

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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DISTRICT OF NEW MEXICO

DANNY PONCE, TINA PONCE as parents and
next friend of CHRISTINA PONCE

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Plaintiffs,

vs.

~~CIV-050~~ 6-0172 MV ACT

TURNER FILMS INC., and
JANE DOE 1

Defendants.

**COMPLAINT FOR INTENTIONAL & NEGLEGT INFLICTION
OF EMOTIONAL DISTRESS; RESPONDEAT SUPERIOR**

COMES NOW, Plaintiffs Danny, Tina and Christina Ponce, by and through
their attorney of record J. ROBERT BEAUVAIS P.A., by J. Robert Beauvais and
for this complaint states:

I. NATURE OF THE PROCEEDING

Plaintiffs seek compensatory and punitive damages for the intentional and
neglect infliction of emotional distress; alternatively prima facie tort.

II. JURISDICTION AND VENUE

1. Plaintiffs Danny and Tina Ponce are the parents and next friend
of Christina Ponce and are enrolled members of the Mescalero Apache Tribe
residing in Otero County New Mexico.

2. Defendants Turner Films Inc. is upon information and belief a

foreign corporation with its principal place of business in Burbank, California.

Defendant John Doe I is upon information and belief an employee or servant of Turner Films Inc.

3. The court has subject matter jurisdiction pursuant to 28 USCA §1332 as there is complete diversity of citizenship between the parties and the claim of damages exceed \$75,000.00.

4. Venue is proper in the District of New Mexico as the place where the violation occurred at the resident of the Plaintiffs.

FACTS COMMON TO ALL COUNTS

5. Plaintiff Christina Ponce was, at the time of the allegations giving rise to the claim a eight (8) year old female Apache maiden.

6. Christina Ponce has & had been raised on the Mescalero Apache reservation her entire life and been taught a deep and abiding respect for Apache Indian values, traditions and customs.

7. An important cultural heritage of the Mescalero Apache Tribe is an Apache maiden cannot cut her hair until the Coming of Age ceremony which is held after the child reaches puberty. Christina Ponce had not yet participated in the Coming of Age at all times material to the complaint.

8. Christina Ponce, through her parents, responded to an open casting call for extras to work in a movie being filmed by Defendants outside Carrizozo,

New Mexico on or about March 17, 2005.

9. Christina Ponce was scheduled and was told to report to work on or about March 17, 2005 for a consisting about 3 days.

10. While on the movie location operated and under the exclusive control of Defendant, and without consulting Danny and Tina Ponce and in reckless violation of and total insensitivity to the religious customs and beliefs of Plaintiffs, Defendant's agent or employee Jane Doe I cut Christina Ponce's hair. The stated reasons were to make her look more "Indian" and like a male Indian child because the movie casting call failed to produce sufficient young male extras of Indian heritage.

COUNT I
TORT OF OUTRAGE

11. Plaintiffs on behalf of Christina Ponce realleges the paragraphs 1 through 10 as if fully set forth herein.

12. Plaintiff Christina Ponce has suffered significant emotional distress by the intentional, outrageous and reckless conduct of Defendant John Doe in the amount of \$250,000.00.

13. The acts of Defendant Jane Doe was outrageous, giving rise to a further claim of punitive damages.

14. Plaintiff is entitled to her costs of suit and reasonable attorneys fees.

COUNT II
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

15. Plaintiff reallege paragraphs 1 through 14 as set forth herein.

16. Plaintiffs Danny and Tina Ponce were without the ambit of the duty owed by Defendants and had a conscious sensory perception of the injury to their daughter sufficient to constitute negligent infliction of emotional distress.

17. Plaintiffs Danny and Tina Ponce have been damaged by the breach of duty by Defendant Jane Doe and have suffered damages which are the direct and proximate result of that conduct.

18. Plaintiffs Danny and Tina Ponce have been damaged in amount to be proven at trial.

19. Plaintiffs are entitled to costs of suit.

COUNT III
RESPONDENT SUPERIOR

20. Plaintiff reallege paragraphs 1 through 14 as set forth herein.

21. At all time material, Jane Doe was acting as the servant, agent or employee of Defendant Turner Films and under its express direction and control.

22. Turner Films is vicariously liable for the wrongful acts of its servant under the doctrine of respondent superior.

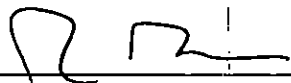
23. Plaintiffs are entitled to have damages awarded against the agent, servant or employee asserted against the employer.

24. Plaintiffs are entitled to their costs of suit.

25. A jury trial is demanded on all counts.

WHEREFORE, Plaintiff prays the court to find for Plaintiffs and against Defendants, award damages and punitive damages and cost of suit and for such other and further relief as the court deems proper.

RESPECTFULLY SUBMITTED:



J. ROBERT BEAUVAIS P.A.
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