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FILED
Superior Court of California
County of Los Angeles

OCT 30 2015

Sherri R. Carter, Executive Officer/Clerk
By Ishayla Chambers, Deputy
Ishayla Chambers

7 Attorneys for Plaintiff: TIMED OUT LLC

D40 Michelle Rosenblatt

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

LAW OFFICES OF HALL & LIM
— A PROFESSIONAL LAW CORPORATION —
16430 Ventura Boulevard, Suite 200
Encino, California 91436

11 TIMED OUT LLC, a California company,

Case No.:

BC 5 9 9 0 4 3

12 Plaintiff,

COMPLAINT FOR:

13 vs,

- 1) STATUTORY MISAPPROPRIATION OF PUBLICITY (CIV. CODE § 3344)
- 2) COMMON LAW MISAPPROPRIATION OF PUBLICITY

14 LA GIRL JEWELRY INC., a California
15 corporation; and DOES 1 through 20 inclusive,

16 Defendants.

17 Plaintiff TIMED OUT LLC alleges as follows:

18 PARTIES

19 1. Plaintiff TIMED OUT LLC, a California corporation (hereinafter referred to as
20 "PLAINTIFF") is, and at all times mentioned herein was, a limited liability
21 company organized and existing under the laws of the State of California, with its principal place of business located
22 in La Jolla, California.

23 2. PLAINTIFF has been assigned the right to bring suit for misappropriation of image
24 against LA GIRL JEWELRY INC., a California corporation, and DOES 1 through 20 inclusive,
25

CITY/CASE: BC599043
LEA/DEF: BBS99043
RECEIPT #: C01539179044
DATE PAID: 10/27/15 09:52 AM
PAYMENT: \$435.00
RECEIVED:
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

11/02/2015

1 on behalf of Tiffany Toth (hereinafter referred to as "THE MODEL").

2 3. PLAINTIFF is informed and believes and on such information and belief alleges that
3 Defendant LA GIRL JEWELRY INC., a California corporation, (hereinafter referred to as "LA
4 GIRL"), is now, and at all times mentioned in this complaint was, an individual, with its principal
5 place of business located in Los Angeles, California.

6 4. PLAINTIFF is unaware of the true names and capacities of those Defendants named
7 herein as unidentified DOES 1 through 20 inclusive (hereinafter referred to as "DOES"), and,
8 therefore, sues such Defendants by such fictitious names. PLAINTIFF will seek leave of court to
9 amend this complaint when the true names of said Defendants are ascertained. PLAINTIFF is
10 informed and believes and on such information and belief alleges that each of the Defendants
11 named by such a fictitious name is, in some manner, responsible for the acts and omissions as
12 alleged herein and is, therefore, liable to PLAINTIFF for the damages alleged herein.

13 5. All Defendants are hereinafter collectively referred to as "DEFENDANTS".

14 6. PLAINTIFF is informed and believes and on such information and belief alleges that each
15 of the DEFENDANTS is now, and at all times mentioned in this complaint was, the agent,
16 servant, or employer of each of the other DEFENDANTS and that, in doing the acts alleged
17 herein, was acting within the course and scope of said agency, service, or employment, and with
18 the permission and consent of each of the other DEFENDANTS.

19 **JURISDICTION AND VENUE**

20 7. Venue is proper in this Court because the principal place of business of one or more
21 DEFENDANTS is situated in this county.

22 **GENERAL ALLEGATIONS COMMON TO ALL COMPLAINTS:**

23 8. PLAINTIFF is, and at all times mentioned herein was, a company that specializes in the
24 protection of personal image rights.

25 9. THE MODEL is, and at all times mentioned herein was, a professional model who earns

1 her living by modeling and selling her image to companies and individuals for the advertisement
2 of products and services.

3 10. PLAINTIFF is informed and believes and on such information and belief alleges that
4 DEFENDANTS are, and at all times mentioned herein were, the operator of the LA Girl Jewelry
5 Store, located at 700 Broadway Los Angeles, CA 90014 (hereinafter referred to as "Defendants'
6 RETAIL JEWELRY STORE").

7 11. DEFENDANTS have used THE MODEL's image and likeness in advertisements to
8 promote the patronage of Defendants' RETAIL JEWELRY STORE.

9 12. THE MODEL discovered that the DEFENDANTS were knowingly and without THE
10 MODEL's prior consent, and in violation of Civil Code section 3344 and common law, invading
11 THE MODEL's privacy by using THE MODEL's image and likeness on DEFENDANTS
12 advertisements for Defendants' RETAIL JEWELRY STORE, as well as on other advertisements
13 and promotional materials.

14 13. THE MODEL, at no time gave DEFENDANTS any permission to use her images for
15 use of any advertising materials produced.

16 14. DEFENDANTS have paid THE MODEL nothing for the use of THE MODEL's
17 image and likeness on DEFENDANTS' websites, advertisements, and promotional materials for
18 any advertising materials produced.

19 15. DEFENDANTS have never contacted THE MODEL, either directly or indirectly, to
20 request permission to use THE MODEL's image and likeness.

21 16. THE MODEL has assigned to PLAINTIFF her right to bring suit for misappropriation
22 of image against DEFENDANTS.

23 17. PLAINTIFF is in the best position to pursue this action against DEFENDANTS, as
24 PLAINTIFF is the holder and custodian of all of the evidence required in this case.

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FIRST CAUSE OF ACTION

(STATUTORY INVASION OF PRIVACY – CIVIL CODE § 3344)

18. PLAINTIFF re-alleges paragraphs 1 through 17 above, and incorporates the same by reference as though fully set forth herein.

19. PLAINTIFF discovered that DEFENDANTS were knowingly and without PLAINTIFF's or PLAINTIFF's model's prior consent, and in violation of Civil Code § 3344, invading the privacy of PLAINTIFF's model by using her images and likenesses in advertisements for Defendants' RETAIL JEWELRY STORE.

20. In the images used by DEFENDANTS to promote Defendants' RETAIL JEWELRY STORE, THE MODEL is readily identifiable in that any person seeing the photographs with the naked eye can reasonably determine that the persons depicted is THE MODEL. The MODEL's face and body is shown in each advertisement, and is clearly lighted and readily distinguishable.

21. DEFENDANTS' appropriation of the images of THE MODEL was for the purpose of advertising or soliciting patronage of the Defendants' RETAIL JEWELRY STORE.

22. DEFENDANTS' appropriation of the images of THE MODEL was for the purpose of advertising or soliciting partially nude entertainment by THE MODEL at the Defendants' RETAIL JEWELRY STORE.

23. DEFENDANTS' appropriation of the images of THE MODEL was for the purpose of advertising or soliciting a personal and intimate encounter with THE MODEL at the Defendants' RETAIL JEWELRY STORE.

24. DEFENDANTS did not request PLAINTIFF's or THE MODEL's permission, nor did PLAINTIFF or THE MODEL give DEFENDANTS permission, to use the images to advertise and promote the participation or patronage of the Defendants' RETAIL JEWELRY STORE.

25. Finally, DEFENDANTS failed to compensate THE MODEL for any use of THE MODEL's likeness and image.

1 26. As a direct and proximate result of DEFENDANTS' appropriation of the likenesses
2 and images of THE MODEL, DEFENDANTS made profits or gross revenues in an amount to be
3 established by proof at trial.

4 27. As a further direct and proximate result of the wrongful conduct set forth above,
5 PLAINTIFF, through its assignment from THE MODEL, sustained the following injuries and
6 damages: The unauthorized use of THE MODEL's images has damaged her in respect to their
7 right to control the commercial exploitation of her name, photographs, and likenesses, resulting in
8 damages, the total amount of which will be established by proof at trial.

9 28. PLAINTIFF is informed and believes and on such information and belief allege that as
10 a further direct and proximate result of the wrongful conduct set forth above, PLAINTIFF and
11 THE MODEL have also sustained the following injuries and damages: the value of THE
12 MODEL's image and likeness has been diluted due to DEFENDANTS unauthorized use of THE
13 MODEL's image and likeness to advertise their retail store. THE MODEL earns a living by
14 modeling and authorizing companies and individuals to use her images and likenesses to promote
15 their products and services.

16 **SECOND CAUSE OF ACTION**

17 (COMMON LAW INVASION OF PRIVACY - MISAPPROPRIATION)

18 29. PLAINTIFF re-alleges paragraphs 1 through 28 above, and incorporates the same by
19 reference as though fully set forth herein.

20 30. DEFENDANTS, in Los Angeles County in the State of California, and without
21 PLAINTIFF's or THE MODEL's consent, invaded THE MODEL's right to privacy, by
22 exploiting her likenesses and personalities, when they published advertisements for Defendants'
23 RETAIL JEWELRY STORE using the image and likeness of THE MODEL.

24 31. DEFENDANTS' use of the images and likeness of THE MODEL promoted patronage of
25 the Defendants' RETAIL JEWELRY STORE operated by DEFENDANTS.

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1 32. DEFENDANTS' conduct appropriated the images of PLAINTIFF's models for
2 DEFENDANTS' advantage in that the use of the images and personalities in connection with the
3 advertisements for the benefit of the DEFENDANTS, and DEFENDANTS' advertisements
4 contributed to the commercial promotion of the Defendants' RETAIL JEWELRY STORE
5 without PLAINTIFF's or THE MODEL's consent.

6 33. DEFENDANTS have paid PLAINTIFF and THE MODEL nothing for the use they have
7 made of the images and they have never contacted PLAINTIFF or THE MODEL for consent to
8 use her images.

9 34. PLAINTIFF, through assignment from THE MODEL, has been damaged by
10 DEFENDANTS' widespread unauthorized commercial use of THE MODEL's respective images
11 in an amount to be proven at trial.

12 35. PLAINTIFF is informed and believes and on such information and belief alleges that as a
13 further direct and proximate result of the wrongful conduct set forth above, THE MODEL has
14 also sustained the following injuries and damages: the value of her images and likenesses has
15 been diluted due to DEFENDANTS' unauthorized use of their images and likenesses to advertise
16 their retail jewelry store. THE MODEL earns a living by modeling and authorizing companies
17 and individuals to use their images and likenesses to promote their products.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. For damages as provided in Civ. Code § 3344;
2. For general damages according to proof;
3. For special damages according to proof;
4. For consequential and incidental damages in an amount according to proof at trial;
5. For the amount due, owing and unpaid to PLAINTIFF in the amount to be determined according to proof at trial plus interest at the legal rate;
6. For prejudgment interest according to law;
7. For costs of suit; and
8. For any other and further relief that the court considers proper.

Dated: October 21, 2015

LAW OFFICES OF HALL & LIM

By: 

Timothy A. Hall, Esq.
Attorneys for Plaintiff:
TIMED OUT LLC

General Information

Court	CA Superior Court - Los Angeles County
Docket Number	BC599043
Status	Open