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2009 FEB -6 PM 3:17
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF
LOS ANGELES

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Attorneys for Plaintiffs
JEAN PAUL EPSTEIN and GARY STRETCH

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JEAN PAUL EPSTEIN, an individual;
GARY STRETCH, an individual,

Plaintiffs,

vs.

METRO-GOLDWYN-MAYER INC., a
California corporation; COLUMBIA
PICTURES INDUSTRIES, INC., a
Delaware Corporation; SONY PICTURES
RELEASING CORPORATION, a
Delaware Corporation; TWENTIETH
CENTURY FOX FILM CORPORATION, a
Delaware Corporation; THE ROBERT
SIMONDS COMPANY, a California
corporation; ROBERT SIMONDS, an
individual; LEN BLUM, an individual; and
STEVE MARTIN, an individual; and
SHAWN LEVY, an individual,

Defendants.

CV09-0925 DDP (AGRx)

COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND UNFAIR
COMPETITION

JURY TRIAL DEMANDED

Plaintiffs, Attorneys for Plaintiffs JEAN PAUL EPSTEIN and GARY STRETCH, as
and for their Complaint, allege as follows:

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I

THE PARTIES

1. Plaintiff JEAN PAUL EPSTEIN ("EPSTEIN") is, and at all relevant times herein mentioned was, an individual residing in the City of Sherman Oaks and County of Los Angeles, California.

2. Plaintiff GARY STRETCH ("STRETCH") is, and at all relevant times herein mentioned was, an individual residing in the City of Sherman Oaks and County of Los Angeles, California.

3. Defendant METRO-GOLDWYN-MAYER INC. ("MGM") is, and at all relevant times mentioned herein was, a corporation organized and existing pursuant to the laws of the State of California with its principal place of business in the City and County of Los Angeles, California.

4. Defendant COLUMBIA PICTURES INDUSTRIES, INC. (COLUMBIA PICTURES") is, and at all relevant times mentioned herein was, a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in the City and County of Los Angeles, California.

5. Defendant SONY PICTURES RELEASING CORPORATION ("SONY PICTURES") is, and at all relevant times mentioned herein was, a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in the City and County of Los Angeles, California.

6. Defendant TWENTIETH CENTURY FOX FILM CORPORATION (TWENTIETH CENTURY FOX") is, and at all relevant times mentioned herein was, a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in the City and County of Los Angeles, California.

7. Defendant THE ROBERT SIMONDS COMPANY ("SIMONDS COMPANY") is, and at all relevant times mentioned herein was, a corporation organized and existing pursuant to the laws of the State of California with its principal place of business in the City and County of Los Angeles, California.

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8. Defendant ROBERT SIMONDS ("SIMONDS") is, and at all relevant times herein mentioned was, an individual residing in the City of Los Angeles and County of Los Angeles, California.

9. Defendant LEN BLUM ("BLUM") is, and at all relevant times herein mentioned was, an individual residing in the City of Los Angeles and County of Los Angeles, California.

10. Defendant STEVE MARTIN ("MARTIN") is, and at all relevant times herein mentioned was, an individual residing in the City of Los Angeles and County of Los Angeles, California.

11. Defendant SHAWN LEVY ("LEVY") is, and at all relevant times herein mentioned was, an individual residing in the City of Los Angeles and County of Los Angeles, California.

II

JURISDICTION AND VENUE

12. This is an action for infringement of copyright pursuant to 17 U.S.C. §101 *et seq.*, and unfair competition pursuant to 15 U.S.C. §1125(a) and California law. Subject matter jurisdiction is conferred by 17 U.S.C. §501, 15 U.S.C. §1121, 28 U.S.C. §§ 1331 and 1338, and the doctrine of pendent jurisdiction.

13. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400 because all of the corporate Defendants are corporations which are doing business and can be found throughout this district and because the actions of the defendant complained of herein took place within this district.

III

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

14. In the days and week following the tragic terrorist attacks of September 11, 2001, EPSTEIN and STRETCH were inspired to find comedic material in the ways in which some might react to the threat of terrorism.

1 15. Specifically, EPSTEIN and STRETCH wrote, produced, directed and starred
2 in an eleven and a half minute film entitled "An Evening With the President" which dealt
3 in a comedic fashion with how a totally fictional first African American President might
4 address the threat of terrorism (the "Picture").

5 16. The Picture can presently be found on Spike.com (formerly iFilm) at
6 <http://www.spike.com/video/evening-with/2420726>. It is also on YouTube at
7 http://www.youtube.com/watch?v=17ffHh_AatU.

8 17. The Picture is protected by United States Copyright Office copyright number
9 PAu003370926. The copyright registration is owned by EPSTEIN and STRETCH.

10 18. Among the most crucial scenes in the Picture is a sequence in which a
11 supposed Afghani terrorist trains himself to pass through U.S. Immigration by learning to
12 say "How about a hamburger" with a flawless American accent (the "Hamburger
13 Scenes"). A substantial portion of the comedic material in the Picture is built around the
14 Hamburger Scenes.

15 19. In another important scene in the Picture, the President of the United States
16 conducts a Press Conference and focuses prominently on an attractive female journalist
17 wearing a red dress and prominently features the word "flow" (the "Press Conference
18 Scene").

19 20. On February 8, 2002, EPSTEIN and STRETCH posted the Picture on iFilm.
20 It has been viewed on that site alone well over one thousand (1,000) times.

21 21. After posting the Picture on iFilm, EPSTEIN sent copies to the Creative
22 Artists Agency and William Morris Agency, among other agencies.

23 22. Approximately, four (4) years after EPSTEIN and STRETCH first released the
24 Picture on iFilm, on February 10, 2006, MGM and COLUMBIA PINK PANTHERS
25 released the motion picture "THE PINK PANTHER" (the "PINK PANTHER") in theaters.

26 23. MGM and the SIMONDS COMPANY are the production companies on the
27 PINK PANTHER.
28

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1 24. MGM, COLUMBIA PICTURES, SONY PICTURES and TWENTIETH
2 CENTURY FOX are the distributors of the PINK PANTHER.

3 25. SIMONDS was the Producer of the PINK PANTHER.

4 26. BLUM and MARTIN are the Screenwriters of the PINK PANTHER. MARTIN
5 was also the PINK PANTHER's star.

6 27. LEVY was the Director of the PINK PANTHER.

7 28. The PINK PANTHER prominently features a sequence which is substantially
8 similar to the Hamburger Scenes in the Picture. Indeed one critic has referenced that
9 scene as "the funniest bit" in the movie.

10 29. There is also a scene in the PINK PANTHER that is substantially similar to the
11 Press Conference Scene.

12 30. Defendants had access to the Picture by virtue of its availability on iFilm,
13 among other sites, and as a result of copies sent by EPSTEIN to the Creative Artists
14 Agency and William Morris Agency, among other agencies.

15 31. On or about February 6, 2009, MGM and COLUMBIA are scheduled to
16 release THE PINK PANTHER 2 ("PINK PANTHER 2") in theaters.

17 32. PINK PANTHER 2 prominently features additional scenes which utilize the
18 basic comedic material of the Hamburger Scenes in the Picture. Moreover, advertising
19 for PINK PANTHER 2 has focused prominently on those scenes from both PINK
20 PANTHER and PINK PANTHER 2.

21 33. By virtue of the use of the Hamburger Scenes and the Press Conference
22 Scene in the PINK PANTHER and the Hamburger Scenes in PINK PANTHER 2,
23 Defendants have copied the Picture.

24 34. Estimates on imdb.com put domestic box office gross for PINK PANTHER at
25 \$82,200,000.00 and worldwide box office gross at \$140,000,000.00. Defendants paid
26 EPSTEIN and STRETCH absolutely nothing on account of their use of the Hamburger
27 Scene or the Press Conference Scene.

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IV

**FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**
[17 U.S.C. § 101 *et seq.*]

35. EPSTEIN and STRETCH incorporate herein by this reference paragraphs 1 through 24, above.

36. As alleged above, have been exploiting, distributing and/or publicly performing in this judicial district a motion picture – the PINK PANTHER – and plan to exploit, distribute and/or publicly perform a second motion picture – PINK PANTHER 2 – which infringes EPSTEIN and STRETCH's copyright in violation of 17 U.S.C. § 106.

37. Defendants' direct and willful acts of infringement, as alleged above, will cause irreparable harm to EPSTEIN and STRETCH unless such conduct is preliminarily and permanently enjoined.

38. EPSTEIN and STRETCH have no adequate remedy at law.

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**SECOND CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER CALIFORNIA LAW**

39. EPSTEIN and STRETCH incorporate herein by this reference paragraphs 1 through 24, above.

40. By reason of defendant's infringement, and threatened infringement, Defendants are liable for unfair competition, deceptive advertising and unfair trade practices in violation of California law.

41. As a result of Defendants' acts, EPSTEIN and STRETCH has sustained and will continue to sustain substantial injury, loss and damage to its ownership rights.

42. Defendants' unlawful conduct will continue to damage EPSTEIN and STRETCH unless enjoined by this Court.

43. EPSTEIN and STRETCH have no adequate remedy at law.

WHEREFORE, EPSTEIN and STRETCH requests that this Court grant the following relief:

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1. That Defendants and their agents, servants, employees and those persons in active concert or participation with Defendants be enjoined and restrained:

a. From infringing EPSTEIN and STRETCH's copyrights in any manner including but not limited to the sale, promotion, display, distribution or advertising of Motion Picture products including but not limited to the PINK PANTHER and PINK PANTHER 2;

b. From distributing, advertising, promoting, or offering in any manner any of EPSTEIN and STRETCH's copyrights including but not limited to the copyright in the Picture as utilized in the PINK PANTHER and PINK PANTHER 2;

2. That an accounting and judgment be rendered against Defendants for:

a. For treble the amount of EPSTEIN and STRETCH's damages in an amount to be proven at trial;

b. For treble the amount of Defendant's direct and indirect profits in an amount to be proven at trial; and/or

c. Statutory damages in the amount of \$100,000.00 for willful copyright infringement for each copyrighted work infringed by defendant as provided for in 17 U.S.C. § 504(c)(2);

3. That EPSTEIN and STRETCH receive punitive and exemplary damages in an amount to be determined;

4. For reasonable attorney's fees;

5. For costs of suit herein; and

6. For such other and further relief as the Court deems just and proper;

Dated: February 6, 2009

LAW OFFICES OF MICHAEL A. GARDINER

By: 
Michael A. Gardiner

Attorneys for Plaintiffs JEAN PAUL EPSTEIN and GARY STRETCH