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1 COM
2 JOSEPH F. KYLE, ESQ.
3 BAR NO. 04660
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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9 ALIX DAILY)
10)
11 Plaintiff)
12 vs.)
13 CAPACITY PICTURES, LLC)
14 C/O FOX ROTHCHILD, LLP,)
15 REGISTERED AGENT FOR)
16 CAPACITY PICTURES, LLC;)
17 PETER TOLAN dba as)
18 CREATIVE ARTISTS AGENCY CAA;)
19 LESLIE TOLAN and DOES 1-5 AND ROE)
20 COROPORATIONS 6-10 INCLUSIVE)
21 Defendants)

Case No.
Department No.
A- 10- 617721- C
XI X
(Jury Demand)

COMPLAINT FOR DAMAGES

Now comes ALIX DAILY by and through her attorney, JOSEPH F. KYLE, of the law firm of KYLE & KYLE, who for her complaints against the Defendants allege as follows

I.
JURISDICTION

1. Plaintiff ALIX DAILY was at all times relative herein a resident of the County of Clark, State of Nevada.

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2. Defendant, CAPACITY PICTURES, LLC is a Nevada Company, licensed to and doing business in Clark County, Nevada.

3. PETER TOLAN is, upon information and belief, is a resident of Los Angeles, California, is represented by CREATIVE ARTISTS AGENCY CAA and has authorized Creative Artists Agency act as his statutory agent for purposes of service of summons

4. LESLIE TOLAN is, upon information and belief, is a resident of Los Angeles, California, is represented by CREATIVE ARTISTS AGENCY CAA and has authorized Creative Artists Agency act as her statutory agent for purposes of service of summons

5. The identities of Defendants DOES 1 through 5 and ROE CORPORATIONS 6 through 10 are unknown at this time. Plaintiff alleges that the Defendants herein designated as Does and Roe Corporations are in some manner responsible for the damages done to the Plaintiffs. The Plaintiffs request leave of the Court to amend this Complaint to name the Does and Roe Corporations Defendants specifically when their true identities become known.

II.

FACTS COMMON TO ALL CAUSES OF ACTION

6. Plaintiff, Alix Daily is the biological niece of defendant, Leslie Tolan and the niece of defendant, Peter Tolan by virtue of the marriage between Leslie Tolan and Peter Tolan.

7. "Finding Amanda" is a major motion picture movie that was released on DVD to the general public on September 16, 2008. The film has also been released in other media forms including but not limited to; movie theatres, pay per view, cable broadcast, television broadcast, online streaming and downloads, and/or in film festivals around the world. The film has received substantial publicity worldwide and has been promoted, advertised, reviewed, discussed and/or

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1 critiqued in all forms of press and media outlets including but not limited to; television,
2 newspapers, radio, internet, billboards, books, posters and/or direct marketing promotional
3 outlets. Defendant, Capacity Pictures LLC is the production company responsible for all aspects
4 of the films content and its release for promotion, sale and viewing to the general public
5 domestically and worldwide. Defendant, Peter Tolan is the writer and director of the film and
6 was responsible for, and oversaw all aspects of, the films creation and production. Leslie Tolan
7 is the executive producer of the film and shared in the responsibilities for the writing, direction,
8 creative direction and promotion of the film.
9

10
11 8. On or about a date uncertain, Leslie and Peter Tolan were approached by Plaintiff's mother
12 (Leslie Tolan's biological sister) for assistance, guidance and help in dealing with a family crisis
13 concerning their niece, Alix Daily who had allegedly incurred what were described as potential
14 legal, psychological, mental and/or medical issues and problems that were explicitly private and
15 confidential to an extreme. Plaintiff is not a public figure.

16
17 9. After accepting the confidential and private information about the aforementioned issues and
18 problems, Leslie and Peter Tolan agreed to provide help, guidance and assistance to Plaintiff's
19 mother in order to find a resolution to such issues and problems being allegedly incurred by their
20 niece, Alix Daily.

21
22 10. After being involved in every aspect of this attempt at intervention into their niece's private
23 and confidential issues, Leslie and Peter Tolan decided to write and produce a major motion
24 picture about the incidents, facts and circumstances of said intervention into the private and
25 confidential problems and issues of their niece, Alix Daily. In fact, the product of that decision
26 is the movie "Finding Amanda" as more fully set forth and described herein. Capacity Pictures,
27 LLC conspired with Leslie and Peter Tolan to produce "Finding Amanda" and was involved with
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1 the Tolans in all aspects of said production.

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3 11. The movie, "Finding Amanda" was autobiographical and/or biographical and although an
4 attempt was made to fictionalize some of the content, even a cursory review of the plot, story,
5 dialogue, set scenery and design, characters and/or events portrayed in the movie could only
6 derive one conclusion, that in fact the movie was based on real life events and individuals
7 including Peter Tolan, Leslie Tolan and Alix Daily.

8
9 12. Alix Daily is portrayed in the movie as Amanda which is the basis for the title, "Finding
10 Amanda". The lead character in the movie, Taylor Peters, is an autobiographical portrayal of
11 Peter Tolan as it relates to the problems and issues concerning his niece Alix Daily. Leslie Tolan
12 is also portrayed by a character in the movie and well as everyone in Plaintiff's immediate
13 family. The cover of the DVD and promotional material states "SHE'S HIS NIECE. REALLY!"
14 Down to the most explicit details, the writers, directors and producers did very little to disguise
15 the fact that a real life story was being told about Plaintiff in the movie, "Finding Amanda".
16 These details include, but are not limited to, real life dialogue, facts and events that had actually
17 occurred and were known to be true by defendants together with the physical appearance,
18 demeanor, dress, and mannerisms of most characters and particularly that of the character
19 Amanda. The places and things portrayed in the movie were also all substantially similar to real
20 life and the life of Alix Daily.

21
22 13. At no time whatsoever did Alix Daily ever provide consent or permission, either express or
23 implied, nor was said permission sought, released or obtained by defendants for defendants to
24 write, produce, discuss in public, promote or distribute a movie about her life, events in her life,
25 confidential and private personal, medical or legal issues or use of her likeness to portray a
26 character in the movie, "Finding Amanda", which recounted such facts, personal issues and
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1 events about plaintiff, either in whole or in part.

2 14. Defendants were not privileged and possessed no rights, legal or otherwise to write, produce,
3 promote, discuss in public, sell or distribute the movie "Finding Amanda" where to do so
4 violated plaintiff's rights and caused plaintiff damages and injury as more fully set forth below.
5

6 **III.**

7 **FIRST CAUSE OF ACTION**

8 **INTENTIONAL AND/OR NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS.**

9 15. Plaintiff re-alleges and re-avers the counts set forth in paragraphs 1-14 as if fully rewritten
10 herein.

11 16. Plaintiff, Alix Daily hereby further states that as a direct and proximate result of the
12 intentional torts and/or negligence of defendants, plaintiff has been caused to incur and in an
13 unreasonable manner, has been inflicted with extreme and/or serious emotional distress.
14

15 17. The conduct of defendants was outrageous and was intended to cause, or was with reckless
16 disregard of the probability of causing severe or extreme emotional distress, or in the alternative,
17 the negligent conduct of defendants or willful violation of statutory standards caused plaintiff to
18 incur serious emotional distress.

19 18. Due to the family relationship of defendants, Peter and Leslie Tolan, the extreme and
20 outrageous character of the conduct arose from an abuse of such position and relationship as
21 their niece thereby giving said defendants the power to affect plaintiff's interests in a uniquely
22 damaging manner deemed to cause an exacerbation of that which would have incurred had
23 defendants not held such a relationship.
24

25 19. The extreme and outrageous character of defendants' conduct arose from defendant's
26 knowledge and prior knowledge that plaintiff was particularly susceptible to emotional distress.
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excess of \$10,000.

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Plaintiff's susceptibility to emotional distress was exploited by defendants after their coming into possession of knowledge of plaintiff's legal issues and plaintiff's physical, mental and/or psychological, conditions when defendants' were approached for assistance, guidance and help for the same by plaintiff's mother. Defendants proceeded to utilize such knowledge of plaintiff's susceptibility to inflict the extreme and/or severe emotional distress upon plaintiff for personal and financial gain. Peter Tolan used this platform to advance his career by making a directorial debut in film at the expense of exploitation of his niece who he knew would be caused emotional distress by the release of "Finding Amanda"

20. As a direct and proximate result of the outrageous and/or extreme conduct of Defendants, plaintiff, Alix Daily has been caused to incur severe and/or serious emotional distress including but not limited to, permanent psychological damage due to, inter alia, severe depression, irreparable grief, anxiety disorder, betrayal, humiliation, embarrassment, insecurities, loss of anonymity, and fear, all of which were so serious and severe that the resulting symptoms caused physical manifestations of injury and illness that are permanent.

21. As a further direct and proximate cause of plaintiff's injuries, plaintiff has been caused to incur pain and suffering, medical and psychological treatment, medical bills, loss of and damage to inter-personal and family relationships and due to the permanent nature of said injuries, expects to incur further such damages and expenses in the future.

22. As a result of the violation, the plaintiff was caused emotional distress and monetary damages and attorney fees for which the Plaintiff seeks compensation in an amount in excess of \$10,000 from defendants.

23. The acts of the Defendants were intentional and were done with malice and in violation of NRS 42-005 and Plaintiff is entitled to punitive damages from the defendants in an amount in

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1 excess of \$10,000.
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3 IV.

4 SECOND CAUSE OF ACTION

5 INVASION OF PRIVACY

6
7 24. Plaintiff re-alleges and re-avers the counts set forth in paragraphs 1-23 as if fully rewritten
8 herein.

9
10 25. Defendants in writing, producing, promoting, discussing in public, selling and distributing
11 the movie "Finding Amanda" to the public, worldwide, have invaded plaintiff's privacy rights as
12 a non-public figure thereby causing the damages and injuries set forth herein.

13
14 26. As a result of the violation, the plaintiff's privacy was invaded, causing the plaintiff loss of
15 respect with her family and friends and here familial relationships have been negatively affected
16 causing further emotional distress and estrangement from family occasions.

17
18 27. The actions of the Defendants were done intentionally and were done with malice and in
19 violation of NRS 42-005 and is entitled to punitive damages from the defendants in an amount in
20 excess of \$10,000.

21 **WHEREFORE**, Plaintiff prays for judgment against defendants, jointly and severally as
22 follows:

23 **On the First Cause of action:**

- 24 1. Compensatory damages in an amount in excess of \$10,000.00
25 2. Punitive damages in an amount in excess of \$10,000.00
26 3. For such other and further relief as the Court may deem proper.
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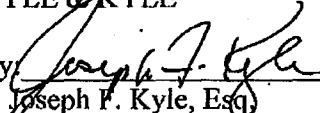
On the Second Cause of action:

1. Compensatory damages in an amount in excess of \$10,000.00
2. Punitive damages in an amount in excess of \$10,000.00
3. For such other and further relief as the Court may deem proper.

Dated May 26, 2010

KYLE & KYLE

By



Joseph F. Kyle, Esq.
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Attorney for Plaintiffs