

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
AN INDIVIDUAL DESCRIBED HEREIN BY THE
PSEUDONYM, "JANE DOE,"

Plaintiff,

SUMMONS

- against -

07604277

Index No.

SZUL JEWELRY, INC., Q2 ENTERTAINMENT,
and MITCHELL GOLDMAN,

Defendants.

FILED

DEC 31 2007
X

**NEW YORK
COUNTY CLERK'S OFFICE**

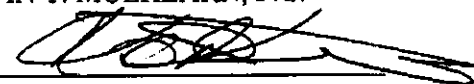
To the above named Defendant(s):

You are hereby Summoned and required to serve upon Plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of the venue designated is that the residence and/or principal place of business of Defendants is located within this district.

Dated: December 27, 2007

KEVIN T. MULHEARN, P.C.



Defendants' addresses:

KEVIN T. MULHEARN, ESQ.

Attorneys for Plaintiff

Prel Plaza - Suite 8

60 Dutch Hill Road

Orangeburg, New York 10962

(845)398-0361

SZUL JEWELRY, INC.
12 East 46th Street, 2nd Floor East
New York, NY 10017

Q2 ENTERTAINMENT
2 Bond Street
New York, NY 10012

MITCHELL GOLDMAN
2 Bond Street
New York, NY 10012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
AN INDIVIDUAL DESCRIBED HEREIN BY THE
PSEUDONYM, "JANE DOE,"

07604277

Plaintiff,

VERIFIED COMPLAINT

- against -

SZUL JEWELRY, INC., QZ ENTERTAINMENT,
and MITCHELL GOLDMAN.

Defendants.

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PARTIES

1. Plaintiff, "JANE DOE," is an individual who resides, and at all material times, has resided in the County of Westchester, State of New York.
2. Defendant, SZUL JEWELRY, INC. ("SZUL"), upon information and belief, is and at all material times has been, a New York corporation, with its principal place of business located at 12 East 46th Street, 2nd Floor East, New York, New York 10017.
3. Defendant, QZ ENTERTAINMENT ("Q2"), upon information and belief, is and at all material times has been, a New York business entity, with its principal place of business located at 2 Bond Street, New York, New York 10012.
4. Defendant MITCHELL GOLDMAN ("GOLDMAN"), is an individual, and, upon information and belief, resides in New York, New York.
5. Defendant, GOLDMAN, upon information and belief, is a principal of Defendant Q2.

VENUE

6. This Court has in personam jurisdiction over Defendants pursuant to New York CPLR §§ 301 and 302, in that Defendants regularly conduct business in this district, Defendants reside in this district, and a substantial part of Plaintiff's claims arose in this district.

BACKGROUND

7. Plaintiff is a 37 year old female. She has worked periodically as a model beginning in approximately 1990.
8. Beginning in 2001 and continuing to present, Plaintiff has worked as a live on-air host for a national cable network program. She has received several commendations with respect to said services.
9. Plaintiff has been acting periodically since approximately 2003. Since 2001, she has obtained clients in the industrial, commercial, tradeshow, modeling and film industries.
10. To develop her acting, modeling and TV hosting career, Plaintiff has made a substantial investment, in terms of time, money, and resources, with respect to the development of career goals including but not limited to a personal website, headshots, acting and TV hosting classes, and various marketing expenses with respect to various aspects of marketing herself.
11. In addition to her work in the film and television industries, Plaintiff has worked, and continues to work, as an educator of children, and plans to earn a Master's degree in either elementary education or speech therapy.
12. Plaintiff has been married for approximately two (2) years.
13. At all times during her modeling, acting and hosting career, Plaintiff has worked hard to project a wholesome image and has been extremely careful to avoid doing any work in the industry that would cheapen or tarnish her reputation, such as nudity, pornography or degrading depictions in any manner.
14. Defendant, SZUL, is an exclusively Internet-based company, which markets and sells on-line a wide selection of diamond, gemstone and pearl jewelry.
15. Defendant, SZUL, was founded by jewelry industry experts, and is a privately held company.
16. On or about November 2, 2007, Plaintiff responded to an ad on the Actors Access website, which stated that SZUL, through its production company, Q2, was looking for two persons to cast for its "Viral Web Spot" commercial.

17. Said ad provided that it was seeking:
[Man] - Caucasian or Hispanic, 20's - 30's, average joe. Young Ben Stiller type.
No pretty boys, please. Good comedic actor.
[Woman] - Caucasian or Hispanic, 20's - 30's. Beautiful. Great Body. A real stunner.
Good comedic skills a plus.
18. At the audition held on or about November 6, 2007, in New York, New York, all actors were told that the SZUL spot would be of a comedic nature. The idea presented was that a shy average joe guy would get a beautiful woman and get her excited - by placing a necklace on her neck.
19. Defendants hired Plaintiff for the spot, and hired an actor named Tommy Dickie for the average joe role.
20. On November 9, 2007, the film shoot for the SZUL-Q2 Commercial took place at 30 48 33rd Street, Astoria, New York.
21. For more than three quarters of the shooting day, the comedic storyline was filmed.
22. At the audition, Defendants instructed Plaintiff to feign excitement for a few seconds while sitting down and in an upright position after the young man placed the necklace on her neck.
23. At the shoot, however, the Director, Dan Morales, after shooting the above scene, also directed Plaintiff to feign excitement while lying down, and thus continued and lengthened the scene in this manner.
24. Plaintiff continued to act in a comedic style with smile on her face, even while feigning excitement. However, Mr. Morales directed Plaintiff to feign excitement without smiling. He asked her to keep repeating the action until he thought he got the most authentic looking film piece.
25. At all material times, Defendants conveyed to Plaintiff that the part of her feigning excitement would be of extremely limited duration, as that part was just the very ending of a much more involved comedic storyline.
26. Mr. Morales directed Plaintiff to feign excitement, with heavy breathing, and movement of her hands from her chest area to upwards toward the back of her neck, for a minute or

two, so that Defendants could film the best possible piece of acting to complete the comedic storyline. Plaintiff, as an actress attempting to professionally follow her director's instructions, complied with these directions.

27. Several days after the conclusion of the shoot on November 9, 2007, Plaintiff was paid the sum of \$200.00 for her services.
28. At no time did Plaintiff ever execute a "Model's Release" or any other contract or agreement which authorized any of the Defendants to release her likeness, picture, image, or name for commercial purposes, through the Internet or otherwise.
29. At no time did Plaintiff consent to or authorize the use of her likeness, picture, image, or name, to simulate a female having an orgasm or otherwise experiencing sexual pleasure.
30. Upon completion of shooting, each of the Defendants knew, or should have known, that Plaintiff had never signed a Model's Release; or otherwise consented to the use of her likeness, picture, image or name for any commercial purposes, and particularly for a commercial which depicted a woman having an orgasm or otherwise experiencing sexual pleasure.
31. Nevertheless, in December, 2007, Defendant SZUL released on the Internet, through "You-Tube" and otherwise, a commercial advertisement for its jewelry in a spot entitled "Rock Her World." Said advertisement consisted of a 35 second spot focused without interruption on Plaintiff, lying down and wearing a SZUL necklace, appearing to have an orgasm or otherwise experiencing sexual pleasure.
32. Nowhere in this advertisement is the male actor who played the average joe role, and the advertisement has been stripped of all elements of comedy.
33. Indeed, the music to the commercial is bump-and-grind burlesque type music, which further provides the advertisement with a decidedly pornographic look, feel and sound.

AS AND FOR A FIRST CAUSE OF ACTION:
VIOLATION OF CIVIL RIGHTS LAW § 51.

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "33" herein, as if each has been fully set forth at length.
35. By reason of the aforesaid, Defendant SZUL, has, knowingly, intentionally, and maliciously, used, and continues to use, Plaintiff's likeness, picture, image, and voice, within the State of New York, for purposes of advertising and/or trade, without Plaintiff's implied or expressed consent, release or authorization, and Defendant SZUL has caused to be transferred, circulated, sold, distributed, used, displaced, advertised, reproduced and/or published, both directly and indirectly, certain pictures, negatives, photographs, audiotapes, videotapes and/or other film portrayals of Plaintiff.
36. Defendant SZUL has engaged in this selfish exploitation of Plaintiff's identity and privacy for its own personal and commercial gain, and said Defendant has maliciously and unlawfully invaded Plaintiff's privacy in violation of §§ 50 and 51 of the New York Civil Rights Law.
37. Defendant SZUL has caused Plaintiff to suffer serious irreparable harm, and caused her to be held to public view in the most personal and damaging manner, and as a direct and proximate result, Plaintiff has suffered and continues to suffer severe damages, including but not limited to severe emotional distress, pain and humiliation, and a loss of professional reputation and goodwill, all in a sum not less than \$2.5 million.

AS AND FOR A SECOND CAUSE OF ACTION:
VIOLATION OF GENERAL BUSINESS LAW § 349.

38. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "37" herein, as if each has been fully set forth at length.
39. New York General Business Law § 349 prohibits "deceptive acts or practices in the

- conduct of any business, trade or commerce or in the furnishing of any services.”
40. The aforesaid business practices of Defendants were deceptive and misleading in a material respect – and in violation of New York General Business Law § 349.
 41. The aforesaid business practices of Defendants affects and concerns the public interest in New York and in fact caused injury to the public-at-large.
 42. Plaintiff was injured by reason of Defendants’ illegal business practices as aforesaid, and as such has been damaged in a sum not less that \$2.5 million, and is also entitled to receive attorneys’ fees pursuant to New York General Business Law § 349 (h).

AS AND FOR A THIRD CAUSE OF ACTION:
UNFAIR COMPETITION

43. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “42” herein, as if each has been fully set forth at length.
44. The aforesaid business practices and schemes of Defendants caused Defendants to misappropriate for their own commercial advantage - the skills, expenditures and labors of Plaintiff.
45. Defendants obtained access to Plaintiff’s skills, expenditures and labors through their acts of fraud and deception as set forth hereinabove and/or through an abuse of a fiduciary or confidential relationship with Plaintiff.
46. Defendants’ such use of Plaintiff’s skills, expenditures and labors deprived Plaintiff of a fair opportunity to reap the due profits and benefits derived from her skills, expenditures and labors.
47. As a direct and proximate result of Defendants’ conduct, Plaintiff suffered damages by reason of her loss of goodwill and professional reputation in a sum not less than \$2.5 million.

AS AND FOR A FOURTH CAUSE OF ACTION:

UNJUST ENRICHMENT

48. Plaintiff repeats and realleges every allegation contained in paragraphs "1" through "47" herein, as if each has been fully set forth at length.
49. By reason of the aforesaid, Defendants received substantial services from Plaintiff during the period at issue.
50. By reason of the aforesaid, Defendants benefitted substantially from the receipt of said services.
51. Under principles of equity and good conscience, Defendants should be required to pay for services provided to them by Plaintiff, in a sum not less than \$2.5 million.

AS AND FOR A FIFTH CAUSE OF ACTION:

FRAUD

52. Plaintiffs repeat and reallege every allegation contained in paragraphs "1" through "51" herein, as if each has been fully set forth at length.
53. Upon information and belief, from November 2, 2007 to present, Defendants made numerous material statements of fact to Plaintiff, with respect to the fact that Defendants were shooting a commercial for SZUL which was primarily of a comedic nature with a slightly sexy storyline.
54. Upon information and belief, the various statements made by Defendants to Plaintiff with respect to the comedic nature of the SZUL advertisement were false, known by the Defendants to be false, or made by Defendants with reckless disregard of the truth or falsity of said statements.
55. Upon information and belief, these statements were made by Defendants to induce Plaintiff to rely upon them and entice her to be an actor for said commercial.
56. Plaintiff did justifiably rely on said statements pertaining to the nature of the SZUL

commercial at issue, and thus acted in said commercial.

57. Has Plaintiff known that the SZUL commercial was entirely of a pornographic and/or sexually explicit or sexually titillating nature, she would not have agreed to act for any said commercial.
58. Upon information and belief, the false statements made by Defendants to Plaintiff were made willfully and maliciously, to the considerable detriment of Plaintiff.
59. The aforesaid statements have caused, and will continue to cause Plaintiff to suffer severe damages, including emotional pain, distress and humiliation, loss of professional reputation and goodwill, and loss of professional opportunities, in an amount not less than \$2.5 million.
60. Plaintiff, moreover, is entitled to punitive damages from Defendants for their fraudulent conduct in an amount not less than \$2.5 million.

AS AND FOR A SIXTH CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTIES

61. Plaintiff repeats and realleges every allegation contained in paragraphs "1" through "60" herein, as if each has been fully set forth at length.
62. At all material times, Defendants Q2 and GOLDMAN, owed Plaintiff fiduciary duties to act in good faith and in her best interests during their association.
63. Plaintiff, indeed, at all material times, trusted and reposed confidence in said Defendants and reasonably relied on their superior expertise and knowledge in the advertising industry.
64. Defendants breached their fiduciary duties owed to Plaintiff by failing to make complete and truthful disclosures to Plaintiff as to the nature of the SZUL commercial being filmed, produced and marketed.
65. As a direct and proximate result of the aforesaid conduct, Plaintiff has suffered, and continues to suffer, severe damages, including but not limited to severe emotional pain, distress and humiliation, and a loss of professional reputation and goodwill, in a sum not

less than \$2.5 million.

WHEREFORE, Plaintiff demands Judgment against Defendants, jointly and severally, as follows:

- (1) Under the First Cause of Action,
 - a. A declaration that Defendant SZUL's conduct was in violation of §§ 50 and 51 of the New York Civil Rights Law.
 - b. That Defendants be preliminarily and permanently enjoined from transferring, selling, distributing, using, displaying, assigning, promoting, advertising or causing to be published, distributed, sold or reproduced, photographs, films, videotapes, audiotapes, portraits, or other pictorial portrayals of Plaintiff herein, including but not limited to the Internet media.
 - c. That until hearing of Plaintiff's application for a preliminary injunction, Defendants, their agents, assigns, employees, independent contractors, or other persons acting on their behalf or at their direction, are restrained and enjoined from transferring, selling, distributing, using, displaying, assigning, promoting, exhibiting, advertising, or causing to be published, distributed or sold any photographs, films, videotapes, audiotapes, portraits, or other pictorial portrayals of Plaintiff herein, including but not limited to the Internet media.
 - d. That Defendants be ordered to pay Plaintiff compensatory damages in a sum not less than \$2.5 million.
 - e. That Defendants be ordered to pay Plaintiff punitive damages in a sum not less than \$2.5 million.
- (2) Under the Second Cause of Action,
 - a. That Defendants be ordered to pay Plaintiff compensatory damages in a sum not less than \$2.5 million.
 - b. That Defendants be ordered to pay Plaintiff all of her attorneys' fees

incurred with respect to this action, pursuant to New York General Business Law § 349 (h), and otherwise.

- (3) Under the Third Cause of Action,
 - a. That Defendants be ordered to pay Plaintiff compensatory damages in a sum not less than \$2.5 million.
 - b. That Defendants be ordered to pay Plaintiff punitive damages in a sum not less than \$2.5 million.
- (4) Under the Fourth Cause of Action,
 - a. That Defendants be ordered to pay Plaintiff compensatory damages in a sum not less than \$2.5 million.
 - b. That Defendants be ordered to pay Plaintiff punitive damages in a sum not less than \$2.5 million.
 - c. That Plaintiff be awarded restitution and that Defendants be required to account for and disgorge all profits and financial gains gleaned by their commercial exploitation of Plaintiff's image, name, likeness, picture, pursuant to their use of said image, name, likeness, and/or picture through any commercial shoots and/or published advertisements.
- (5) Under the Fifth Cause of Action,
 - a. That Defendants be ordered to pay Plaintiff compensatory damages in a sum not less than \$2.5 million.
 - b. That Defendants be ordered to pay Plaintiff punitive damages in a sum not less than \$2.5 million.
- (6) Under the Sixth Cause of Action,
 - a. That Defendants be ordered to pay Plaintiff compensatory damages in a sum not less than \$2.5 million.
 - b. That Defendants be ordered to pay Plaintiff punitive damages in a sum not less than \$2.5 million.

- (7) That Plaintiff receive the costs and disbursements of this action, as well as reasonable attorneys' fees, and any other, different or further relief as to the Court may seem just, proper or necessary.

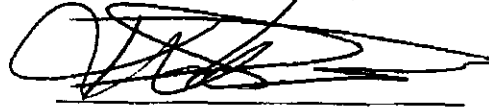
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: December 21, 2007
Orangeburg, New York

Respectfully submitted,

KEVIN T. MULHEARN, P.C.

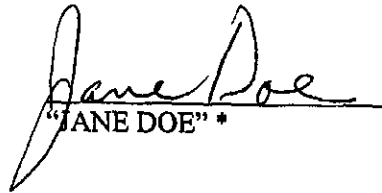


By: Kevin T. Mulhearn, Esq.
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Phone: (845) 398-0361
Fax: (845) 398-3836
Email: Kmulhearn@ktmlaw.net

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

"JANE DOE" being duly sworn says: I am a Plaintiff in the action herein; I have read the annexed Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



"JANE DOE" *

NOTARY PUBLIC

KEVIN T. MULHEARN
Notary Public, State of New York
No. 02MU5047687
Qualified in Rockland County
Commission Expires August 7, 2009

* "JANE DOE" has signed this verification under her real name. Upon Court's issuance of a protective order, said verification will be filed under seal with the Court.

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COUNTY OF NEW YORK

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Plaintiff,

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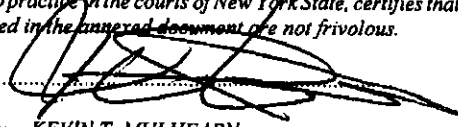
SUMMONS AND VERIFIED COMPLAINT

KEVIN T. MULHEARN, P.C.
Attorneys for Plaintiff
Office Address & Tel. No.:
60 Dutch Hill Road, Suite 8
Orangeburg, New York 10962
(845) 398-0361

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: December 27, 2007

Signature.....



Print Signer's Name: KEVIN T. MULHEARN

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for
