

APR 25 2008

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

11 BRENDA SONG, an individual,

12 Plaintiff,

13 vs.

14 VIBE MEDIA, INC., a California  
15 Corporation; CITYVIBE.COM, a business  
entity unknown; ALI ASKARI, an  
16 individual; and DOES 1-50, inclusive,

17 Defendants.

Case No.

BC389695

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:

- 18 (1) LIBEL PER SE
- 19 (2) INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS
- 20 (3) COMMERCIAL MISAPPROPRIATION  
OF PHOTOGRAPH AND LIKENESS  
[Cal.Civ.Code § 3344]

21 Plaintiff BRENDA SONG, for her complaint herein, alleges as follows:

22 1. Brenda Song, a twenty-year-old actress best known for her work on the successful  
23 Disney Channel television series, *The Suite Life of Zack & Cody*, is one of the most popular  
24 young female stars in television today. Ms. Song, who has a long and promising career ahead of  
25 her, scrupulously maintains and cultivates her image as a well-behaved, mature and law-abiding  
26 role model for her many young fans. In this lawsuit, Ms. Song sues an unscrupulous adult escort  
27 service that has illegally and shamelessly taken one of Ms. Song's photographs from the Internet  
28 and used it to advertise what is undoubtedly a thinly-disguised, and possibly illegal, enterprise.

1 PARTIES

2 2. Plaintiff. Plaintiff BRENDA SONG ("Song") is, and at all relevant times was, an  
3 individual who resides in Los Angeles County, California.

4 3. Defendants.

5 (a) Plaintiff is informed and believes, and based thereon alleges, that at all times  
6 mentioned herein, defendant VIBE MEDIA, INC. ("Vibe") was and is a California corporation,  
7 having its principal business in Los Angeles, California, and is duly authorized to conduct  
8 business in the State of California.

9 (b) Plaintiff is informed and believes, and based thereon alleges, that at all times  
10 mentioned herein, defendant CITYVIBE.COM ("Cityvibe") conducts business in the State of  
11 California. On information and belief, Cityvibe, a business of unknown legal character and  
12 citizenship, is affiliated and/or controlled by Vibe.

13 (c) Plaintiff is informed and believes, and based thereon alleges, that at all times  
14 mentioned herein, defendant ALI ASKARI ("Askari") is, and at all relevant times was, an  
15 individual who resides in Los Angeles County, California. On information and belief, Askari is  
16 the president, owner and principal shareholder of Vibe and Cityvibe.

17 (d) The true names and capacities, whether individual, corporate, associate or  
18 otherwise, of defendants DOES 1 through 50, inclusive, are unknown to plaintiff, who therefore  
19 sues said defendants by such fictitious names. Plaintiff is informed and believes and based  
20 thereon alleges that each of the defendants designated herein as fictitiously named defendants is,  
21 in some manner, responsible for the occurrences alleged herein, and that plaintiff's damages as  
22 alleged were proximately caused by their conduct. When plaintiff ascertains the true names and  
23 capacities of DOES 1 through 50, she will amend her complaint accordingly.

24 (e) Vibe, Cityvibe, Askari and DOES 1 through 10, inclusive, will sometimes be  
25 referred to herein collectively as "Vibe Media Defendants."

26 4. Plaintiff is informed and believes, and based thereon alleges, that all of the defendants,  
27 both actually and fictitiously named, are and were in some manner legally liable for the conduct  
28 at issue in this action. Plaintiffs are further informed and believe, and based thereon allege, that

1 each defendant, both actually and fictitiously named, was the principal, agent, employee, partner,  
2 member and/or alter ego of the other and, with respect to the circumstances at issue in this action,  
3 was at all times acting within the scope of one or more of such relationships and with the implied  
4 and/or express direction, approval and ratification of each of the other defendants.

5 GENERAL ALLEGATIONS

6 5. Brenda Song is an actress and singer, and is one of the stars of the well-known Disney  
7 Channel television series, *The Suite Life of Zack & Cody*. Ms. Song has appeared in many Disney  
8 Channel original series and movies. She has made guest appearances in other television series,  
9 and she won a Young Artist Award for her work in *The Ultimate Christmas Present*. She was  
10 voted one of Teen People's 25 most popular stars under 25 years of age.

11 6. On or about April 4, 2008, the Vibe Media Defendants caused to be published in the  
12 weekly newspaper, *LA Weekly*, a three-page commercial advertisement for an adult escort service  
13 (the "Tortious Commercial Advertisement") which included in it a photograph of Ms. Song. On  
14 information and belief, *LA Weekly* is a free weekly tabloid-sized newspaper (a so-called  
15 "alternative weekly") distributed throughout the greater Los Angeles area. The newspaper  
16 advertises itself as being the largest urban newsweekly in the western United States, having an  
17 audited circulation of 215,000 copies.

18 7. The Tortious Commercial Advertisement, a copy of which is attached hereto as  
19 Exhibit "A," features three pages of provocative photographs of young women, each photograph  
20 having imposed on it a female first name, a local telephone number and a titillating, salacious  
21 phrase. One of the photographs contained in the Tortious Commercial Advertisement is a  
22 "headshot" of Brenda Song, with the name "Layla" imposed on Ms. Song's photograph. Also  
23 printed on the photo is a local telephone number in the (310) area code, and the phrase,  
24 "Hawaiiin [sic] beauty. Come get lei'd."

25 8. On April 23, 2008, plaintiff's attorney telephoned the number printed with Ms. Song's  
26 photograph, and a female voice answered the telephone. When asked, the woman stated that her  
27 name is "Layla" and that the photograph printed in the newspaper is her genuine photograph. The  
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1 woman then asked if plaintiff's attorney wanted to see her "tonight," at which point plaintiff's  
2 attorney terminated the telephone call.

3 9. The Tortious Commercial Advertisement was printed in the issue of *LA Weekly* dated  
4 April 4, 2008, was re-printed in the issue of *LA Weekly* dated April 11, 2008, and was possibly  
5 also run on other dates and/or in other publications. When notified that it was running an  
6 advertisement containing an unauthorized picture of Ms. Song, an attorney for *LA Weekly*  
7 responded that "it appears false representations were made to *LA Weekly* by its advertiser," and  
8 stated that "the photograph will not appear in future issues."

9 10. Publication of the Tortious Commercial Advertisement has quickly attracted public  
10 attention. The advertisement was re-published on [www.tMZ.com](http://www.tMZ.com), a popular celebrity gossip and  
11 news website, and was featured on the April 21, 2008 broadcast of the television show  
12 *TMZ on TV*, a syndicated television show broadcast throughout the United States and  
13 internationally. Press inquires have been received from other news outlets, tabloids and radio  
14 shows, and additional press coverage is likely.

15 11. Notwithstanding the use of the false name "Layla," the image used in the Tortious  
16 Commercial Advertisement is easily recognized as being a photograph of Ms. Song. The  
17 language contained in the advertisement, along with the context of the surrounding provocative  
18 photos of women and the adjacent use of the words "escort pages" could cause a reasonable  
19 reader to believe that Ms. Song was selling herself for "escort" services and that the services  
20 included intimate (and illegal) conduct. This implication is false.

21 12. The Tortious Commercial Advertisement was created, published and re-published  
22 without Ms. Song's consent, authorization or knowledge.

23 13. When plaintiff discovered the existence of the Tortious Commercial Advertisement,  
24 she immediately sent a "cease and desist" letter to the Vibe Media Defendants and *LA Weekly*, a  
25 true and correct copy of which is attached hereto as Exhibit "B." *LA Weekly* has agreed to cease  
26 publication of the commercial advertisement, but the Vibe Media Defendants have not responded.  
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1 FIRST CAUSE OF ACTION

2 (Libel Per Se)

3 14. Plaintiff realleges and incorporates herein by this reference the allegations contained  
4 in paragraphs 1 through 13, above, as though set forth in full.

5 15. The Tortious Commercial Advertisement is libelous on its face (or libelous per se) in  
6 that it: implies that plaintiff is committing the crime of prostitution; is injurious to plaintiff in her  
7 occupation as an actress on a television show and on a television network that markets itself to  
8 young and teenage children; it charges plaintiff with improper and immoral conduct; it charges  
9 plaintiff with dishonesty; it subjects plaintiff to contempt and ridicule; and it imputes a lack of  
10 chastity to plaintiff.

11 16. As a result of the false and unauthorized publication of the Tortious Commercial  
12 Advertisement, Ms. Song's reputation as a family-oriented actress has been seriously damaged  
13 and thus endangers her career and employment prospects.

14 17. As a direct and proximate result of defendants' conduct, plaintiff has been damaged in  
15 an amount to be proven at the time of trial, which amount plaintiff believes is in excess of  
16 \$100,000.

17 18. In performing the above-described conduct, defendants acted with oppression, fraud,  
18 malice and a conscious disregard of plaintiff's rights. Accordingly, in addition to actual damages,  
19 plaintiff is entitled to punitive and exemplary damages in an amount to be fixed by the trier of  
20 fact sufficient to punish said defendants and deter others from similar conduct in the future.

21 SECOND CAUSE OF ACTION

22 (Intentional Infliction of Emotional Distress)

23 19. Plaintiff realleges and incorporates herein by this reference the allegations contained  
24 in paragraphs 1 through 18, above, as though set forth in full.

25 20. Defendants' conduct of causing publication of the false Tortious Commercial  
26 Advertisement, which such advertisement strongly implies that plaintiff is selling her "escort"  
27 services, is extreme and outrageous conduct. This is especially true given that the image used in  
28 the advertisement is a photograph taken of Ms. Song when she was a 16-year-old minor.

1 21. Defendants acted with a reckless disregard of the probability that plaintiff would  
2 suffer emotional distress because they knew that the implication of the Tortious Commercial  
3 Advertisement was false, and caused the photograph to be published without plaintiff's consent or  
4 knowledge.

5 22. Plaintiff has suffered, and continues to suffer, public humiliation, anxiety and severe  
6 emotional distress because of the publication and re-publication of the Tortious Commercial  
7 Advertisement.

8 23. As a direct and proximate result of defendants' conduct, plaintiff has been damaged in  
9 an amount to be proven at the time of trial, which amount plaintiff believes is in excess of  
10 \$100,000.

11 24. In performing the above-described conduct, defendants acted with oppression, fraud,  
12 malice and a conscious disregard of plaintiff's rights. Accordingly, in addition to actual damages,  
13 plaintiff is entitled to punitive and exemplary damages in an amount to be fixed by the trier of  
14 fact sufficient to punish said defendants and deter others from similar conduct in the future.

15 THIRD CAUSE OF ACTION

16 (Commercial Misappropriation Of Photograph And Likeness)

17 25. Plaintiff realleges and incorporates herein by this reference the allegations contained  
18 in paragraphs 1 through 24, above, as though set forth in full.

19 26. Defendants knowingly used plaintiff's photograph and likeness for the commercial  
20 purpose of soliciting the purchase of services without plaintiff's consent or knowledge, in  
21 violation of plaintiff's common law rights of publicity and her statutory rights under Section 3344  
22 of the California Civil Code.

23 27. As a direct and proximate result of defendants' conduct, plaintiff has been damaged in  
24 an amount to be proven at the time of trial, which amount plaintiff believes is in excess of  
25 \$100,000.

26 28. Pursuant to Section 3344 of the California Civil Code, defendants are liable to  
27 plaintiff in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual  
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1 damages suffered by her as a result of the unauthorized use, and are also liable to her for any  
2 profits from the unauthorized use that are attributable to the use.

3 29. Pursuant to Section 3344 of the California Civil Code, defendants are liable for the  
4 attorney's fees and costs incurred by plaintiff in connection with this action.

5 30. In performing the above-described conduct, defendants acted with oppression, fraud,  
6 malice and a conscious disregard of plaintiff's rights. Accordingly, in addition to actual damages,  
7 plaintiff is entitled to punitive and exemplary damages in an amount to be fixed by the trier of  
8 fact sufficient to punish said defendants and deter others from similar conduct in the future.

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1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiff BRENDA SONG prays for judgment against defendants as  
3 follows:

4 1. For an award of compensatory damages in an amount to be proven at the time of trial,  
5 which amount plaintiff believes is in excess of \$100,000;

6 2. For an award of punitive and exemplary damages in an amount to be fixed by the trier  
7 of fact sufficient to punish said defendants and deter others from similar conduct in the future;

8 3. For preliminary and permanent injunctive relief, enjoining, preventing and prohibiting  
9 defendants from making any unauthorized use of defendant's name, likeness or photograph in  
10 connection with any advertising or for any other purpose or use;

11 4. On the Third Cause of Action, for damages in an amount equal to the greater of seven  
12 hundred fifty dollars (\$750.00) or the actual damages suffered by plaintiff as a result of the  
13 unauthorized use of plaintiff's photograph and likeness, and any profits from the unauthorized use  
14 attributable to the use that are not taken into account in computing actual damages;

15 5. On the Third Cause of Action, for an award of attorney's fees and costs; and

16 6. For such other and further relief as this Court may deem just, equitable and proper.

17 DATED: April 25, 2008

18 Respectfully submitted,

19 BUCHALTER NEMER  
20 A Professional Corporation

21 By Lawrence Steinberg  
22 Lawrence B. Steinberg  
23 Attorneys for plaintiff BRENDA SONG  
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