2010 NY Slip Op 52462(U)

IRINA KRUPNIK, Plaintiff,

v.

NBC UNIVERSAL, INC., UNIVERSAL STUDIOS, INC., UNIVERSAL PICTURES COMPANY, INC., Defendants.

103249/10.

Supreme Court, New York County.

Decided June 29, 2010.

Law Offices of Thomas M. Mullaney (Thomas M. Mullaney, of counsel) for plaintiff.

Levine Sullivan Koch & Schulz, LLP (Robert Penchina, Amanda M. Leith, of counsel) for defendants.

O. PETER SHERWOOD, J.

Plaintiff Irina Krupnik ("plaintiff" or "Krupnik"), a former model, brings this action against defendants NBC Universal, Inc. and Universal City Studios LLLP (incorrectly sued as "Universal Studios, Inc." and "Universal Pictures Company, Inc."[1]). Plaintiff objects to the inclusion of a photograph of herself in a brochure used during a scene in *Couples Retreat,* a PG-13 rated movie released by defendants. The photograph at issue depicts plaintiff in a bikini, and was originally created on a photo shoot for inclusion on the web site Bikini.com. Plaintiff was paid in connection with the photograph, and executed a release that not only permits the use of her image for any and all purposes, including commercial uses, but expressly waives any claims for misappropriation of the right of privacy or publicity, and for defamation.

Plaintiff asserts causes of action for the unauthorized use of her likeness in violation of Section 51 of the New York Civil Rights Law, and for defamation and unjust enrichment under the common law. Plaintiff contends that defendants' unauthorized and defamatory use of her likeness in *Couples Retreat* has caused her deep embarrassment and ongoing damage to her reputation as a professional image consultant and makeup artist.

Defendants now move pursuant to CPLR § 3211 (a) (1), and (7), for an order dismissing the complaint for failure to state a cause of action.

For the reasons set forth below, the motion to dismiss is granted, and the complaint is dismissed.

Factual Background

Plaintiff has worked as a professional image consultant and makeup artist for the last seven years (Complaint, ¶¶ 1, 7). Since 1998, plaintiff has also performed as a nude and bikini model (*see* Decl. of Robert Penchina, Esq. in Support of Motion [Penchina Decl.], Ex. "H"). In January 2000, as shown in the records of the Internet Archive (accessible at www.archive.org), plaintiff prominently appeared on the website titled "Bikini.com," which featured provocative photos of plaintiff (*see id.,* Exs. "B" and "C"). Since she first appeared on the site, and up until the present, Bikini.com has continuously featured photos of plaintiff, including her among the "Bikini.com Supermodels" (*see id.,* Ex. "B").

On February 15, 2001, plaintiff was employed to model bikinis for a photo shoot in the Bahamas (the "Bikini Shoot") (Complaint, ¶ 8). The photograph at issue in this case (the "Photo") was taken as part of that photo shoot (*id.*). Plaintiff executed a broad Model Release in connection with the Bikini Shoot (*id.*), granting to Sunshine Media Corp. and "its licensees and assigns" perpetual rights to use her name and likeness "in any way whatsoever":

For the fee described below [$1,500]... I hereby give and grant to Sunshine Media Corp. ("Sunshine") and its licensees and assigns all rights with respect to all videotape, photographs and audio recordings provided by me or taken of me by Sunshine and its representatives on the date(s) described below [February 14-15, 2001], in perpetuity, including the right to use my name, biographical information and interviews in conjunction with such recordings and photos, and to use, reuse, publish, modify or license the same in whole or in part in all media (including, but not limited to, internet or television) and in any way whatsoever, including, but not limited to, in the programming, promotion, advertising and merchandising (ex. calendars, posters) of Bikini.com

(Model Release [Aff. of Larry Weier in Support of the Motion [Weier Aff.], Ex. "5"]).

In addition to the broad grant of rights to modify and use the photos taken of plaintiff for commercial and other purposes, the Model Release contained broad waivers of any right to control the use of the images, and it releases any claims that could accrue to plaintiff in connection with any future modification or use of the photos:

I acknowledge that this sale represents a worldwide buyout of such photos, and hold harmless Sunshine and its officials, affiliates, employees, associates and assigns, from and against any and all liability, damage, loss and/or claims of any kind or nature whatsoever, including, without limitation, any and all claims and demands relating to libel, invasion of privacy... and violation of publicity rights. I hereby waive any right that I may have to inspect or approve the finished product or products or the copy that may be used in conjunction therewith

(*id.*).

Defendants are the creators and distributors of the movie *Couples Retreat* (Complaint, ¶¶ 3, 4). *Couples Retreat* is a comedy that explores the real-world problems faced by couples. The movie tells the story of four Midwestern couples who travel to a fictitious couples resort "Eden West," where they find that participation in the resort's couple's therapy is not optional (*id.*). One of the couples is portrayed by Jon Favreau and Kristin Davis. Beginning at the 45 minutes and 13 seconds mark, during a scene set in his hotel room, Jon Favreau notices and pays attention to a prop brochure (the Brochure) found in his room (*see* Weier Aff., Ex "1"). One side of the Brochure promotes Eden West, and on the other side, it promotes Eden West's fictitious "sister" resort for singles, "Eden East" (*see id.,* Exs. "1" and "2"). The top left corner of the "Eden East" side of the Brochure displays a photograph of a woman on a beach wearing a bikini (*see id.,* Ex. "2").

In the scene from the movie, the husband is shown picking up the Brochure, and becomes infatuated with the picture of the bikini-clad woman (*see id.,* Exs "1" and "2"; Penchina Decl., Ex. "A"). When his wife leaves the room to go the bathroom, the husband is depicted hurriedly making preparations to masturbate while viewing the brochure (Complaint, ¶¶ 12, 13; *see* Weier Aff., Ex. "1"). His attempts are interrupted, however, when a waiter bringing room service barges into the room (*see* Weier Aff., Ex. "1").

The photo in the brochure was a photo of plaintiff created during the Bikini Shoot (Complaint, ¶¶ 8, 12). Since their creation, photos from the Bikini Shoot have been publicly displayed and available to be downloaded at Bikini.com (*see e.g.* Penchina Decl., Ex. "C", at 7). In addition, the Photo has "been available for commercial use through stock photo licensing companies" (Complaint, ¶ 8; *see* Ex. "A"). During the time *Couples Retreat* was in development, "a stock image company called JupiterImages, which at that time managed the rights" to the Photo, "advertised" the Photo "under the name Young woman in bikini on beach'" (*id.,* ¶ 10). On October 8, 2008, Universal Pictures paid JupiterImages $500 for a license to use the Photo in *Couples Retreat* (*id.,* ¶¶ 10-11).

Defendants incorporated the Photo into the Brochure, which was then shown during the movie (*id.,* ¶ 12). A review of the brochure (*see* Weier Aff., Ex. "2") reveals that defendants did not alter the Photo in any way. During the course of the one hour and fifty-three minute movie, the Photo appears on screen for a total of 9 seconds (*see id.,* Ex. "1"). It is shown four times: once for three seconds, and three additional times for two seconds each (*id.*).

Defendant released *Couples Retreat* to theaters during October 2009, and recently released the Blu-ray and DVD versions of the movie (Complaint, ¶¶ 5, 6).

On March 11, 2010, plaintiff initiated this action, asserting claims for violation of her right of privacy and publicity, defamation, and unjust enrichment arising from defendants' inclusion of the Photo in scenes of *Couples Retreat.*

Discussion

Although on a motion to dismiss a complaint pursuant to CPLR § 3211 "the pleading is to be afforded a liberal construction," and "the facts as alleged in the complaint [are presumed] as true" (*Leon v Martinez,* 84 NY2d 83, 87 [1994];*see also Rovello v Orofino Realty Co.,* 40 NY2d 633 [1976]), "factual claims [that are] either inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration'" *(Mark Hampton, Inc. v Bergreen,* 173 AD2d 220, 220 [1st Dept 1991] [citation omitted], *lv denied* 80 NY2d 788 [1992]; *see also Wilhelmina Models, Inc. v Fleisher,* 19 AD3d 267, 269 [1st Dept 2005] ["Factual allegations presumed to be true on a motion pursuant to CPLR 3211 may properly be negated by affidavits and documentary evidence"]). Thus, dismissal is warranted where, as here, documentary evidence establishes that "the allegations of the complaint fail to state a cause of action" (*L.K. Sta. Group, LLC v Quantek Media, LLC,* 62 AD3d 487, 491 [1st Dept 2009]).

1. *Civil Rights Law § 51*

In her first cause of action for violation of her right of privacy and publicity under Civil Rights Law § 51, plaintiff alleges that defendants "have published [her] likeness in a vulgar context in *Couples Retreat* and thereby used [her] picture and likeness for advertising purposes or for the purposes of trade within New York State" (Complaint, ¶ 20). Plaintiff further alleges that defendants "did not obtain written consent from [her] before using her picture and likeness in the manner that they were used" (*id.,* ¶ 21).

This cause of action, however, fails to state a claim upon which relief may be granted. Pursuant to the Model Release signed by plaintiff, the use of her image was authorized in writing, and all of the claims asserted in this action were released by her. In addition, the use of the Photo by defendant in *Couples Retreat* does not constitute a use for advertising or purposes of trade within the meaning of Section 51.

New York law does not recognize a common-law right to privacy (*see Roberson v Rochester Folding Box Co.,* 171 NY 538 [1902]; *see also Wojtowicz v Delacorte Press,* 43 NY2d 858 [1978]). However, the Legislature enacted Civil Rights Law §§ 50 and 51, which provide a limited statutory right of privacy. Section 50 provides that it is unlawful when: "A person, firm or corporation... uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person" (Civil Rights Law § 50). Section 51 authorizes a claim by "[a]ny person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade" only when such use was "without the written consent first obtained as above provided".

Here, the allegations of the complaint and documentary evidence conclusively establish that plaintiff's prior written consent was given and obtained. Plaintiff concedes in the complaint that she signed a "release to allow licensing and commercial use of her photograph" (Complaint, ¶ 15). Nevertheless, she argues that she "did not consent" to the "use of her photograph which Defendants have devised" (*id.,* ¶ 17). However, it is axiomatic that a

defendant's "obligations in an action arising out of the contract must be determined from the contract itself and not from the plaintiff's allegations in the complaint of its obligations" (*Dember Constr. Corp. v Staten Is. Mall,* 56 AD2d 768, 769 [1st Dept 1977]; *see also La Potin v Lang Co.,* 30 AD2d 527, 528 [1st Dept 1968] [" Where a variance exists between the written contract and the conclusion drawn by the pleader, the writing must prevail over the allegations of the complaint'"] [citation omitted]). Moreover, under well-settled rules of contract construction, a written agreement that is clear and unambiguous on its face must be enforced according to the plain meaning of its terms (*Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.,* 60 AD3d 61, 67 [1st Dept 2008], *affd* 13 NY3d 398 [2009] [dismissing contract claim as barred by "clear contractual language" contrary to plaintiff's allegations, and rejecting proffered extrinsic evidence]).

The unambiguous terms of the Model Release expressly grant to Sunshine, its licensees and assigns, such as defendants, with respect to photographs "taken of me by Sunshine and its representatives," the right "to *use, reuse, publish, modify* or license the same in whole or in part *in all media* (including, but not limited to, internet and television) and *in any way whatsoever*" (Model Release [emphasis added]). The plain language of this release thus permits use of the Photo in all media, and in any way whatsoever, including defendants' use of the Photo in *Couples Retreat.* Although plaintiff argues that she did not consent to the "unanticipated, degrading and defamatory use of her photograph" (Complaint, ¶ 17), her argument cannot overcome the clear written language of the release itself. Indeed, the Model Release reflects that the Photo might ultimately be used in ways that plaintiff might not have anticipated, but that she nevertheless explicitly "waive[ed] any right that I may have to inspect or approve the finished product or products or the copy that may be used in conjunction therewith." Thus, plaintiff waived her right to object to the material with which her photo might be juxtaposed.

In addition, the Model Release expressly and unambiguously provides that plaintiff agreed to hold harmless parties such as defendants "from and against *any and all liability, damage, loss and/or claims of any kind* or nature whatsoever, including, without limitation, any and all claims and demands relating to *libel, invasion of privacy... and violation of publicity rights*" (Model Release [emphasis added]). Thus, according to the plain terms of the Model Release, plaintiff knowingly waived, and agreed to hold licensees for the Photo harmless from and against her cause of action for invasion of privacy. As such, her first cause of action is barred by terms of the signed Model Release, and must be dismissed (*see Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.,* 60 AD3d 61, *supra*).

In opposition to the motion, plaintiff argues that her claim is supported by a 51-year-old case, *Russell v Marboro Books* (18 Misc 2d 166 [Sup Ct, NY County 1959]), in which the court found that a release did not preclude liability as a matter of law under Civil Rights Law § 51. Her reliance on that case, however, is completely misplaced. As the New York Court of Appeals has repeatedly noted, "`a defendant's immunity from a claim for invasion of privacy is no broader than the consent executed to him [citation omitted]'" (*Dzurenko v Jordache, Inc.,* 59 NY2d 788, 790 [1983]). Therefore, if there is a "limitation in the consent...

as to time, form, or forum, the use of a name, portrait or picture is without consent if it exceeds the limitation" (*id.*).

In *Russell,* unlike here, a specific limitation existed in the written consent given by the plaintiff. *Russell* involved a claim made by a professional photographer's model, who had granted a written release consenting to the unrestricted use of a particular photograph of herself in an advertisement. The defendant did not use the same photo covered by the release, but used an altered version of the photo in an objectionable advertisement. The court denied the defendant's motion to dismiss, finding that the release executed by the plaintiff did not preclude liability as a matter of law under Civil Rights Law § 51.

Relying on *Russell,* plaintiff argues that her photo was "altered" by being placed in the Brochure, such that the challenged use was not covered by the Model Release. However, the wording of the Model Release is far broader than the release at issue in *Russell.* Unlike the release in *Russell,* the Model Release was not tied to only a single specific photo. Rather, plaintiff expressly consented to the use of "all... photographs... taken of me." Moreover, the Model Release expressly granted the right to alter or "*modify*" any image taken of plaintiff; it expressly permitted her photo to be used "*in any way whatsoever*"; and it expressly waived "any and all claims and demands relating to *libel, invasion of privacy... and violation of publicity rights*" (Model Release [emphasis added]). The release at issue in *Russell* contained none of these provisions. Thus, *Russell* has no application here.

In *Spiegel v Schulmann* (2006 WL 3483922 [ED NY 2006], *affd in part, vacated in part on other grounds,* ___ F3d ___, 2010 WL 1791417 [2d Cir 2010]), the court rejected claims by a plaintiff who, like plaintiff here, had signed a written release, but nevertheless tried to assert Section 51 claims in reliance on *Russell.* In *Spiegel,* the plaintiff argued that an altered photograph of his torso was being used in an unflattering manner in advertisements for defendants' "Evolve" nutrition program. The plaintiff contended that, although he signed a release and "understood that his photograph would be used to show his torso before entry into the program," he "neither agreed to alteration of the photograph nor anticipated that it would be used in any other way" (*id.* at *18). The court rejected this argument, stating that "the release which Spiegel signed contained no such limitations" (*id.*). Instead, Spiegel signed a broad release that was similarly worded to the release signed by plaintiff here (*id.*). Rejecting Spiegel's arguments — the same advanced by plaintiff here — the court expressly found that the modern release at issue was "[u]nlike the release[] in... *Russell*:

[T]his release does not relate to a single photograph or document, much less contain any language limiting the use of that photograph or document. To the contrary, the release expressly provides that Spiegel may be "photographed," and that any photographs taken of Spiegel may be used "in any manner." Since there is no question as to the very broad scope of Spiegel's written consent, there is no genuine issue of material fact to be determined by a jury. Spiegel is not entitled to relief under New York Civil Rights Law § 51...

(*id.; see also Spiegel v Schulmann,* 2010 WL 1791417, at *3 ["the release signed by Spiegel was both broader and more clearly worded than the release[] at issue in *Russell*"]).

Likewise, plaintiff Krupnik signed a broad written release not limited to a single photo, nor limiting the way in which her likeness could be used, but authorizing use of any modifications of the photos taken of her "in any way whatsoever." Moreover, she expressly waived any right to assert claims sounding in right of privacy or publicity arising from use of those photos. Thus, her first cause of action must be dismissed.

Plaintiff's Civil Rights Law § 51 claim must also be dismissed for the additional and independent reason that defendants made no use of her likeness for advertising purposes or the purposes of trade.

Section 51 permits a claim only when, without authorization, a person's "name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade." The Court of Appeals has repeatedly "underscored that the statute is to be narrowly construed and strictly limited to nonconsensual commercial appropriations of the name, portrait or picture of a living person'" (*Messenger v Gruner+Jahr Print. and Publ.,* 94 NY2d 436, 441 [2000], quoting *Finger v Omni Publs. Intl.,* 77 NY2d 138, 141 [1990]).

Krupnik complains about the alleged use of her likeness in what she deems a "derogatory and humiliating context in a major motion picture" (Complaint, ¶ 4; *see also* ¶ 20 [defendants allegedly "published Ms. Krupnik's likeness in a vulgar context in *Couples Retreat*"]), but she fails to identify any use of her likeness for advertising purposes or purposes of trade. According, her section 51 claim must be dismissed.

A person's name or likeness "is used for advertising purposes' if it appears in a publication which, taken in its entirety, was distributed for use in, or as part of, an advertisement or solicitation for patronage of a particular product or service" (*Beverley v Choices Women's Med. Ctr.,* 78 NY2d 745, 751 [1991]; *accord School of Visual Arts v Kuprewicz,* 3 Misc 3d 278 [Sup Ct, NY County 2003]). "Trade purposes" is defined as "use which would draw trade to the [defendant's] firm" (*Kane v Orange County Publs.,* 232 AD2d 526, 527 [2d Dept 1996], *lv denied* 89 NY2d 809 [1997]). The complaint is devoid of any allegations that *Couples Retreat* was an advertisement or solicitation of patronage, or that the brief images of plaintiff were intended to draw business to defendants. Furthermore, New York courts have repeatedly ruled that use of a person's likeness in movies or other entertainment media, similar to the circumstances here, does not constitute use for advertising or purposes of trade, and are not actionable under section 51, because "works of fiction do not fall within the narrow scope of the statutory definitions of advertising' or trade'" (*Costanza v Seinfeld,* 279 AD2d 255, 255 [1st Dept 2001]; *Hampton v Guare,* 195 AD2d 366 [1st Dept], *lv denied* 82 NY2d 659 [1993]).

Application of this principle is found in *Frank v National Broadcasting Co.* (119 AD2d 252 [2d Dept 1986], *appeal withdrawn* 70 NY2d 641 [1987]), where the court rejected a section 51 claim brought by a person whose name was used in a comedic skit during an episode of Saturday Night Live. The plaintiff, a person named Maurice Frank who was "an accountant, tax consultant and financial planner," asserted that section 51 was violated when the defendant broadcast a skit about a tax consultant named "Maurice Frank." In the skit, "Maurice Frank" was referred to in fictitious advertising as "Fast Frank," who gave

"ludicrously inappropriate" advice about how to get your taxes completed on April 14. Affirming the trial court's dismissal of this claim, the Court stated:

[I]t is clear that the plaintiff has no claim under Civil Rights Law §§ 50 and 51. Those provisions permit the recovery of damages for invasion of privacy when one's name, photograph, etc., is used without permission for advertising or trade purposes. As nothing in this record in any way suggests that the plaintiff's name has been so used, the [section 51 claim] was properly dismissed

(*id.* at 256).

Similarly, in *Lemerond v Twentieth Century Fox Film Corp.* (2008 WL 918579 [SD NY 2008]), the court granted a motion to dismiss a section 51 claim by a person who was depicted in the defendant's movie, *Borat — Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan* (*Borat*). *Borat* "tells the fictional story of a fictional Kazakh television personality," who is sent to the U.S. "by a fictional governmental entity" to "produce a fictional report" (*id.* at *1). The plaintiff was depicted in the movie interacting with the fictional character Borat Sagdieyev. Dismissing plaintiff's claim, the court found that the use of his likeness "is not actionable under NYCRL § 51" (*id.* at *3; *see also Costanza v Seinfeld,* 279 AD2d at 255 [rejecting the plaintiff's section 51 claim asserting that his name, likeness and persona were used without permission "to create the [fictional] character of George Costanza' for the Seinfeld television program").

2. *Defamation*

In support of her second cause of action for defamation, plaintiff alleges that "[d]efendants published [her] photograph... in a degrading and vulgar context as a prop for a masturbation scene," and that from such publication, her "clients and acquaintances, and other viewers, reasonably but falsely understood" that she "is the type of person who would agree to having her photograph... used publicly as an object for masturbation" (Complaint, ¶¶ 27, 30). However, plaintiff's claim for defamation fails.

Plaintiff signed a written release which expressly and unambiguously confirms her agreement not only to permit any and all uses whatsoever of the Photo, but also to hold harmless parties such as the defendants "from and against *any and all liability, damage, loss and/or claims of any kind or nature whatsoever,* including, without limitation, any and all claims and demands relating *to libel...*" (Model Release [emphasis added]). Thus, pursuant to the clear and unambiguous terms of the Model Release, plaintiff affirmatively released her defamation claim (*see Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.,* 60 AD3d 61, *supra*). As such, her defamation claim must be dismissed (*see e.g. Gelbman v Valleycrest Prods.,* 189 Misc 2d 403, 408 [Sup Ct, NY County 2001] [granting motion to dismiss upon finding that tort action was "specifically prohibited" by contractual release of "all claims arising out of injury or damage resulting from participation in the show, including but not limited to claims of defamation, invasion of privacy, publicity or personality"]; *see also Lee v Boro Realty, LLC,* 39 AD3d 715 [2d Dept 2007]; *Almar Plumbing & Heating Corp.*

v Dormitory Auth. of State of NY, 21 Misc 3d 1119[A], 2008 NY Slip Op 52102[U] [Sup Ct, Kings County 2008]).

Moreover, in response to the motion to dismiss, plaintiff fails to contest defendants' dispositive arguments with respect to her express waiver of, and agreement to hold defendants harmless against claims relating to libel, or defendants' alternative argument that the use of the photo was non-defamatory as a matter of law. Her failure to contest these arguments provides an independent ground to grant the motion to dismiss the defamation claim (*see Wilmington Trust Co. v Burger King Corp.,* 10 Misc 3d 1053[A], 2005 NY Slip Op 51943[U], * 6-*7 [Sup Ct, NY County 2005] ["in its opposition, plaintiff did not address defendant's argument that economic duress did not exist; therefore, that claim is deemed abandoned"]).

3. *Unjust Enrichment*

In her third cause of action, plaintiff asserts that defendants have been "unjustly enriched as a result of their unauthorized use of plaintiff's photograph and likeness" (Complaint,¶ 36). The unjust enrichment claim must be dismissed because it is pre-empted by sections 50 and 51 of the Civil Right Law.

"The New York Civil Rights law preempts all common law claims based on unauthorized use of name, image, or personality, including unjust enrichment claims" (*Zoll v Ruder Finn, Inc.,* 2004 WL 42260, *4 [SD NY 2004]; *see e.g. Hampton v Guare,* 195 AD2d at 366-367 ["the preemptive effect of the Civil Rights Law is fatal to the third, fourth and fifth causes of action of the plaintiff's amended complaint alleging common-law conversion, common-law tort and unjust enrichment where, as here, the plaintiff has no property interest in his image, portrait or personality outside the protections granted by the Civil Rights Law"]; *Grodin v Liberty Cable,* 244 AD2d 153, 153-154 [1st Dept 1997] [in connection with claim for "unauthorized reuse of his image and voice" it was "error not to dismiss plaintiff's causes of action for negligence and unjust enrichment, there being no common-law right of privacy in New York"]). Accordingly, plaintiff cannot state a claim for unjust enrichment based upon the alleged unauthorized use of images of her. In addition, plaintiff fails to respond to defendant's arguments with respect to this cause of action as well.

The court has considered the remaining claims, and finds them to be without merit.

Conclusion

Based upon the foregoing discussion, it is

ORDERED that the motion to dismiss is granted, and the complaint is dismissed, with costs and disbursements to defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants.

ORDERED that a copy of this order with notice of entry shall be served on plaintiff within twenty (20) days of entry.

This constitutes the decision and order of the court.

[1] According to defendants, plaintiff erroneously named "Universal Studios, Inc." and "Universal Pictures Company, Inc." as defendants herein. The party responsible for the movie at issue is Universal Pictures, a division of Universal City Studios LLLP. Universal Studios, Inc. is a holding company not involved in the production or distribution of films, and Universal Pictures Company, Inc. ceased to exist following mergers completed during the 1960s.