



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Jan-09-2015 2:07 pm

Case Number: CGC-15-543584

Filing Date: Jan-09-2015 2:00

Filed by: MEREDITH GRIER

Juke Box: 001 Image: 04749739

COMPLAINT

ABBEY DYKHOUSE VS. APPLE INC ET AL

001C04749739

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

APPLE INC.; DELLA MARIE HUFF; and DOES 1 to 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ABBEY DYKHOUSE

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

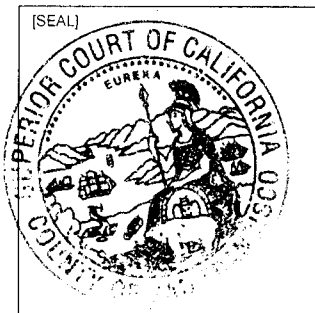
The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco County Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER
(Número del Caso) **CCC-15-543584**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Joseph S. May, 744 Montgomery Street, 5th Floor, San Francisco, CA 94111, (415) 781-3333

DATE: **JAN 09 2015** CLERK OF THE COURT Clerk, by **MEREDITH GRIER**, Deputy (Adjunto) (Fecha) (Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- 4. by personal delivery on (date):

1 Joseph S. May SBN 245924
2 LAW OFFICE OF JOSEPH S. MAY
3 744 Montgomery Street, 5th Floor
4 San Francisco, CA 94111
5 Tel: (415) 781-3333
6 Fax: (415) 707-6600
7 joseph@josephmaylaw.com

8 Brian Gearinger SBN 146125
9 GEARINGER LAW GROUP
10 825 Van Ness Ave., 4th Floor
11 San Francisco, CA 94109
12 Tel: (415) 440-3102
13 brian@gearingerlaw.com

14 Attorneys for Plaintiff Abbey Dykhouse

FILED
San Francisco County Superior Court
JAN 09 2015
CLERK OF THE COURT
BY: *Masalia Green*
Deputy Clerk

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO
17 UNLIMITED JURISDICTION

18 ABBEY DYKHOUSE,
19 Plaintiff,
20 v.
21 APPLE INC.; DELLA MARIE HUFF;
22 and DOES 1 to 50, inclusive,
23 Defendants.

24 **000-15-543584**
25 CASE NO.

26 **COMPLAINT FOR DAMAGES FOR
27 STATUTORY AND COMMON LAW
28 MISAPPROPRIATION OF LIKENESS;
DEMAND FOR JURY TRIAL**

Plaintiff Abbey Dykhouse ("Plaintiff") complains against Defendants Apple Inc. ("Apple"), Della Marie Huff ("Huff"), and Does 1 to 50, inclusive, and alleges as follows:

PARTIES

1. Plaintiff is an adult over the age of eighteen, and at all times relevant hereto, was and is a resident of California.
2. Apple is a California Corporation.
3. Huff is an adult over the age of eighteen and a resident of San Francisco, California.

1 4. The true names and capacities, whether individual, corporate, associate or otherwise,
2 of Defendants sued herein as Doe 1 to 50, inclusive, are unknown to Plaintiff, who sues said
3 defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names
4 and capacities if and when the same are ascertained. Plaintiff is informed and believes, and
5 thereon alleges, that said Defendants, and each of them, are responsible in some manner for
6 Plaintiff's damages as herein alleged. Each reference in this complaint to "defendant,"
7 "defendants," or a specifically named defendant refers also to all "Doe" defendants.

8 5. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
9 each of the defendants, including all defendants sued under fictitious names, was the agent and
10 employee of each of the other defendants, and in doing the things hereinafter alleged, was acting
11 within the course and scope of such agency and employment.

12 JURISDICTION AND VENUE

13 6. Jurisdiction is proper in this Court because the claimed damages exceed \$25,000.

14 7. Venue is proper in this Court because at least one defendant is legally domiciled in
15 San Francisco or a resident of San Francisco.

16 GENERAL FACTUAL ALLEGATIONS

17 8. On or about September 17, 2010, Huff took numerous photographs of Plaintiff and
18 Plaintiff's dog, Stitch.

19 9. On or about September 21, 2010, Huff e-mailed Plaintiff to ask permission for Huff's
20 employer, Apple, to use photos that Huff had taken of Stitch four days earlier. Huff indicated
21 that Apple would use the photos in "demo libraries," which Huff represented to be sample photo
22 libraries used to demonstrate Apple products at Apple's retail stores. Huff further indicated that
23 Plaintiff could give permission for the use of the photos of Stitch by signing and returning a
24 release.

25 10. Plaintiff does not have present recollection of signing or returning any release;
26 however, Plaintiff is informed and believes and thereon alleges that the release that Huff e-
27 mailed her on September 21, 2010 only purported to allow Apple to use the photographs of
28 Stitch for a period of one year.

1 11. Plaintiff learned that in or around September 2013 Apple was using in its demo
2 libraries numerous photographs taken by Huff on September 17, 2010, including many
3 photographs of Plaintiff, in which Plaintiff was readily identifiable.

4 12. Plaintiff subsequently learned that Huff, who works as a freelance professional
5 photographer in addition to her employment with Apple, was offering – and is continuing to
6 offer – for sale on her web site photographs she took on September 17, 2010, including many
7 photographs of Plaintiff, in which Plaintiff is readily identifiable.

8 13. Neither Apple nor Huff ever asked for or obtained Plaintiff’s permission to use her
9 likeness. Alternatively, if consent was given, Apple’s and Huff’s use of Plaintiff’s likeness
10 exceeded the scope of any consent. Alternatively, any such consent was vitiated.

11 14. Neither Apple nor Huff ever remunerated Plaintiff or offered to remunerate Plaintiff
12 for the use of her likeness.

13 **FIRST CAUSE OF ACTION**

14 **STATUTORY MISAPPROPRIATION OF LIKENESS [CIV. CODE § 3344]**

15 **(Against All Defendants)**

16 15. Plaintiff refers to paragraphs 1-14 of this Complaint and incorporates by reference
17 the allegations of said paragraphs as though expressly set forth at length at this point.

18 16. Apple and Huff knowingly used Plaintiff’s photograph and likeness without
19 Plaintiff’s consent.

20 17. Plaintiff suffered actual damages as a result of the unauthorized uses, in an amount
21 according to proof at trial.

22 18. Defendants are liable to Plaintiff for all profits that are attributable to their
23 unauthorized use of Plaintiff’s likeness.

24 19. Defendants’ unauthorized use of Plaintiff’s likeness was done with malice,
25 oppression, or fraud, entitling Plaintiff to an award of punitive damages. Punitive damages are
26 also available pursuant to the express language of Section 3344 of the Civil Code.

27 20. Defendants are also liable to Plaintiff, in the Court’s discretion, for an award of
28 reasonable attorneys’ fees and costs, pursuant to Section 3344(a) of the Civil Code.

1 **SECOND CAUSE OF ACTION**

2 **COMMON LAW MISAPPROPRIATION OF LIKENESS**

3 **(Against All Defendants)**

4 21. Plaintiff refers to paragraphs 1-20 of this Complaint and incorporates by reference
5 the allegations of said paragraphs as though expressly set forth at length at this point.

6 22. Apple and Huff each knowingly used Plaintiff's identity – namely, her image – to
7 each Defendant's advantage, commercial or otherwise. Specifically, Apple used Plaintiff's
8 identity to help sell Apple products at its retail stores, while Huff offered Plaintiff's image for
9 direct sale to the public through Huff's web site. Plaintiff is informed and believes and thereon
10 alleges that Huff also used photographs of Plaintiff to help improve her standing as an employee
11 of Apple by providing Apple with the photographs to use in its demo libraries.

12 23. Neither Apple nor Huff had Plaintiff's consent to use her image, and/or any consent
13 was vitiated, and/or any use of Plaintiff's image by Huff or Apple exceeded the scope of any
14 consent that Plaintiff may have given.

15 24. As a direct and proximate result of Apple's and Huff's use of Plaintiff's likeness,
16 Plaintiff has suffered injury compensable at law, including but not limited to loss of privacy,
17 embarrassment, annoyance, anxiety, aggravation, and emotional upset, in an amount according to
18 proof at trial.

19 25. Defendants' unauthorized use of Plaintiff's likeness was done with malice,
20 oppression, or fraud, entitling Plaintiff to an award of punitive damages.

21 **PRAYER**

22 Plaintiff prays for damages against Defendants, and each of them, on all causes of action,
23 as follows:

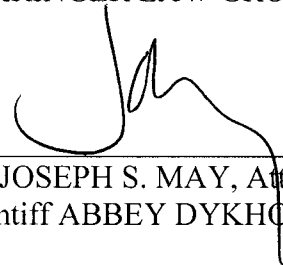
- 24 a. For actual compensatory damages in an amount according to proof;
- 25 b. For any and all applicable statutory penalties;
- 26 c. For any profits from Defendants' unauthorized use of Plaintiff's image that are
27 attributable to the use;
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- d. For punitive damages in an amount sufficient to punish Defendants for their wrongdoing and to deter Defendants and others from similar wrongdoing;
- e. For an award of reasonable attorneys' fees;
- f. For costs of suit;
- g. For such other and further relief as the Court deems just and proper.

DATED: January 9, 2015

LAW OFFICE OF JOSEPH S. MAY
and
GEARINGER LAW GROUP



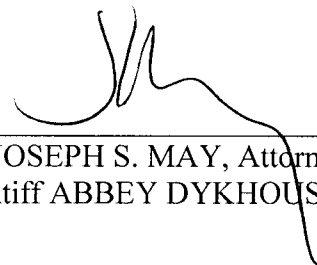
By: JOSEPH S. MAY, Attorneys for
Plaintiff ABBEY DYKHOUSE

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: January 9, 2015

LAW OFFICE OF JOSEPH S. MAY
and
GEARINGER LAW GROUP



By: JOSEPH S. MAY, Attorneys for
Plaintiff ABBEY DYKHOUSE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Joseph S. May SBN 245924
Law Office of Joseph S. May
744 Montgomery Street, 5th Floor
San Francisco, CA 94111
TELEPHONE NO.: (415) 781-3333 FAX NO.: (415) 707-6600
ATTORNEY FOR (Name): Plaintiff Abbey Dykhouse

FOR COURT USE ONLY
FILED
San Francisco County Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

JAN 09 2015
CLERK OF THE COURT
BY: *Masahito*
Deputy Clerk

CASE NAME:
Dykehouse v. Apple Inc. et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CCC-15-543584
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Two (2)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 9, 2015
Joseph S. May
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.