

FILED
Los Angeles Superior Court

MAR 01 2013

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By SHAUNYA WESLEY Deputy

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Attorney for Plaintiff
GITA HALL MAY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BC502104

GITA HALL MAY, an individual,

Case No.

Plaintiff,

COMPLAINT FOR DAMAGES
AND OTHER RELIEF

v.

LIONS GATE ENTERTAINMENT
CORP., a corporation, and DOES 1-200,
inclusive,

Defendants.

CITY/CASE: BC502104
LEA/DEF#:

RECEIPT #: CCH465980032

DATE PAID: 03/01/13 11:24 AM

PAYMENT: \$435.00 310

RECEIVED:

CHECK: \$435.00

CASH: \$0.00

CHANGE: \$0.00

CARD: \$0.00

03/01/2013

COMPLAINT

1 Plaintiff GITA HALL MAY files this Complaint against defendant LIONS GATE
2 ENTERTAINMENT CORP. and DOES 1 through 200, inclusive (hereinafter, collectively,
3 "Defendants"), and each of them, and alleges, on personal knowledge as to herself and on
4 information and belief as to all others, as follows:

5 **NATURE OF THE ACTION**

6 1. The shadow of a businessman falls through the canyons of Madison Avenue,
7 starkly outlined against a backdrop of office buildings, martinis, stockings and period
8 advertisements from the late 1950's and early 1960's. By design, these ads depict iconic
9 female beauty of the age, images that instantly evoke recollections of this now-distant time,
10 intriguing the viewer – and suddenly there is the face of a ravishing red-haired beauty, her eyes
11 piercing the screen, her look that perfectly personifies the period.



27 2. The woman in this picture is Plaintiff GITA HALL MAY, arguably *the* top model
28 of her era. The picture was taken by Richard Avedon, arguably *the* top fashion photographer

1 of all time, for use in a hairspray ad for Revlon, arguably *the* top mass-market beauty company
2 of the era. Given her stature, Plaintiff consented to the use of her likeness, and the Avedon
3 photo embodying it, *only* for the then-current run of the Revlon campaign. At no time did she
4 agree to allow, forty years later, her image to be cropped from the photo, in secret, and inserted
5 as a key element in the title sequence of a cable television series, without her consent and for
6 commercial purposes.

7 3. Speaking of commercial purposes, the creators of this title sequence (this being
8 Hollywood) fully hoped that they would sell the pilot, sell the series, and make millions. As it
9 turned out, it made them *billions*, and (this being Hollywood) Defendants have since made
10 every effort to not only exploit the program and pocket the proceeds, but to assert in every
11 possible way the purported supremacy of their purported intellectual property rights.

12 4. When it comes to the rights of Plaintiff, however, Defendants insist they have the
13 right to profit from the wrongful use of Plaintiff's likeness, without compensating her for the
14 value that her image contributed to their property or the revenues that her image contributed to
15 their profit.

16 5. This action is brought to obtain redress for the unauthorized use of Plaintiff's
17 image. Equitable and monetary relief are sought, and the jurisdiction of this Honorable Court
18 is respectfully invoked to obtain justice for Plaintiff for the wrongs herein alleged.

19 **PARTIES**

20 6. Plaintiff GITA HALL MAY ("Plaintiff") is, and at all times mentioned herein was,
21 an individual residing in the City of Los Angeles, County of Los Angeles, State of California.

22 7. Defendant LIONS GATE ENTERTAINMENT CORP. ("Lionsgate"), is and was at
23 all times relevant a corporation organized under the laws of British Columbia, Canada with
24 headquarters in the City of Santa Monica, County of Los Angeles, State of California.

25 8. The true names and capacities, whether individuals, corporate, associate or
26 otherwise of defendants herein designated as DOES 1-200 are unknown to Plaintiff at this
27 time, who therefore sues said defendants by such fictitious names pursuant to California Code
28 of Civil Procedure § 474. Specifically, Plaintiff alleges that DOE defendants are responsible

1 for the wrongful acts complained of and described more fully herein, in that each of the
2 Defendants sued herein as a DOE committed the same acts as the other Defendants, and/or is
3 legally responsible in some manner for one or more of the acts, omissions, breaches,
4 occurrences, losses, and damages herein complained of, and/or further, that each DOE is, and
5 at all times material hereto was, acting as an agent, servant, employee, representative,
6 managing agent, partner, principal alter ego, affiliate, or co-conspirator of one or more of the
7 other Defendants, with the knowledge, consent, and/or ratification of such other Defendants in
8 causing or permitting the acts, omissions, breaches, occurrences, losses, and damages alleged
9 herein.. Any mention of or reference to any named defendant, and any allegation or cause of
10 action stated in this complaint against any named defendant, is intended to include and apply to
11 DOE defendants. Plaintiff will seek leave to amend this complaint to allege the true names and
12 capacities of DOE defendants as they become known.

13 JURISDICTION AND VENUE

14 9. This Court has Jurisdiction over this action pursuant to California Code of Civil
15 Procedure § 410.10. Venue is proper pursuant to California Code of Civil Procedure §§ 395
16 and 395.5 because Defendant resides in the County of Los Angeles and because Plaintiff
17 resides in the County of Los Angeles, and hence the liability of Defendant arose in the County
18 of Los Angeles.

19 BACKGROUND

20 10. Plaintiff, formerly named Gita Hall, is a well-known model and actress who,
21 commencing in the 1950's, and continuing through the 1960's gained public recognition and a
22 valuable reputation for her unique and striking beauty. Plaintiff was a top model, sought after
23 by top photographers and brands, and her image was iconic of the era. Her likeness and image
24 was utilized in advertisements for top products, and Plaintiff enjoyed commercial success by
25 reason thereof.

26 11. Defendants produce, sell, distribute, broadcast and exhibit an audiovisual series,
27 comprised of numerous individual episodes, entitled Mad Men ("Mad Men").

28 12. Defendants created an opening main title sequence (the "Main Titles") for Mad

1 Men, which was included in the pilot episode of Mad Men and in each episode of Mad Men
2 that has been produced, broadcast or sold to date.

3 13. The Main Titles were integral to the success of Mad Men, and the episodes of Mad
4 Men, and Mad Men as a series, have derived economic and commercial value from the Main
5 Titles, from which Defendants have derived profit and monetary gain, both directly from the
6 exploitation thereof, and indirectly from the enhancement to Defendants' other business
7 endeavors by reason of the prestige and acclaim accorded them by reason of the success
8 thereof. Defendants have also benefited from the Main Titles in that the value of their
9 trademarks, and other measures of business goodwill, has increased, and in that Defendants
10 have exploited such trademarks, including the Mad Men trademark, by licensing and
11 otherwise, resulting in additional revenues and profits derived in part from the Main Titles.

12 14. The Main Titles have achieved critical acclaim independent of the series and its
13 episodes, including winning awards and other industry recognition. Indeed, the Main Titles
14 were even the subject of their own Emmy award, winning over all others for "Outstanding
15 Main Title Design."

16 15. The Main Titles, by reason of the foregoing, inter alia, were and are integral to the
17 success of Mad Men and are responsible in significant part for the value, success, goodwill,
18 profits, and reputation of Defendants.

19 16. Although each episode of Mad Men includes a unique variation of the Main Titles
20 that changes from episode to episode (as to individual credits for writers and directors, for
21 example) and from season to season (as to individual credits for principal cast, for example),
22 there is an element that remains a constant throughout: the iconic portrait of Plaintiff GITA
23 MAY HALL.

24 17. Specifically, the Credits prominently feature a photographic likeness of Plaintiff
25 (hereinafter, the "Photograph" – depicted in Paragraph 1 hereof). Plaintiff is readily
26 identifiable in the Photograph. The Photograph was taken by legendary photographer Richard
27 Avedon for a 1950's advertisement for Revlon's "Satin-Set" hairspray.

28 18. The Photograph was deliberately and intentionally selected by Defendants because

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1 of the unique and iconic likeness of Plaintiff, and Defendants sought to include the likeness of
2 a famous celebrity from the 1950s in the credits in order to promote and burnish the image of
3 the show in the eyes of the public and to create the “feel” of the program that was critical to its
4 commercial success. Defendants put exhaustive efforts into the selection of “just right” images
5 for use in the Main Titles, in order to enhance the chance of the success of the Mad Men pilot
6 and the economic value of the series, its episodes, and ancillary exploitations.

7 19. Defendants sought Plaintiff’s image because she was among the top models of her
8 day, and her likeness – used repeatedly in glamorous advertisements of the era – was perfectly
9 associated with the late 1950’s/early 1960’s advertising look that Defendants sought for their
10 program. The Photograph is prominently featured in the Main Titles, and is a part of the
11 central “falling man” sequence – indeed, Plaintiff’s likeness appears more prominently and
12 directly than any other image in that sequence, and in the Pilot directly opposite the credit for
13 the program’s Producer.

14 20. Defendants have and continue to publish, sell and exploit for commercial gain by
15 various means, including inter alia as described above, the Photograph and Plaintiff’s likeness
16 and image.

17 21. Defendants have generated income in excess of \$1 billion through exploitation of
18 the series and its episodes, each of which includes Plaintiff’s likeness without her consent, and
19 each of which has been the subject of numerous individual broadcasts.

20 22. Plaintiff first discovered the Defendants’ use of the Photograph in May of 2012.
21 Plaintiff could not have discovered Defendants’ uses prior thereto, inasmuch as the Mad Men
22 program was not broadcast on public airways, and was only available to members of the public
23 for a fee.

24 23. Plaintiff never gave her consent, and was never compensated, for Defendants’ use
25 of the Photograph, or Defendants’ use of Plaintiff’s likeness or image.

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FIRST CAUSE OF ACTION

Misappropriation of Right of Publicity for Commercial Purposes-Against All Defendants

24. Plaintiff re-alleges and incorporates by reference all of the allegations set out in Paragraphs 1 through 23 of this Complaint as if set forth fully herein.

25. Defendants knowingly used the Photograph and Plaintiff's likeness on products, merchandise or goods, and for the purpose of advertising or selling goods or services, or soliciting purchases of products, merchandise, goods, or services.

26. Plaintiff did not consent to Defendants' use of the Photograph or her likeness for any purpose.

27. Plaintiff is readily identifiable in the photograph as defined in California Civil Code § 3344(b).

28. As a direct and proximate result of Defendants' unauthorized use of the Photograph and Plaintiff's likeness, Defendants received revenues, realized profits and received other economic gain.

29. As a direct and proximate result of Defendants' conduct, Plaintiff suffered damages, including but not limited to, the loss of revenues which Plaintiff would have otherwise generated through the exploitation of the Photograph and Plaintiff's likeness and image, impairment of Plaintiff's reputation, physical harm, mental anguish, and diminution in the value of Plaintiff's image. These damages exceed the minimum jurisdiction of this Court and will be proved at the time of trial.

30. Plaintiff is entitled to actual damages suffered as a result of the unauthorized use of the Photograph and Plaintiff's likeness pursuant to California Civil Code § 3344(a).

31. Plaintiff is entitled to any profits realized by Defendants derived from the use of the Photograph and Plaintiff's likeness pursuant to California Civil Code § 3344(a).

32. Plaintiff is entitled an award of attorney's fees and costs incurred in connection with this action pursuant to California Civil Code § 3344(a).

33. Plaintiff suffered additional special and general damages which exceed the minimum jurisdiction of this court and will be proved at the time of trial.

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1 34. Plaintiff is entitled to prejudgment interest according to law.

2 35. Because Defendants exploited the Photograph and Plaintiff's likeness and image
3 while knowing that Defendants had no right to do so, and knowing that such conduct was a
4 violation of Plaintiff's legal rights and the law, Defendants have acted with fraud, malice and
5 oppression. As such, Plaintiff is entitled to an award of punitive damages against Defendants.

6 **SECOND CAUSE OF ACTION**

7 **Invasion of Common Law Right of Privacy-Against All Defendants**

8 36. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
9 Paragraphs 1 through 23 of this Complaint as if set forth fully herein.

10 37. In committing the acts alleged above, Defendants appropriated and used Plaintiff's
11 likeness, identity and personality to Defendants' advantage, both commercially and otherwise.

12 38. Plaintiff did not consent to Defendants' use of the Photograph, her likeness,
13 identity or personality for any purpose.

14 39. Defendants' conduct constituted an invasion of Plaintiff's right of privacy and
15 publicity in that it deprived Plaintiff of the ability to control the contexts in which her name
16 and likeness can be used.

17 40. As a direct and proximate result of Defendants' conduct, Plaintiff suffered
18 damages, including but not limited to, the loss of revenues which Plaintiff would have
19 otherwise generated through the exploitation of the Photograph and Plaintiff's likeness,
20 identity and personality, impairment of Plaintiff's reputation, mental anguish, and diminution
21 in the value of Plaintiff's image. These damages exceed the minimum jurisdiction of this court
22 and will be proved at the time of trial.

23 41. Plaintiff is entitled to any restitution in the form of any profits realized by
24 Defendants from the use of the Photograph and Plaintiff's likeness, identity or personality.

25 42. Plaintiff suffered additional special and general damages which exceed the
26 minimum jurisdiction of this court and will be proved at the time of trial.

27 43. Plaintiff is entitled to prejudgment interest according to law.

28 44. Because Defendants exploited the Photograph and Plaintiff's likeness and image

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1 while knowing that Defendants had no right to do so, and knowing that such conduct was a
2 violation of Plaintiff's legal rights and the law, Defendants have acted with fraud, malice and
3 oppression. As such, Plaintiff is entitled to an award of punitive damages against Defendants.

4 **THIRD CAUSE OF ACTION**

5 **Violation of the Unfair Competition Law-Against All Defendants**

6 45. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
7 Paragraphs 1 through 23, 25 through 35, and 37 through 44 of this Complaint as if set forth
8 fully herein.

9 46. In committing the acts alleged above, Defendants violated California Business &
10 Professions Code Section 17200 et. seq. ("UCL"), which prohibits any "unlawful, unfair or
11 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

12 47. The acts and practices of Defendants were and are unlawful in that they violated
13 California Civil Code § 3344.

14 48. The acts and practices of Defendants were and are unfair in that the inclusion of the
15 Photograph or likeness violates established public policy and has unjustifiably placed the
16 motives of Defendant above the harm suffered by Plaintiff.

17 49. The acts and practices of Defendants were and are fraudulent in that they are likely
18 to mislead the general public and therefore constitute unfair, fraudulent, and misleading acts
19 within the meaning of the meaning of the UCL.

20 50. Plaintiff alleges that unless enjoined by this court, Defendants will continue to
21 engage in the unfair business practices alleged above.

22 51. As a direct and proximate result of Defendants' conduct, Plaintiff did not receive
23 the benefits and money obtained by Defendants and to which Plaintiff is entitled, requiring an
24 injunction of Defendants' present and future unfair business practices and an award of
25 restitution.

26 52. Plaintiff is entitled to prejudgment interest according to law.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of the False Advertising Law-Against All Defendants**

3 53. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
4 Paragraphs 1 through 23, 25 through 35, 37 through 44, and 46 through 52 of this Complaint as
5 if set forth fully herein.

6 54. In committing the acts alleged above, and in advertising their products by use of
7 Plaintiff's image and likeness, Defendants have intentionally misled the public into believing
8 that Plaintiff endorses Defendants and their products.

9 55. Defendants' conduct constitutes a violation of California Business & Professions
10 Code Section 17500.

11 56. Plaintiff alleges that unless enjoined by this court, Defendants will continue to
12 engage in the untrue and misleading advertising alleged above.

13 57. As a direct and proximate result of Defendants' conduct, Plaintiff did not receive
14 the benefits and money obtained by Defendants and to which Plaintiff is entitled, requiring an
15 injunction of Defendants' present and future unfair business practices and an award of
16 restitution.

17 58. Plaintiff is entitled to prejudgment interest according to law.

18 59. Because Defendants exploited the Photograph and Plaintiff's likeness and image
19 while knowing that Defendants had no right to do so, and knowing that such conduct was a
20 violation of Plaintiff's legal rights and the law, Defendants have acted with fraud, malice and
21 oppression. As such, Plaintiff is entitled to an award of punitive damages against Defendants.

22 **FIFTH CAUSE OF ACTION**

23 **Quasi Contract and Unjust Enrichment**

24 60. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
25 Paragraphs 1 through 23, 25 through 35, 37 through 44, 46 through 52, and 54 through 59 of
26 this Complaint as if set forth fully herein.

27 61. Defendants intentionally, unjustly and without authorization appropriated and used
28 the Photograph and Plaintiff's likeness and image for the purpose of selling and promoting

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1 their products and brands.

2 62. Plaintiff had an expectation that she would be compensated for any use of any
3 photographs of Plaintiff promoting Revlon hairspray or the use of Plaintiff's likeness or image.

4 63. Through their unauthorized use of the Photograph and Plaintiff's likeness and
5 image, Defendants have been unjustly enriched in that they have unjustly obtained and retained
6 profits and monetary benefits that should rightfully have been received by Plaintiff.

7 64. Based upon the wrongful conduct of Defendants, the unjust enrichment of
8 Defendants, and the reasonable expectation and rights of Plaintiff with respect to any use of the
9 Photograph and Plaintiff's likeness and image, Defendants are liable to Plaintiff under the
10 principles of quasi contract, unjust enrichment, money had and received by Defendants and
11 services and items of value provided by Plaintiff to the benefit of Defendants.

12 65. Plaintiff is entitled to restitution of the value of the benefits derived by Defendants
13 from the unauthorized use they made of the Photograph and Plaintiff's likeness and image and
14 to an injunction preventing Defendants from any further exploitation of the Photograph or
15 Plaintiff's likeness or image. The value of said benefits exceeds the minimum jurisdiction of
16 this court and will be proved at the time of trial.

17 66. Plaintiff is entitled to prejudgment interest according to law.

18 67. Because Defendants exploited the Photograph and Plaintiff's likeness and image
19 while knowing that Defendants had no right to do so, and knowing that such conduct was a
20 violation of Plaintiff's legal rights and the law, Defendants have acted with fraud, malice and
21 oppression. As such, Plaintiff is entitled to an award of punitive damages against Defendants.

22 **SIXTH CAUSE OF ACTION**

23 **An Accounting-Against All Defendants**

24 68. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
25 Paragraphs 1 through 23, 25 through 35, 37 through 44, 46 through 52, 54 through 59, and 61
26 through 67 of this Complaint as if set forth fully herein.

27 69. The amount of money due to Plaintiff from Defendants is unknown to Plaintiff and
28 cannot be ascertained without an accounting of the revenue, receipts, and profits relating to the

1 Defendants' use of the Photograph and Plaintiff's likeness and image.

2 70. Plaintiff alleges that the accounts are so complicated that an ordinary legal action
3 demanding a fixed sum is impracticable.

4 71. Based upon the foregoing, Plaintiff is entitled to an accounting of the revenue,
5 receipts, and profits relating to the Defendants' use of the Photograph and Plaintiff's likeness
6 and image.

7 **SEVENTH CAUSE OF ACTION**

8 **Imposition of Constructive Trust-Against All Defendants**

9 72. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
10 Paragraphs 1 through 23, 25 through 35, 37 through 44, 46 through 52, 54 through 59, 61
11 through 67, and 69 through 71 of this Complaint as if set forth fully herein.

12 73. By virtue of their improper and unauthorized use of the Photograph and Plaintiff's
13 likeness and image, Defendants hold all money, goods and property received by Defendants as
14 a result of said use as a constructive trustee for Plaintiff's benefit.

15 74. Plaintiff is therefore entitled to an order directing that Defendants hold all such
16 money, goods and property received by Defendants in trust for the benefit of Plaintiff.

17 **EIGHTH CAUSE OF ACTION**

18 **Injunctive Relief-Against All Defendants**

19 75. Plaintiff re-alleges and incorporates by reference all of the allegations set out in
20 Paragraphs 1 through 23, 25 through 35, 37 through 44, 46 through 52, 54 through 59, 61
21 through 67, 69 through 71, and 73 through 74 of this Complaint as if set forth fully herein.

22 76. In doing the acts described herein, Defendants have irreparably harmed Plaintiff by
23 publishing, selling and profiting from the use of the Photograph and Plaintiff's likeness,
24 thereby preventing Plaintiff from obtaining the true value of the use of the Photograph and
25 Plaintiff's likeness and image.

26 77. Defendants continue improperly exploit the Photograph, Plaintiff's likeness and
27 image and to profit from same.

28 78. Plaintiff has no adequate remedy at law for the injuries caused by Defendants'

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1 continued exploitation of the Photograph and Plaintiff's likeness and image as her reputation,
2 image, likeness and ability to exploit same continue to be further devalued.

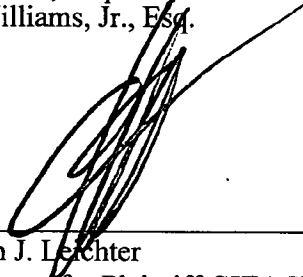
3 79. Plaintiff is entitled to an injunction preventing Defendants from any further
4 exploitation of the Photograph or Plaintiff's likeness or image.

5
6 WHEREFORE, Plaintiff prays for judgment against Defendants, and against each of them as
7 follows:

- 8 1. For general, special, and consequential damages;
- 9 2. For statutory damages;
- 10 3. For punitive damages;
- 11 4. For disgorgement;
- 12 5. For restitution;
- 13 6. For injunctive relief;
- 14 7. For an accounting;
- 15 8. For a constructive trust;
- 16 9. For attorney's fees and costs;
- 17 10. For interest as allowed by law;
- 18 11. For costs of suit;
- 19 12. For such other and further equitable and legal relief as the Court deems just and
20 proper.

21 Dated: March 1, 2013

22 THE LAW HUT, A Professional Corporation
23 Kevin J. Leichter, Esq.
24 R. Delano Williams, Jr., Esq.

25
26 By: 
27 Kevin J. Leichter
28 Attorneys for Plaintiff GITA H. MAY

03/01/2013