negotiated a written license agreement (the "August 2010 Agreement"), which specifically required that prior to Pelagic's use of any of Mr. Ludovico's photographic images, Pelagic first obtain Mr. Ludovico's written approval including the identification code or name of each photo Pelagic proposed to be use for apparel.

24. At no time subsequent to the execution of the August 2010 Agreement did Pelagic (or anyone on its behalf), ever request, seek, propose or obtain any form of written approval from either Mr. Ludovico or TLL regarding the Bull Photograph.

Pelagic's Ocean Conservancy Line of Apparel & Use of Mr. Ludovico's Photographs

25. After the August 2010 Agreement, Pelagic began using a variety of Mr. Ludovico's photograph works to promote Pelagic's apparel offerings at various boat shows, trade shows and related advertising opportunities. Examples include the following trade show booth where Mr. Ludovico's marine photography was prominently displayed:



26. In addition, Mr. Ludovico agreed to take many of Pelagic's advertising photographs including those depicting Mr. Kawaja fishing on Pelagic's boat:



27. After the August 2010 Agreement, Pelagic also launched its “Ocean Conservancy Project” apparel site featuring Mr. Ludovico’s art:

The Pelagic Ocean Conservancy Project

The Pelagic Ocean Conservancy Project was created as a voice for a large number of ocean enthusiasts who regularly enjoy outdoor recreational activities such as sport fishing, boating, and diving, and are genuinely concerned with the future of our sport.

This collaborative effort features the work of leading marine photographers, artists, and watermen, with the overall purpose of raising awareness to help protect pelagic gamefish species. Our mission is to promote sensible and sustainable recreational fisheries management so that the tradition of sport fishing can survive and be passed down for future generations to enjoy.

Through these unique partnerships, a collection of limited edition marine-inspired products are being offered to ocean enthusiasts around the globe. For each product purchased, a portion of the proceeds will be donated directly to those organizations that are on the forefront of scientific research, conservation, and recreational fisheries management.



Tony Ludovico



As one of the top underwater marine life photographers in the world today, Tony is able to showcase the sheer awe and beauty of our oceans and their inhabitants by capturing images of our favorite gamefish species in the open ocean environment.

The PELAGIC Ocean Conservancy Project is proud to present an exclusive collection of apparel and accessories that incorporates Tony’s award winning imagery. For each product purchased that bears the OCP logo, a portion of the proceeds will be donated to help preserve our ocean’s resources for future generations to enjoy.

[VIEW COLLECTION](#)

See <http://www.pelagicgear.com/ocean-conservancy-project> (last viewed September 29, 2015).

28. In viewing the collection (at <http://www.pelagicgear.com/products/men-s-clothing/ocean-conservancy-project/tony-ludovico>) there are twenty-four (24) items purportedly licensed by Mr. Ludovico under the August 2010 Agreement:

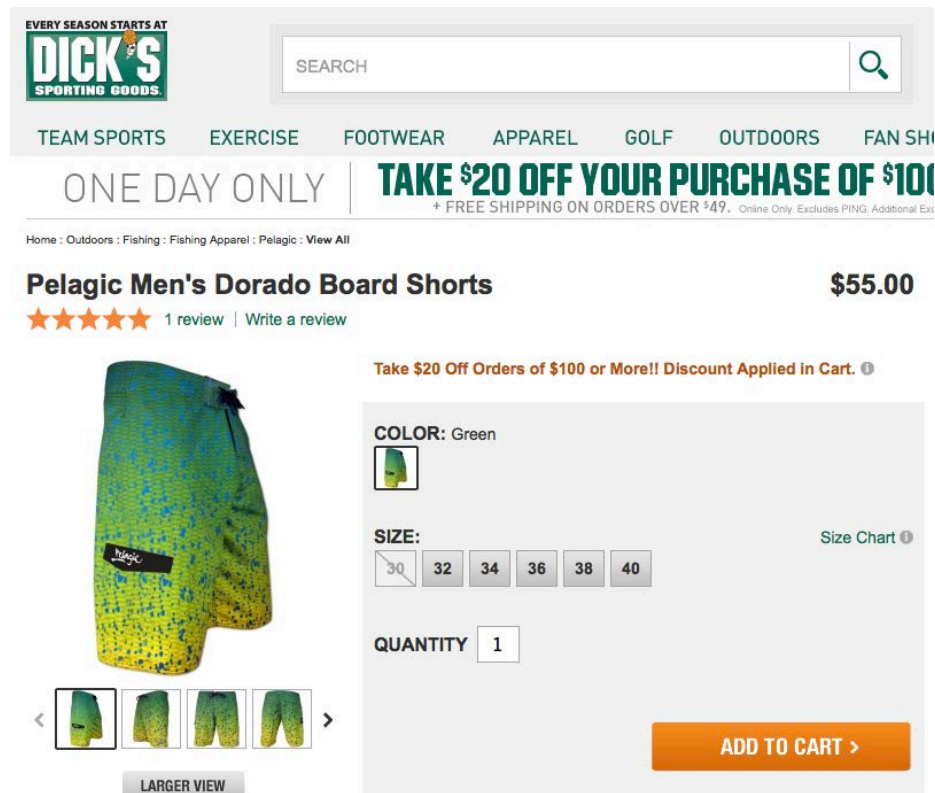
Product Description	Product Number	Pricing (US)
4-TEK Boardshort – Under Cover	239UC	\$ 64.00
4-TEK Boardshort – Collage	239C	\$ 64.00
4-TEK Boardshort – Panorama	239P	\$ 64.00
Vaportek L/S – Yellowfin Tuna	780LSYT	\$ 55.00
Vaportek L/S – Sea of Life	780LSSOL	\$ 55.00
Vaportek L/S – Blue Marlin	780LSBM	\$ 55.00
Premium Pocket Tee – Paradise Under	170PU	\$ 42.00
Premium Pocket Tee – Sea of Life	170SL	\$ 42.00
Ludovico Tank – Marlin	194M	\$ 34.00
Ludovico Tank – Tuna	194T	\$ 34.00
Ludovico Tank – Redfish	194R	\$ 34.00
Ludovico Tank – Snook	194S	\$ 34.00
Trucker Cap – Collage	553C	\$ 25.00
SPF Sunshield – Collage	791C	\$ 24.00

4-TEK Boardshort – Rastatuna	239R	\$ 60.00
4-TEK Boardshort Revolution	239RV	\$ 49.99
OCP Sailfish Boardshort – Blue	2510B	\$ 49.99
OCP Panorama Tee – Orange	1776O	\$ 24.00
Bikini – Atlantis	669B	\$ 89.00
Bikini – ISLA Mujeres	668B	\$ 89.00
Women’s Performance Dress – ISLA Mujeres	674IM	\$ 69.00
Women’s Performance Dress – Atlantis	676A	\$ 69.00
Women’s Performance Dress – Kauai	675K	\$ 69.00
SPF Sunshield Under Cover – Blue	801UC	\$ 24.00

Pelagic’s Implicated Dorado Apparel Line

29. One apparel line *not* listed under Pelagic’s Ocean Conservancy Project is Pelagic’s line of sport fishing and water sports apparel and swimwear marketed and advertised under the name “Dorado” (the “Dorado Apparel Line”).

30. The Dorado Apparel Line, launched after August 2010, is Pelagic’s most successful line of clothing and swimwear, sold nationwide at leading retailers including Dick’s Sporting Goods (amongst others):



31. As shown above, the offerings in the Dorado Apparel line includes green and yellow colors (or alternatively blue and white colors) with an array of a specific orientation of blue spotting. The intricate blue coloring of each apparel offering includes a specific design of blue spots.

32. In marketing its Dorado Apparel line, Pelagic has used without permission or license exact images of the Bull Photograph (hereinafter the “Dorado Advertisements”):



33. Pelagic’s Dorado Apparel Line has grown to include twenty-nine (29) separate product offerings as shown by the following chart:

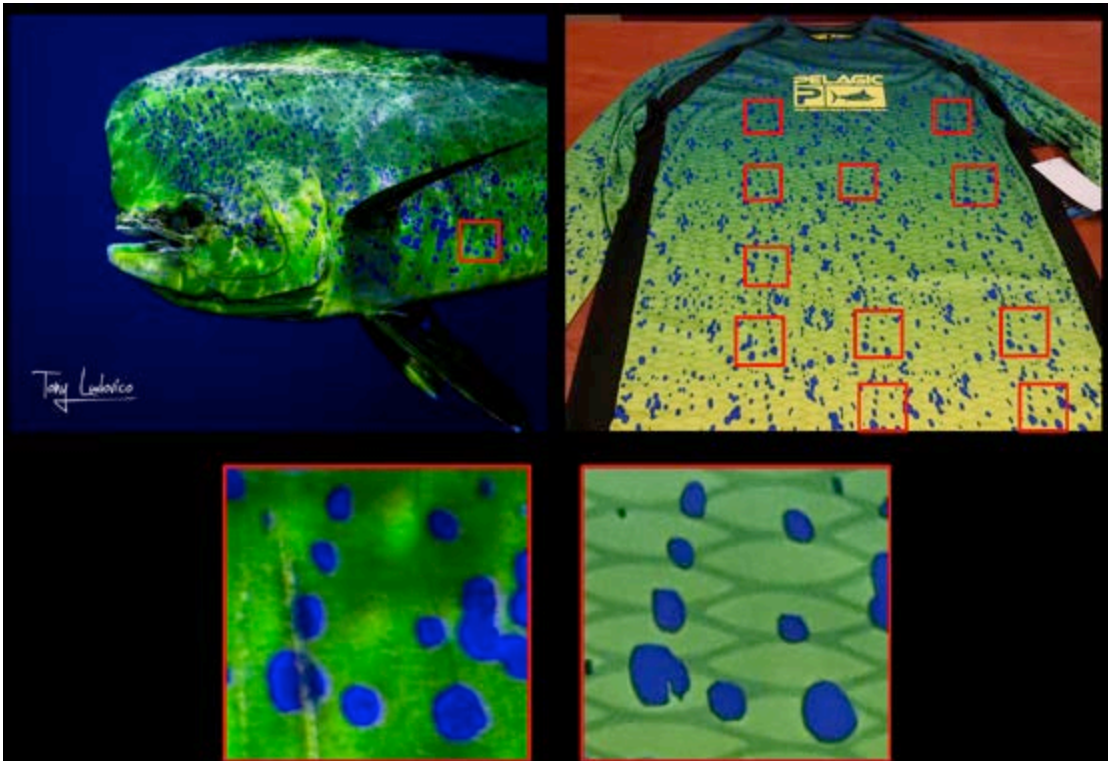
Product Description	Product Number	Pelagic’s Website	Dick’s Sporting Goods	West Marine	Beall’s Outlet	Melton’s Tackle	Tackle Direct
Sunglass Pouch Dorado	1057D	\$5.00					
Dorado Boardshort Blue	235B	\$55.00					
Dorado Boardshort Green	235G	\$55.00	\$55.00	\$55.00	\$55.00	\$54.99	\$55.00
Kids Dorado Boardshort	235-K-G	\$44.00					
Youth Dorado Boardshort	235-Y-G	\$48.00					
Super Dorado Boardshort Blue	238B	\$66.00					
Super Dorado Boardshort Green	238G	\$49.99					

Psycho Dorado Boardshort Blue	250B	\$66.00		\$66.00	\$66.00	\$66.00	
Psycho Dorado Boardshort Green	250G	\$66.00	\$66.00	\$66.00	\$66.00	\$66.00	
Psycho Dorado Hoody	421B	\$55.00				\$55.00	\$55.00
Psycho Dorado Visor Blue	535B	\$24.00	\$24.00	\$24.00	\$24.00		
Dorado Visor Blue	535B	\$22.00		\$24.00		\$21.99	\$22.00
Psycho Dorado Visor Green	535G	\$24.00	\$24.00	\$24.00	\$24.00		
Dorado Visor Green	535G	\$22.00		\$24.00			\$22.00
Psycho Dorado Cap Blue	557B	\$29.00		\$29.00			
Psycho Dorado Cap Green	557G	\$29.00	\$29.00	\$29.00	\$29.00		
Women's Dorado Boardshorts	661G	\$59.00		\$59.00	\$59.00	\$59.00	
Bikini Dorado	665G	\$89.00					
Bikini Dorado (Top)	665G					\$44.50	
Bikini Dorado (Bottom)	665G			\$22.88		\$44.50	
Vaportek L/S Dorado Green	780LSDG	\$55.00	\$55.00		\$55.00		\$55.00
Kids Vaportek Dorado	780LSKGD	\$39.00					
Youth Vaportek Dorado	780LSYGD	\$44.00			\$44.00		
SPF Sunshield Psycho Dorado Blue	790B	\$22.00		\$22.00	\$22.00	\$22.00	\$20.00
SPF Sunshield Psycho Dorado Green	790G	\$22.00	\$22.00	\$22.00	\$22.00		\$20.00
iPhone 4 Gel Skin	D	\$24.99					
Youth Psycho Dorado Tee Blue	YSS1801B	\$18.00			\$18.00		
Youth Psycho Dorado Tank Top Black	YTK1802BK	\$18.00			\$18.00		
Pelagic Print Dorado		\$39.00					

34. In addition to using the exact image of the Bull Photograph in advertising the Dorado Apparel Line, each of the twenty-nine (29) offerings identified in the chart above are unauthorized derivative works created by copying the coloring and portions of unique blue spotting orientation found within the Bull Photograph itself (protected by the Copyright-in-Suit).

35. As exemplified in the analysis shown in **Exhibit F** regarding the Pelagic Vaportek L/S Dorado Green product (Product No. 780LSDG), this rash guard includes at least

two (2) portions of the unique expression of the Bull Photograph protected by the Copyright-in-Suit. More specifically, the front of this single clothing article alone copies two (2) specific portions of the Bull Photograph immediately behind its pectoral fin (hereinafter the “First Taken Expression” and the “Second Taken Expression”). As shown below, the front side of the rash guard includes thirteen (13) copies of the First Taken Expression and an additional twelve (12) copies of the Second Taken Expression protected under the Copyright-in-Suit:



36. Such twenty-five (25) copies of these original and protectable elements of expression from the Bull Photograph create an image within the rash guard that is substantially similar to the Copyright-in-Suit.

37. These actions by Pelagic in creating the Pelagic Vaportek L/S Dorado Green product (Product No. 780LSDG), as well as the other additional twenty-eight (28) product lines within the Dorado Product Line, were done without the authority, approval or license from either Mr. Ludovico or TLL. Moreover, all of the twenty-nine (29) items within the Dorado

Apparel Line were created by the intentional copying of the First Taken Expression and the Second Taken Expression obtained directly from the Copyright-in-Suit (in the same manner as described above). Moreover, all of the twenty-nine (29) items are substantially similar to the original Bull Photograph.

38. As a second example of this intentional and unauthorized copying of the original elements of the Copyright-in-Suit, **Exhibit G** attached hereto denotes and identifies the intentional and purposeful manner in which portions of expression found within the Bull Photograph are wholesale copied and pasted within Dorado board shorts offered by Pelagic.

39. The linear manner that these portions of original and protectable expression contained within the Bull Photograph were slavishly copied and carefully placed in the twenty-four (24) apparel items (as exemplified by **Exhibit F** and **Exhibit G**) denote the considerable lengths in which Pelagic has created substantially similar imagery within its Dorado Apparel Line.

40. Pelagic's copying and use of the imagery and original protectable expression found within the Bull Photograph was done without right, permission or license from TLL.

41. An average lay observer would recognize that each of the twenty-nine (29) items that comprise the Dorado Apparel Line copied the protectable features of the Bull Photograph (as protected by the Copyright in Suit), including, but not limited to, the numerous replications of the First Taken Expression and the Second Taken Expression.

Pelagic's Continued Unauthorized Advertising through Ludovico's Bull Photograph

42. In addition to this slavish copying of LCC's work, Pelagic has also used the Bull Photograph (and related imagery created by Mr. Ludovico) in its social media advertising to advance sales of the Dorado Apparel Line. As one example, Pelagic used photography of one

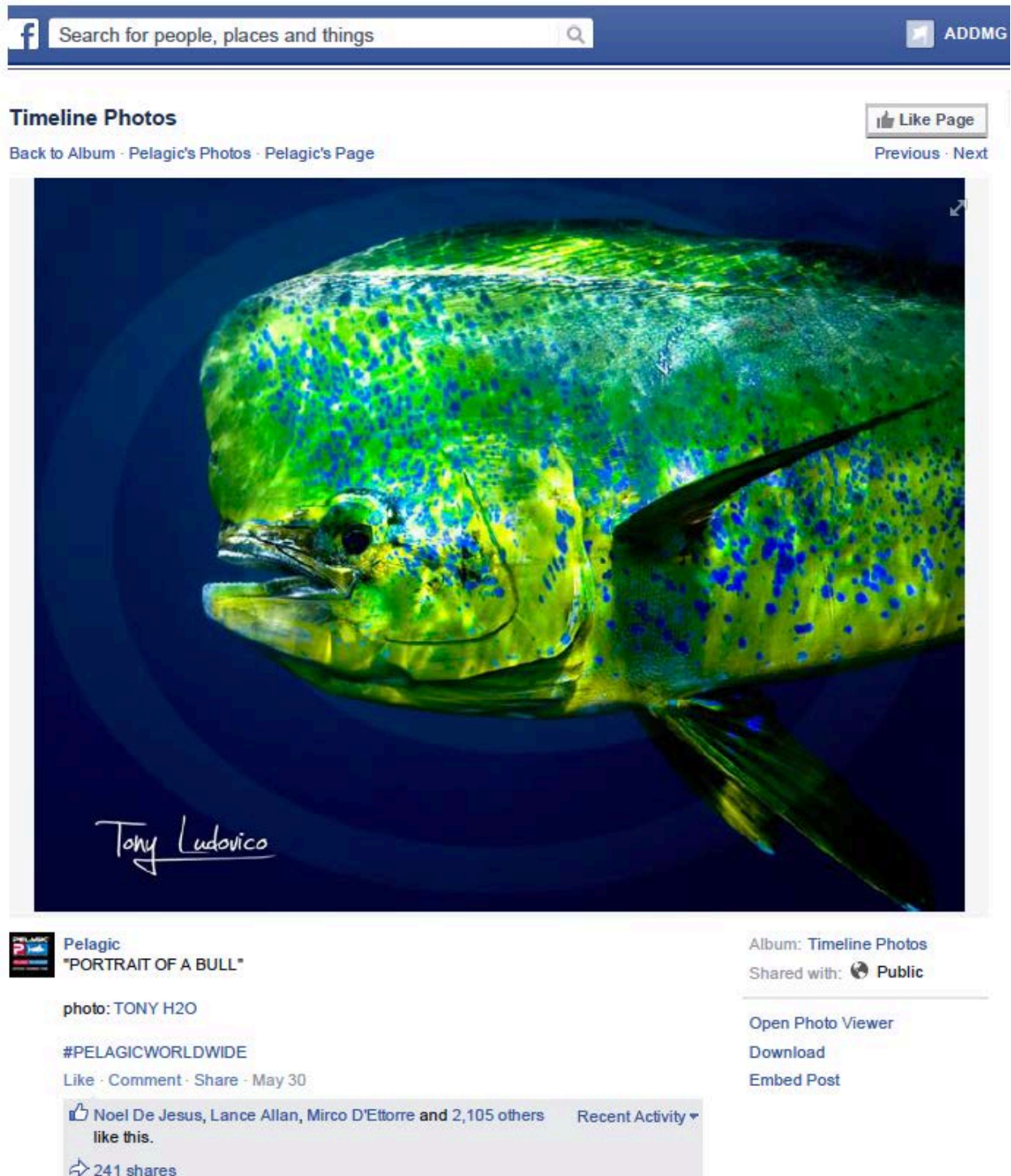
(1) of Mr. Ludovico's galleries which included the Bull Photograph as its feature:



43. As a second example, an actual copy of the Bull Photograph was recently featured as part of Pelagic's Instagram social media promotion of its brand:



44. As a third example, Pelagic has used the Bull Photograph in its Facebook advertising as denoted below:



Facebook interface showing a post from Pelagic. The post features a large, vibrant image of a fish with a large, bull-like head, colored in shades of green and blue. The fish is set against a dark blue background. The post is titled "PORTRAIT OF A BULL" and is attributed to TONY H2O. The post has received 2,105 likes and 241 shares. The post is shared with the public. The post is part of the "Timeline Photos" album.

Search for people, places and things

ADD MG

Timeline Photos

Like Page

Back to Album · Pelagic's Photos · Pelagic's Page

Previous · Next

Tony Ludovico

Pelagic
"PORTRAIT OF A BULL"

photo: TONY H2O

#PELAGICWORLDWIDE

Like · Comment · Share · May 30

Noel De Jesus, Lance Allan, Mirco D'Ettore and 2,105 others like this.

Recent Activity

241 shares

Album: Timeline Photos

Shared with: Public

Open Photo Viewer

Download

Embed Post

45. Neither of the aforementioned three (3) social media posts (hereinafter the “Unauthorized Social Media Posts”) were done with permission, license, or right from TLL.

COUNT I
COPYRIGHT INFRINGEMENT

46. This is an action for damages and permanent injunctive relief based on copyright infringement in violation of 17 U.S.C. § 501, *et seq.*

47. TLL repeats and re-alleges the allegations of paragraphs 1-46 of this Complaint as though fully set forth herein.

48. TLL is the owner of a copyright for an original work of authorship entitled *Portrait of a Bull*.

49. The United States Register of Copyrights issued Copyright Registration No. VA 1-945-550 which is assigned to TLL (previously defined as the “Copyright-in-Suit”).

50. Copyright Registration No. VA 1-945-550 is valid and subsisting.

51. TLL is the owner of the entire right, title and interest in, and to, the copyrighted work and Copyright Registration No. VA 1-945-550.

52. Pelagic has directly and indirectly infringed Copyright Registration No. VA 1-945-550 by violating the exclusive rights of TLL through copying, reproducing, distributing, and displaying copies of the Bull Photograph in its social media (including but not limited to Unauthorized Social Media Posts), through the Dorado Apparel Line (including all twenty-nine (29) product offerings), as well as through marketing and promotional items that include the Bull Photograph (including the Dorado Advertisements).

53. Upon information and belief, Pelagic’s infringing activities were knowingly engaged-in with a willful and reckless disregard of TLL’s rights.

54. The reproduction, preparation of derivative copies, advertising, distribution, and

display by Pelagic of the copyrighted *Portrait of a Bull* work was and continues to be without license, and therefore constitutes an infringement in violation of 17 U.S.C. §501.

55. Pelagic has suffered a compensable injury due to Defendant's infringing activities, and will continue to suffer irreparable injury unless Defendant's infringing activities are enjoined.

56. TLL is entitled to recover its actual damages incurred as a result of Pelagic's infringing activities, and Pelagic's profits from their infringing activities and use of the infringing work. TLL, as the copyright owner, is entitled to recover the actual damages suffered by TLL (or by Mr. Ludovico) as a result of the foregoing copyright infringement in addition to Pelagic's profits attributable to the infringement. In assessing such actual damages, TLL may assess damages based upon Pelagic's profits attributable to the sale of all of the Dorado Apparel Line. To establish this, TLL need only denote a casual connection between the infringement of the Bull Photograph and the profits claimed by the sale of apparel. Such causal connection can be shown through the nexus between the revenues of Pelagic and the infringement of the Copyright-in-Suit.

WHEREFORE, Plaintiff TLL respectfully prays that this Honorable Court enter such preliminary and final orders and judgments as are necessary to provide TLL with appropriate relief under 17 U.S.C §502 through § 504.

PRAYER FOR COSTS AND ATTORNEY FEES

TLL requests an award of reasonable costs and attorneys' fees pursuant to the Lanham Act and Florida Statutes.

REQUEST FOR JURY TRIAL

TLL requests jury trial of all matters so triable as a matter of right.

PRAYER FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Plaintiff TONY LUDOVICO, LLC requests this Honorable Court grant relief in the following manner:

- a. Preliminarily and then permanently enjoining Pelagic from using the Copyright-in-Suit of the Bull Photograph, as well as from making derivative works based upon the Bull Photograph;
- b. Preliminarily and then permanently enjoining Pelagic from using the Copyright-in-Suit of the Bull Photograph in its advertising, marketing and promotion, including but not limited to its social media advertising, trade show marketing, print advertising and related promotional activities;
- c. An award of monetary damages against Pelagic, including those available under 17 U.S.C. 504;
- d. Enhanced damages as provided by Title 17;
- e. An award of punitive or exemplary damages;
- f. Destruction of all products, apparel, promotional items and marketing bearing the Copyright-in-Suit of the Bull Photograph;
- g. An award of costs and reasonable attorneys' fees; and
- h. Such other and further relief as this Court deems just and proper.

DATED this October 2, 2015

s/ Robert H. Thornburg

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Counsel for Tony Ludovico LLC.

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 1-945-550

Effective Date of Registration:

January 09, 2015

Title

Title of Work: Portrait of a Bull

Completion/Publication

Year of Completion: 2006
Date of 1st Publication: June 01, 2006
Nation of 1st Publication: United States

Author

- Author:** Anthony Charles Ludovico
Author Created: photograph(s)
Citizen of: United States
Domiciled in: United States
Year Born: 1960

Copyright Claimant

Copyright Claimant: Anthony Charles Ludovico
PO Box 880201, Port Saint Lucie, FL, 34988, United States

Rights and Permissions

Organization Name: Tony Ludovico, LLC
Name: Brooke Heddon
Email: brooke@tonyludovico.com
Telephone: (813)992-8530
Address: PO Box 880201
Port Saint Lucie, FL 34988 United States

Certification

Name: Brooke Heddon
Date: January 09, 2015

Exhibit B

>> From: Tony Ludovico [<mailto:tonyblueh2o@yahoo.com>]

>

>> Sent: Tuesday, May 06, 2008 3:56 PM

>> To: Ron - Pelagic

>> Subject: RE: Tony Ludovico

>>

>>

>>

>> Dude,

>>

>>

>>

>> It was fun, he is a cool guy! The gear! Thanks, if

>> you can throw in some

>> size 34 waste for JT, he loved the shorts and said

>> he would wear them on the

>> set.

>>

>>

>>

>> Looking foward to PV in August - let me know, too

>> bad about Accension, i'd

>> get some killer shots! Just don't have 10k on an

>> artists budget.....

>>

>>

>>

>> Cool about the new website, let me know when its up.

>>

>>

>>

>> Trying to set up a trip to PV on May 22 - 26 with my

>> lawyer, Tony Timpano

>> and a couple of his bigshot clients. Can you

> email

>> me Josh Temples info, I

>> am looking to get a nice sporty because they want a

>> salon to get out of the

>> weather (with AC)...If Josh isn't around can you

>> recommend anyone else?

>>

>>

>>

>> Thanks talk to you soon bro,

>>

>>

>>

>> Tony

>>

>>

>>

>>

>>

>>
>>
>> Dude,
>>
>>
>>
>> Hope alls good!
>>
>>
>>
>> Travolta! - Sounds cool !!!
>>
>>
>>
>> I will put together a box of gear.
>>
>>
>>
>> Regarding the tempest suit - we are waiting on a
>> shipment but when it comes
>> I will send.
>>
>>
>>
>> PV we are looking at dates in both august and
>> september. lemee know what
>> you prefer and lets do it!
>>
>>
>>
>> Clay/ascension island - we just booked our trip and
>> it was ten grand a pop -
>> ouch!
>>
>>
>>
>> Still looking at launching our new web site in june
>> - I am waiting for the
>> final details from the web guys and then I will get
>> you all the details, and
>> at that point we will discuss together with tony
>> tempiano to see how we can
>> sell some stuff for you.
>>
>>
>>
>> Super slammed but alls good.
>>
>>
>>
>> Best,
>>
>>

>>

>> ron

>>

>>

>>

>>

>>

>> Ron Marlin Kawaja . President . PELAGIC, INC

>>

>> 895 W. 16th Street . Newport Beach, CA . 92663

>>

>> Phone: 949-642-0646 ext. 101 . Fax: 949-642-8862

>>

>> <<http://www.pelagicgear.com/>> www.PelagicGear.com

>> <<http://www.pelagicgear.com/>>

>>

>>

>> _____

Exhibit C

>
>
>
>
> cool
> do you need the high res images just let me
> know Let try and have some stuff for Miami.....
>
>
>
> Tony
> Ludovico
>
> www.realunderwaterimages.com
>
>
>
> 772
> 204 6367
>
>
> tonyblueh2o@yahoo.com
>
>
>
>
>
>
>
>
> --- On Fri, 10/9/09,
> Ron - Pelagic <ron@pelagicgear.com>
> wrote:
>
>
> From: Ron - Pelagic <ron@pelagicgear.com>
>
> Subject: RE: From TC Palm: Tony Ludovico's mesmerizing
> underwater photos
> gainingnotoriety
>
> To: "Tony Ludovico"
> <tonyblueh2o@yahoo.com>
>
> Date: Friday, October 9, 2009, 5:57 PM
>
>
> Fucking
> sick shit bro!
>
>
> I
> will start making some designs for clothing with
> this...
>
>
>
>

>
>
>
> Ron
> Marlin Kawaja . President . PELAGIC,
> INC
> 895
> W. 16th Street . Newport Beach, CA . 92663
>
> Phone:
> 949-642-0646 ext. 101 . Fax: 949-642-8862
>
> www.PelagicGear.com
>
>
>
>
>
> From: Tony Ludovico
> [<mailto:tonyblueh2o@yahoo.com>]
>
> Sent:
> Friday, October 09, 2009
> 2:43 PM
>
> To: Ron -
> Pelagic
>
> Subject: RE:
> From TC Palm: Tony
> Ludovico's mesmerizing underwater photos
> gainingnotoriety
>
>
>
>
>
>
>
> Tony
> Ludovico
>
> www.realunderwaterimages.com
>
>
>
> 772
> 204 6367
>
>
> tonyblueh2o@yahoo.com
>
>
>

> To: Ron -
> Pelagic
>
> Subject:
> Re: From TC Palm:
> Tony Ludovico's mesmerizing underwater photos
> gainingnotoriety
>
>
>
> Ya
> send me some stuff forher to
> wear
>
>
> In
> a small..... She is tiny..
>
>
> Very
> cool chick loves the water...
>
>
>
> Sent from my iPhone
>
>
>
> On Oct 9, 2009, at 5:14 PM, "Ron - Pelagic"
> <ron@pelagicgear.com>
> wrote:
>
>
>
> Sounds
> like you got a hot new piece of ass to
> me...
>
>
> Ha
> ha...
>
>
>
>
>
>
> Ron
> Marlin Kawaja
> . President . PELAGIC,
> INC
> 895

> W. 16th Street . Newport Beach, CA .
> 92663
> Phone:
> 949-642-0646 ext. 101 . Fax:
> 949-642-8862
> www.PelagicGear.com
>
>
>
>
>
> From: Tony Ludovico
> [<mailto:tonyblueh2o@yahoo.com>]
>
> Sent:
> Friday, October 09, 2009
> 8:33 AM
>
> To: Ron -
> Pelagic
>
> Subject:
> RE: >From TC Palm:
> Tony Ludovico's mesmerizing underwater photos
> gainingnotoriety
>
>
>
>
> do
> it... So much
> cool stuff.. going on LIFE IS GOOD.....
>
>
>
> can
> you send me 1 more back pack ??
>
>
> Tony
> Ludovico
>
> www.realunderwaterimages.com
>
>
>
> 772
> 204 6367
>
>
> tonyblueh2o@yahoo.com
>
>

Exhibit D



Image By Tony Ludovico @ 2010

Exhibit E

> 949 642 0646 x101| F 949 642

> 8862

>

> www.pelagicgear.com

>

>

>

>

>

>

>

>

>

>

> From: Tony Ludovico

> [<mailto:tonyblueh2o@yahoo.com>]

>

> Sent: Sunday, July 11, 2010 7:28 AM

>

> To: Ron - Pelagic

>

> Subject: Re: LUDO samples in the house!!!!

>

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> Thanks

> I got the box.. But they sent 2 duffle bags and

> no pack back..

>

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>

> what

> I may do is take one of the duffle bags and display it in

> the gallery ?? I love

> the color.. It will brighten up the room. That blue is so

> nice....

>

>

>

>

>

>

>

>

>

>

> Guys,
>
>
>
> I really like the way this
> is shaping up!
>
>
>
> Enclosed, please find a
> pic of the first 3 sample tee
> shirts... as well as a pic of the hang tag that goes with
> each garment.
>
>
>
>
>
>
>
> I would like to propose
> that we start off with about 10 tee
> shirt designs and ROCK THE WORLD!!!!
>
>
>
> However, we still need to
> tweak things a bit in my opinion,
> so I wanted to plan for a conference call to get all your
> feedback and go over
> everyone's comments before we move forward...
>
>
>
> But overall, based on my
> experience in this fishing/clothing
> industry, I think it's a FUCKING HOME RUN!!!!
>
>
>
>
>
>
> Look forward to hearing
> from you guys...
>
>
>
> Best,
>
>
>
> Ron
>
>

>
>
>
>
>
>
> PS - please
> note:
>
>
>
> 1 - we need a good pic of
> tony "in action" for the other
> side of his hang tag... something that looks like hes
> "extreme" maybe a
> shot of him in the bleu camo wetsuit underwater holding the
> camera with a fish
> or bluewater...???

>
>
>
> 2 - also need a bit of
> text for his hang tag as well...
> example below:
>
>
>
> Sample text: "with
> his unique style of photography, he
> brings to life the amazing creatures in the ocean, raising
> the level of
> awareness for these species and bringing to the forefront,
> the need to conserve
> the precious resources of the ocean..." blah blah
> blah something like
> that....???

>
>
>
> <image001.jpg>
>
>
> Ron Marlin Kawaja
> | President | Pelagic
> Inc.
>
> 895 West
> 16th Street | Newport Beach CA
> 92663
>
> | P
> 949 642 0646 x101 | F 949 642
> 8862
>
> www.pelagicgear.com
>
>

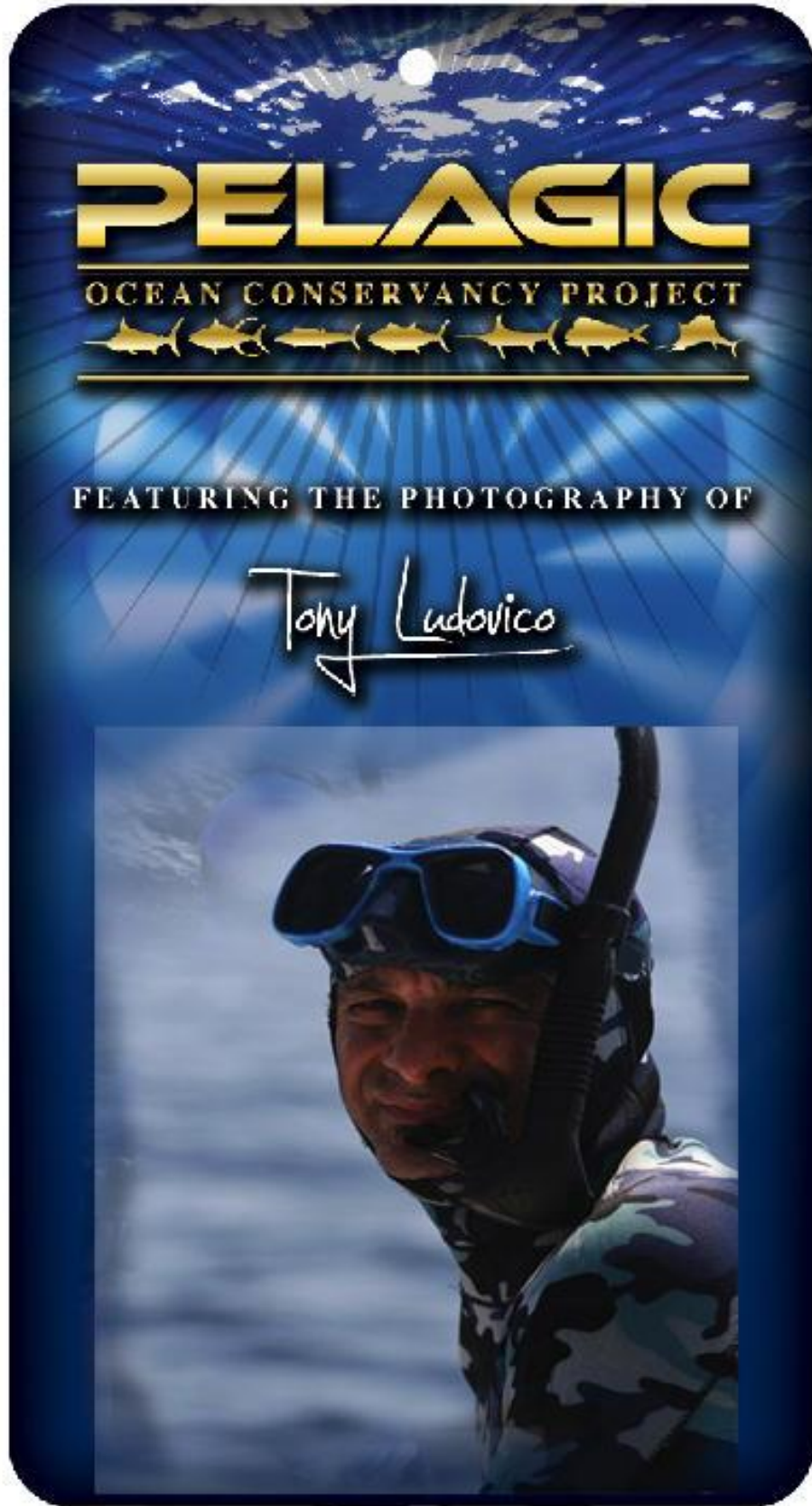
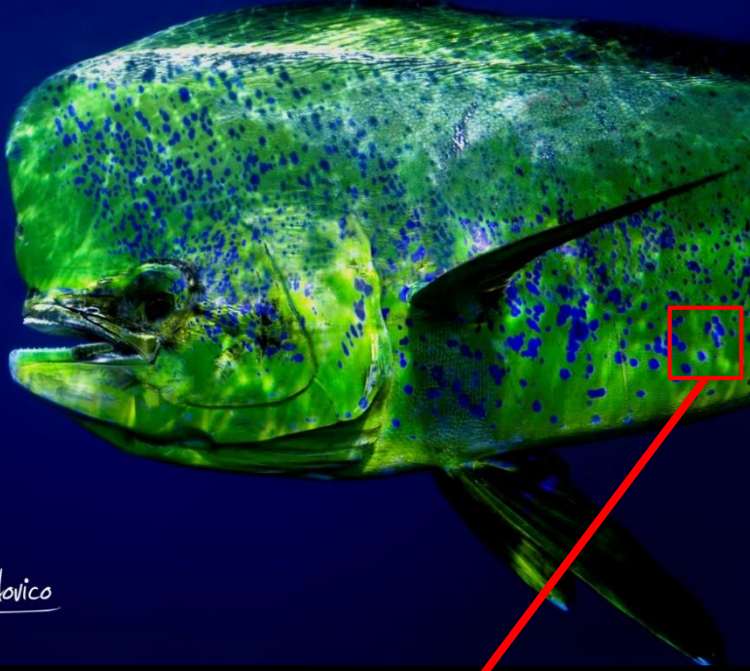


Exhibit F



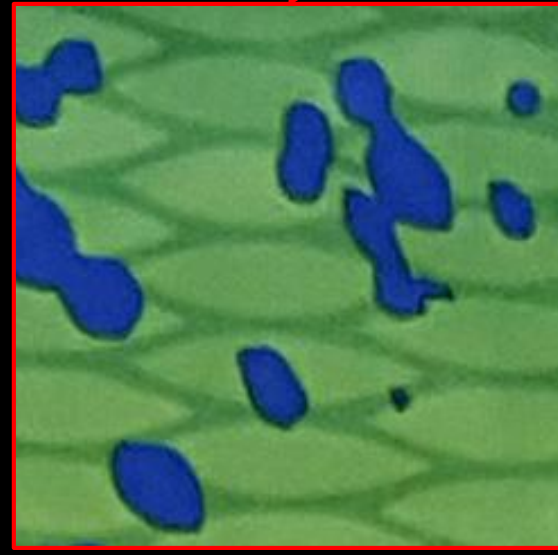
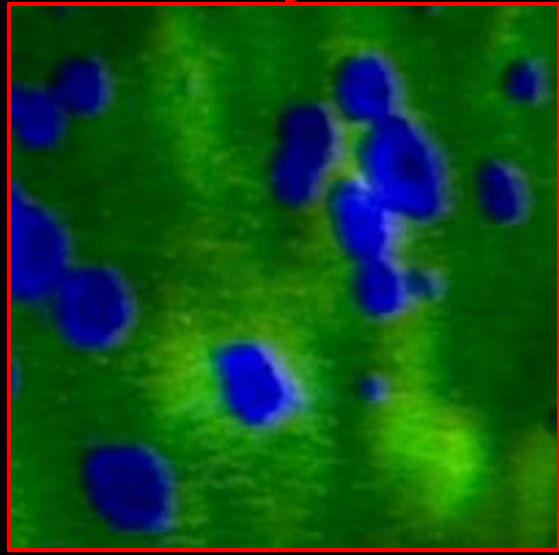
Tony Ludovico



Tony Ludovico

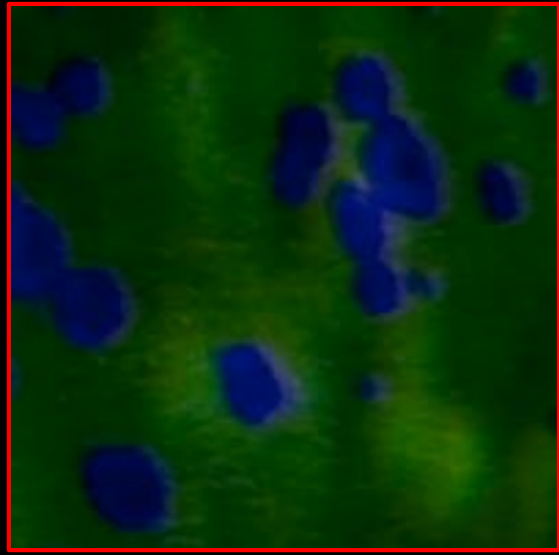


PELAGIC
PIA
High Performance Offshore Gear



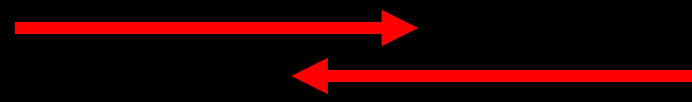
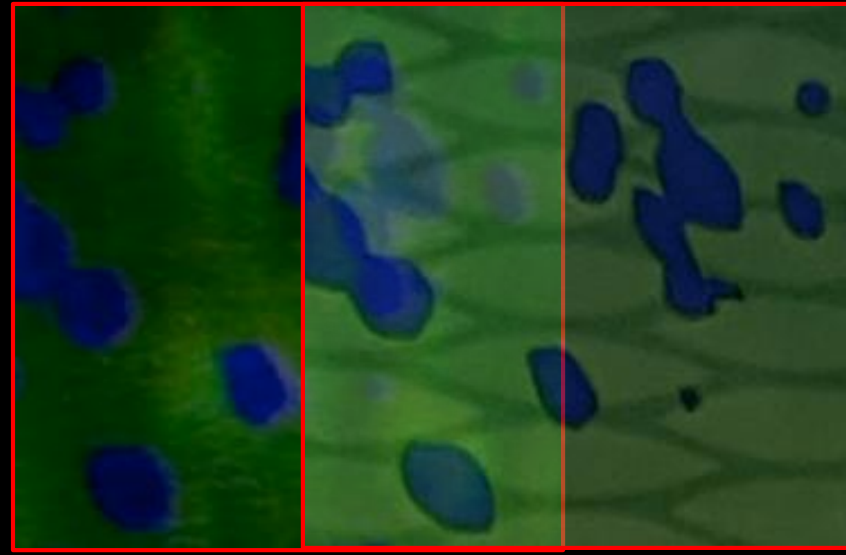


Tony Ludovico





Tony Ludovico



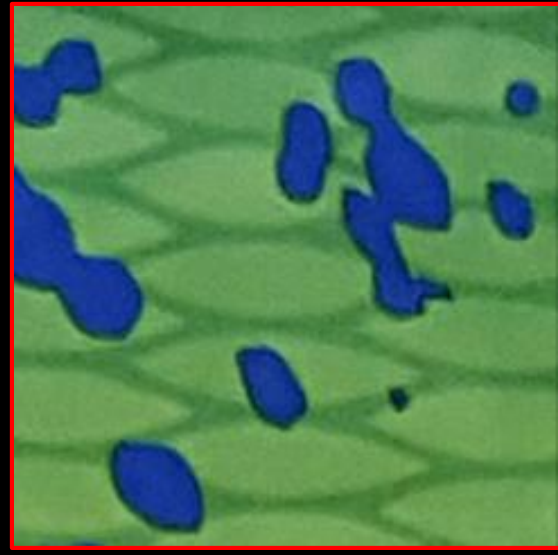
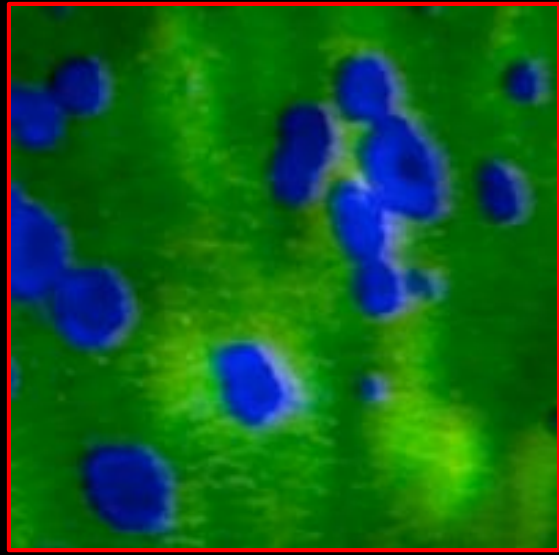


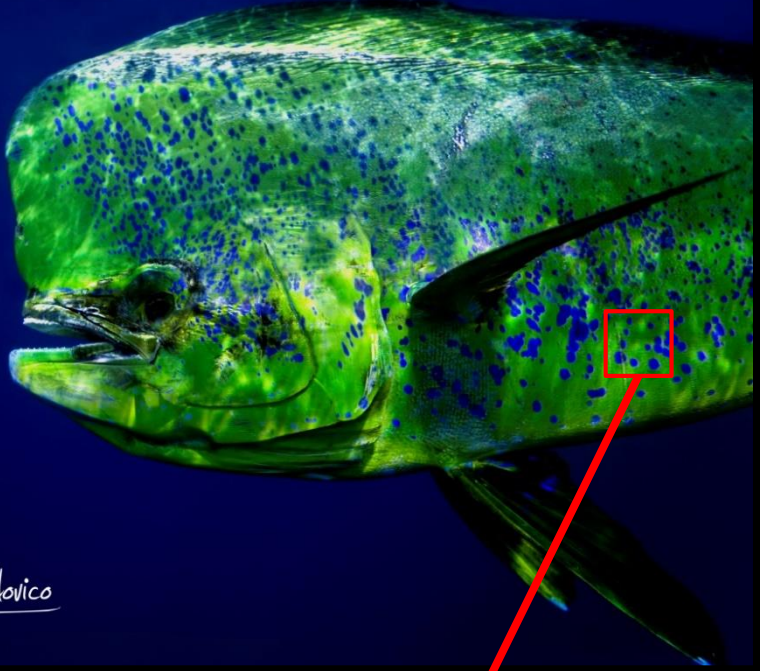
Tony Ludovico



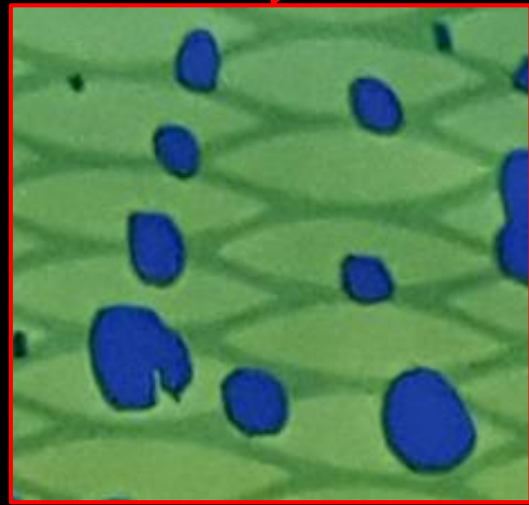
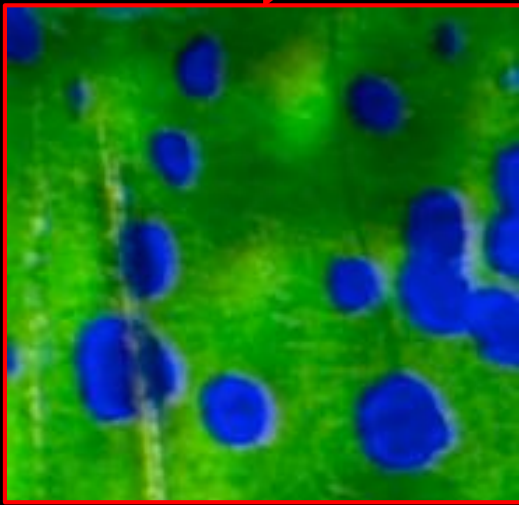


Tony Ludovico



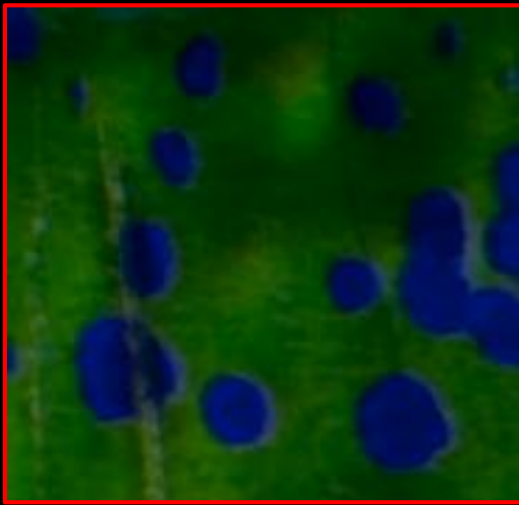


Tony Ludovico



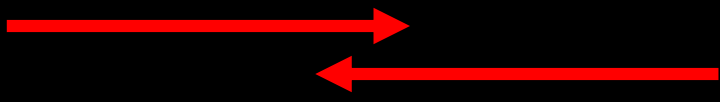
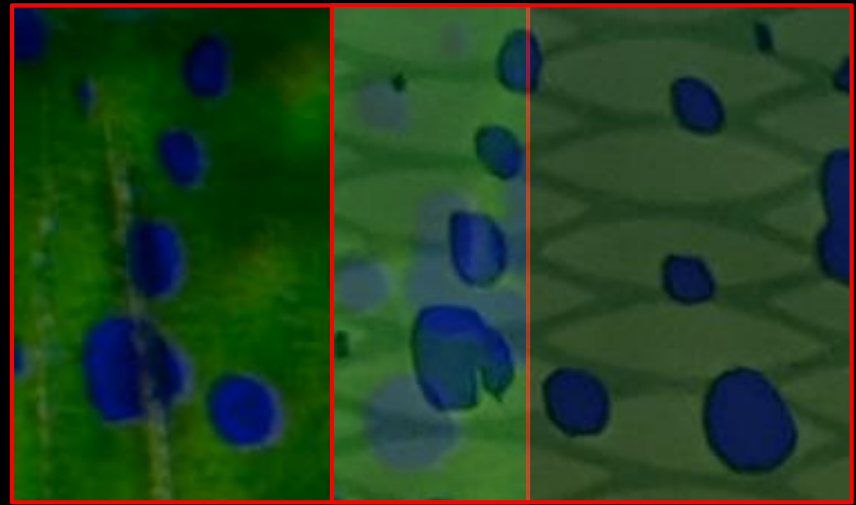


Tony Ludovico



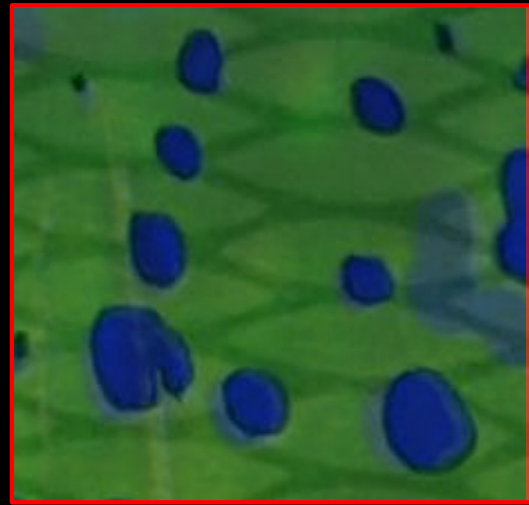


Tony Ludovico





Tony Ludovico





Tony Ludovico

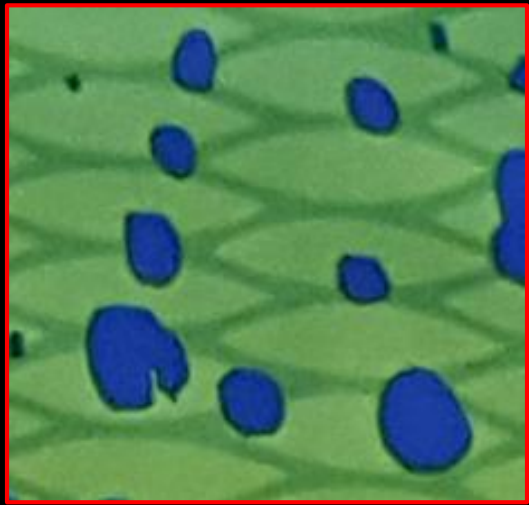
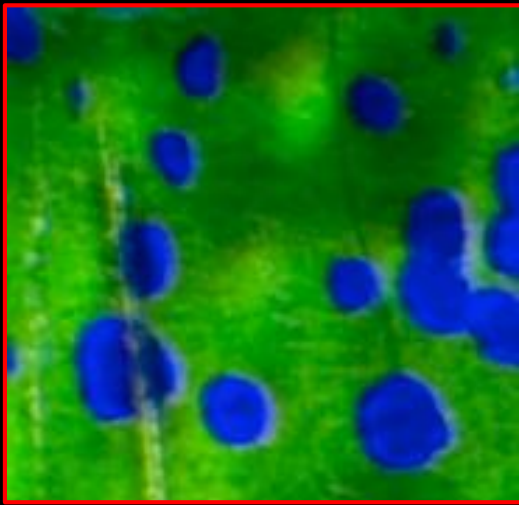


Exhibit G



Tony Ludovico

