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 JOHN DOE 2

**FILED**  
 LOS ANGELES SUPERIOR COURT  
 NOV 09 2006  
 JOHN A. CLARKE, CLERK  
*Stephanie Frank*  
 BY STEPHANIE FRANK, DEPUTY

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 8 **SUPERIOR COURT OF CALIFORNIA**  
 9 **COUNTY OF LOS ANGELES - WEST DISTRICT**  
 10 **SANTA MONICA COURTHOUSE**

11 JOHN DOE 1, an individual; JOHN  
 12 DOE 2, an individual,

13 Plaintiffs,

14 v.

15 ONE AMERICA PRODUCTIONS,  
 INC, a California Corporation;  
 16 EVERYMAN PICTURES, a  
 California Corporation;  
 GOLD/MILLER PRODUCTIONS, *business*  
 17 *form of entity unknown;*  
 TWENTIETH CENTURY-FOX  
 18 FILM CORPORATION, a Delaware  
 Corporation; and ROES 1 through 50,  
 19 inclusive.

20 Defendants.

Case No. **SC091723**

**COMPLAINT FOR**

- 21 (1) FRAUD;
- 22 (2) RESCISSION OF CONTRACT;
- 23 (3) COMMON LAW FALSE
- 24 LIGHT;
- 25 (4) STATUTORY FALSE LIGHT
- 26 [CAL. CIV. CODE 3344];
- 27 (5) APPROPRIATION OF
- 28 LIKENESS; AND
- (6) NEGLIGENT INFLECTION OF  
 EMOTIONAL DISTRESS

INITIAL CASE MANAGEMENT REVIEW  
 AND CONFERENCE FEB 27 2007

Judge Joseph S. Biderman

*Dept e*  
*8:30 AM*

*90404* *A6009*  
*320.00*

**COMPLAINT**

1 COMES NOW THE PLAINTIFFS, JOHN DOE 1 AND JOHN DOE 2, FOR  
2 THEIR COMPLAINT, ALLEGE AS FOLLOWS:

3  
4 SUMMARY OF ACTION

5  
6 1. Sasha Baron Cohen is a prankster. His M.O. consists of  
7 creating likeable yet outrageous characters and then unleashing these characters  
8 into selected individuals for public viewing. The funny part is when we, the  
9 audience, see how these individuals react to him.

10  
11 2. Until recently, his musings could be found on "Da Ali G  
12 Show," which only aired on HBO and which received moderate success. What is  
13 most impressive about Mr. Cohen is his uncanny ability to fool interviewees into  
14 his traps—including a Presidential candidate and Congressman from both sides of  
15 the isles (who have staff whose job it is to screen such pranks). In other words, Mr.  
16 Cohen and his staff lie really well.

17  
18 3. One of the characters made famous on Ali G is Borat, a Kazak  
19 news reporter. Borat, it seems, has overgrown his pint size format and has become  
20 a full length picture—Borat: Cultural Learnings of America for Make Benefit  
21 Glorious Nation of Kazakhstan (the "Film"). The format of the film is no different  
22 than what is described above. People are tricked in making fools out of  
23 themselves. The film has been described in many, colorful ways. Some call it  
24 hilarious and some call it offensive. Where one falls on that line depends largely  
25 one's tolerance for incest and penis jokes.

26  
27 4. Needless to say, the movie is doing very well domestically. The  
28 Film was originally released in 837 theaters nationwide on November 3, 2006 and

1 is set to expand to 2,400 theaters on November 10, 2006. See a true and correct  
 2 copy of a November 7, 2006 Daily Variety news article confirming this  
 3 information included herewith as "Exhibit 2." It is the only movie ever to gross  
 4 over \$26 million while playing at less than 1000 locations. The problem, however,  
 5 is that its success rests on the backs of unsuspecting players. This lawsuit seeks to  
 6 remedy that.

7  
 8 **PARTIES**

9  
 10 1. The PLAINTIFFS consist of JOHN DOE 1 and JOHN DOE 2,  
 11 (the "PLAINTIFFS") who brings this action under fictitious names to protect  
 12 themselves from any additional and unnecessary embarrassment. PLAINTIFF  
 13 JOHN DOE 1 was, at al relevant times, under the age of 21. The PLAINTIFFS  
 14 reside in the state of South Carolina.

15  
 16 2. DEFENDANT ONE AMERICA PRODUCTIONS INC.,  
 17 ("DEFENDANT ONE AMERICA") is a California Corporation doing business  
 18 within the State of California.

19  
 20 3. DEFENDANT EVERYMAN PICTURES ("DEFENDANT  
 21 EVERY MAN") is a California Corporation doing business within the State of  
 22 California.

23  
 24 4. DEFENDANT GOLD/MILLER PRODUCTIONS  
 25 ("DEFENDANT GOLD/MILLER") is doing business within the State of  
 26 California.

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1                   5.     DEFENDANT TWENTIETH CENTURY-FOX FILM  
 2 CORPORATION ("DEFENDANT TWENTIETH CENTURY") is a Delaware  
 3 Corporation with its primary place of business within the State of California.

4  
 5                   6.     The true names and capacities, whether individual, corporate,  
 6 associate, or otherwise, of DEFENDANTS ROES 1-50, inclusive, are unknown to  
 7 PLAINTIFF, who therefore sues said DEFENDANTS by such fictitious names.  
 8 PLAINTIFF alleges on information and belief that each of the DEFENDANTS  
 9 designated herein as a fictitiously named defendant is, in some manner, responsible  
 10 for the events and happenings referred to, either contractually or tortiously, and/or  
 11 that such fictitiously named DEFENDANTS claim some right, title or interest to  
 12 the property described herein below and/or that such fictitiously named  
 13 DEFENDANTS are liable in some manner for the obligation described herein  
 14 below. When PLAINTIFF ascertains the true names and capacities of ROES 1-50,  
 15 PLAINTIFF will amend this complaint accordingly

16  
 17                   7.     At all times herein mentioned, all of the DEFENDANTS,  
 18 including the ROE DEFENDANTS, were the agents, servants and employees of all  
 19 the other DEFENDANTS and at all of said times were acting in the course and  
 20 scope of their said agency, service and employment.

21  
 22                                   **JURISDICTION AND VENUE**

23                   8.     This is an unlimited case, over which this Court has jurisdiction.  
 24 The total amount of damages sought exceeds \$25,000.

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 26                   9.     Moreover, this Court has personal jurisdiction over all the  
 27 DEFENDANTS because at all times mentioned herein, DEFENDANTS are located  
 28 in the County of Los Angeles, State of California.

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10. In addition, venue is proper in the County of Los Angeles pursuant to California Code of Civil Procedure Sec. 395(a), which provides that the action may be tried in "the county that the defendants or some of them reside."

**FACTS**

11. On or about October 28, 2005, PLAINTIFFS and other members of PLAINTIFF's college fraternity, while at the fraternity, were interviewed by DEFENDANTS for potential participation in the Film.

12. During the interview, and also thereafter, DEFENDANTS told PLAINTIFFS and other members of PLAINTIFFS' college fraternity that the Film would not be shown in the United States and would not disclose their names or the names of their fraternity or university.

13. Ultimately, PLAINTIFFS were selected by DEFENDANTS to participate in the Film. Shortly thereafter, DEFENDANTS took PLAINTIFFS, one of which was under the age of 21, to a drinking establishment "to loosen up" and provided alcoholic beverages to PLAINTIFFS, including the PLAINTIFF who was under 21 years old.

14. After a while of heavy drinking by the PLAINTIFFS, DEFENDANTS presented PLAINTIFFS with a "Standard Consent Agreement" (the "Agreement") for them to sign in order to be able to use PLAINTIFFS in "a documentary-style film" which as DEFENDANTS described would only be shown in Europe and would never be shown in the United States. A true and correct copy of a portion of the Agreement is included herewith as "Exhibit 1."

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15. Based on DEFENDANTS' representations and because they were under the influence of alcohol, PLAINTIFFS signed the Agreement. Immediately thereafter, and while still well under the influence of the alcohol, provided to them by DEFENDANTS, DEFENDANTS escorted PLAINTIFFS to a motor-home where the filming and audiotaping would take place. There, PLAINTIFFS were encouraged to continue drinking, which they did.

16. Unbeknownst to PLAINTIFFS, DEFENDANTS has no intention of limiting release of the Film to Europe and intended to release the film in the United States all along. DEFENDANTS further had every intention of displaying PLAINTIFFS' names and the names of their fraternity and university.

17. Believing the film would not be viewed in the United States, and at the encouragement of DEFENDANTS, PLAINTIFFS engaged in behavior that they otherwise would not have engaged in. Then Film was indeed released in the United States and PLAINTIFFS' said behavior was included as part of the Film without their consent.

18. As a result of the foregoing, PLAINTIFFS have suffered and will continue to suffer humiliation, mental anguish, and emotional and physical distress, loss of reputation, goodwill and standing in the community in which PLAINTIFFS live, work and learn, all to PLAINTIFFS' damage in an amount according to proof.

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1           22. The foregoing were misrepresentations, or omissions, of  
 2 material facts in that DEFENDANTS, at all times, intended to release the Film in  
 3 the United States and intended to disclose PLAINTIFFS' names and the names of  
 4 their fraternity and university. Furthermore, PLAINTIFFS believed that they  
 5 would be given an opportunity to affirm or disaffirm the Agreement while sober  
 6 after PLAINTIFFS were videotaped and audiotaped.

7  
 8           23. DEFENDANTS made the above representations and omissions  
 9 in with the intent that PLAINTIFFS would execute the Agreement and participate  
 10 in the Film.

11  
 12           24. PLAINTIFFS did rely thereon and participated in the Film.  
 13 PLAINTIFFS were justified in their reliance because they had reviewed  
 14 DEFENDANTS' website and, at the time, believed the Film to be a legitimate  
 15 project.

16  
 17           25. PLAINTIFFS, at all relevant times, were unaware of both the  
 18 falsity of the material representations made, and the actuality of the material facts  
 19 omitted by DEFENDANTS and further, PLAINTIFFS justifiably acted in reliance  
 20 upon the truth and accuracy of DEFENDANTS' misrepresentations and omissions.

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 22           26. The depiction created by DEFENDANTS were offensive and  
 23 objectionable to PLAINTIFFS and to a reasonable person of ordinary sensibilities  
 24 in that it made PLAINTIFFS the objects of ridicule humiliation, mental anguish,  
 25 and emotional and physical distress, loss of reputation, goodwill and standing in  
 26 the community in which PLAINTIFFS live, work and learn, all to PLAINTIFFS'  
 27 damage in an amount according to proof.

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1           30. At the time the representations were made, at the time  
 2 **PLAINTIFFS** entered into the contract and at the time **PLAINTIFFS** rendered their  
 3 performance under the contract, **PLAINTIFFS** did not know the representations  
 4 were false, but believed them to be true and reasonably relied on them. Had  
 5 **PLAINTIFFS** known the true facts or been given the Agreement to sign while they  
 6 were sober and not under the influence of alcohol, they would not have entered into  
 7 the contract and would not have rendered or accepted performance thereunder.

8  
 9           31. Under the terms of the contract, on or about October 28, 2005,  
 10 and while still under the influence of alcohol, **PLAINTIFFS** allowed themselves to  
 11 be videotaped and audiotaped for the Film

12  
 13           32. On or about October 28, 2005, **DEFENDANTS** delivered the  
 14 \$200.00 to each of the **PLAINTIFFS**

15  
 16           33. Thereafter, on or about November 3, 2006, **PLAINTIFFS**  
 17 discovered that **DEFENDANTS'** representations were untrue and that the Film was  
 18 being shown in the United States.

19  
 20           34. **PLAINTIFFS** will suffer substantial harm and injury under the  
 21 contract if it is not rescinded in that as a result of **DEFENDANTS'** conduct,  
 22 **PLAINTIFFS** have been depicted in a false light as further describe herein.

23  
 24           35. **PLAINTIFFS** intends service of the summons and complaint in  
 25 this action to serve as notice of rescission of the contract and hereby offers to  
 26 restore all consideration furnished by **DEFENDANTS** under the contract on  
 27 condition that **DEFENDANT** refrain from further displaying the Film.

28

1           36. As a result of entering into the contract with DEFENDANTS,  
 2 PLAINTIFFS have suffered ridicule humiliation, mental anguish, and emotional  
 3 and physical distress, loss of reputation, goodwill and standing in the community in  
 4 which PLAINTIFFS live, work and learn, all to PLAINTIFFS' damage in an  
 5 amount according to proof.

6  
 7           37. In performing the acts herein alleged, DEFENDANTS  
 8 intentionally misrepresented to and concealed from PLAINTIFFS. material facts  
 9 known to DEFENDANTS, specifically that the Film would be shown in the United  
 10 States and that PLAINTIFFS would not be depicted in a false light with the  
 11 intention on the part of DEFENDANTS of depriving PLAINTIFFS of their  
 12 reputation, goodwill and standing in the community thereby justifying an award of  
 13 punitive damages against DEFENDANTS.

14  
 15                                   **THIRD CAUSE OF ACTION -**  
 16                                   **COMMON LAW FALSE LIGHT**  
 17                                   **(Against all Defendants)**

18  
 19           38. PLAINTIFFS hereby incorporate by reference all prior  
 20 paragraphs of this complaint, and makes said paragraphs a part of this, the first  
 21 cause of action, as though fully set forth herein.

22  
 23           39. On or about October 28, 2005, DEFENDANTS, without  
 24 PLAINTIFFS' consent, invaded PLAINTIFFS' right to privacy by videotaping and  
 25 audiotaping then for the Film in a manner that falsely attributed to PLAINTIFFS  
 26 certain stereotypical views of minorities.

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1           40.    The disclosure by DEFENDANTS created publicity in the sense  
 2 of a public disclosure to a large number of people in that the Film has been released  
 3 and is being shown countrywide in the United States

4           41.    The depiction created by DEFENDANTS placed PLAINTIFFS  
 5 in a false light in the public eye in that DEFENDANTS' depiction of PLAINTIFFS  
 6 falsely depicted them as insensitive to minorities.

7  
 8           42.    The depiction created by DEFENDANTS was offensive and  
 9 objectionable to DEFENDANTS and to a reasonable person of ordinary  
 10 sensibilities in that it made plaintiff the object of ridicule humiliation, mental  
 11 anguish, and emotional and physical distress, loss of reputation, goodwill and  
 12 standing in the community in which PLAINTIFFS live, work and learn, all to  
 13 PLAINTIFFS' damage in an amount according to proof.

14  
 15           43.    The depiction created by DEFENDANTS was done with malice  
 16 in that it was made either with knowledge of its falsity or in reckless disregard of  
 17 its truth in that DEFENDANTS depicted PLAINTIFFS as being insensitive to  
 18 minorities even though they are not.

19  
 20           44.    Within 20 days after PLAINTIFFS learned of the publication or  
 21 broadcast, PLAINTIFFS served on DEFENDANTS a demand for a retraction as  
 22 required by Section 48a of the Civil Code of the State of California. A copy of that  
 23 demand is attached hereto, marked Exhibit 2, and incorporated herein by reference.

24  
 25           45.    Up to and including the date of the filing of this complaint,  
 26 DEFENDANTS have failed and refused to publish a retraction as required by law.

27    ///

28    ///



1           51. The depiction created by DEFENDANTS was offensive and  
 2 objectionable to DEFENDANTS and to a reasonable person of ordinary  
 3 sensibilities in that it made plaintiff the object of ridicule humiliation, mental  
 4 anguish, and emotional and physical distress, loss of reputation, goodwill and  
 5 standing in the community in which PLAINTIFFS live, work and learn, all to  
 6 PLAINTIFFS' damage in an amount according to proof.

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 8           52. The depiction created by DEFENDANTS was done with malice  
 9 in that it was made either with knowledge of its falsity or in reckless disregard of  
 10 its truth in that DEFENDANTS depicted PLAINTIFFS as being insensitive to  
 11 minorities even though they are not.

12  
 13           53. In creating the above described depiction, DEFENDANTS  
 14 acted with hatred and ill will toward plaintiff within the meaning of Section  
 15 48a(4)(c), (d) of the Civil Code , in that they failed to completely disregard  
 16 PLAINTIFFS' rights and PLAINTIFFS therefore seek an award of punitive  
 17 damages.

18  
 19                                   **FIFTH CAUSE OF ACTION –**  
 20                                   **APPROPRIATION OF LIKENESS**  
 21                                   **(Against all Defendants)**

22  
 23           54. PLAINTIFFS hereby incorporate by reference all prior  
 24 paragraphs of this complaint, and makes said paragraphs a part of this, the first  
 25 cause of action, as though fully set forth herein.

26  
 27           55. On or about October 28, 2005, DEFENDANTS, knowingly and  
 28 without PLAINTIFFS' prior consent, invaded PLAINTIFFS rights to privacy by

1 appropriating PLAINTIFFS' name, voice, visual image and likeness by  
 2 videorecording and audiorecording PLAINTIFFS and using said recordings in the  
 3 Film which falsely depicted PLAINTIFFS as being insensitive to minorities.

4  
 5 56. The appropriation was unauthorized and without the prior  
 6 consent of PLAINTIFFS

7  
 8 57. DEFENDANTS' conduct involved the appropriation of  
 9 PLAINTIFFS' name, voice and likeness. DEFENDANTS' conduct involved the  
 10 appropriation of visual images of PLAINTIFFS and PLAINTIFFS are readily  
 11 identifiable in the visual images in that any person viewing the visual images with  
 12 the naked eye can reasonably determine that the persons depicted in them are  
 13 PLAINTIFFS

14  
 15 58. The appropriation by defendant was for the purpose of  
 16 distributing the Film and soliciting individuals to pay to view the Film.

17  
 18 59. The depiction created by DEFENDANTS was offensive and  
 19 objectionable to DEFENDANTS and to a reasonable person of ordinary  
 20 sensibilities in that it made plaintiff the object of ridicule humiliation, mental  
 21 anguish, and emotional and physical distress, loss of reputation, goodwill and  
 22 standing in the community in which PLAINTIFFS live, work and learn, all to  
 23 PLAINTIFFS' damage in an amount according to proof.

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**SIXTH CAUSE OF ACTION -  
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS  
(Against all DEFENDANTS)**

60. PLAINTIFFS hereby incorporates by reference all prior paragraphs of this complaint, and makes said paragraphs a part of this, the fourth cause of action, as though fully set forth herein.

61. DEFENDANTS owed a duty to the general public, as well as PLAINTIFFS in particular, to not subject PLAINTIFFS to emotional distress.

62. DEFENDANTS breached that duty when they subjected PLAINTIFFS to the emotional distress alleged herein.

63. DEFENDANTS were both the direct and proximate cause for the emotional distress caused.

64. PLAINTIFF suffered damage, in an amount to be proven at trial.

WHEREFORE, PLAINTIFFS pray judgment against DEFENDANTS, and each of them, as hereinafter set forth.

**PRAYER FOR RELIEF**

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1. For an injunction from:
  - a) Displaying or exploiting the image and likeness of PLAINTIFFS, and each of them, in the film Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan (the "FILM"), or on television, DVD, internet devices, or in any other media whatsoever; and
  - b) Displaying or exploiting the image and likeness of PLAINTIFFS, and each of them, in any advertising or promotional campaigns associated with the FILM.
2. For PLAINTIFFS' general damages according to proof;
3. For PLAINTIFFS' loss of income, wages and earning potential according to proof;
4. For PLAINTIFFS' medical and related damages according to proof;
5. For declaratory relief against DEFENDANTS, and each of them, to enjoin them from continuing to engage in the unlawful conduct alleged herein;
6. For prejudgment interest according to proof, pursuant to Civil Code § 3291;
7. For PLAINTIFFS' costs of suit herein;

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8. For PLAINTIFFS' attorney fees [California Civil Code §3344];

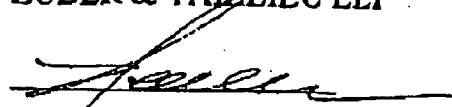
9. For punitive damages; and

10. For such other and further relief as to the Court may deem just and proper.

Dated: November 9, 2006

ZUBER & TAILLIEU LLP

By:



OLIVIER A. TAILLIEU, ESQ.  
Attorney for PLAINTIFFS JOHN  
DOE 1 and JOHN DOE 2