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FILED
LOS ANGELES SUPERIOR COURT

JUN 02 2008

JOHN A. CLARKE, CLERK

BY SHAUNYA WESLEY, DEPUTY

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

14 TAMI H. SMITH, an individual; TAMI H.
15 SMITH, INC., a California Corporation

16 Plaintiffs,

17 v.

18 J'AIME PRODUCTIONS, INC., a California
19 Corporation; JAMIE PRESSLY, an
20 individual; and DOES 1-50, inclusive,

21 Defendants.

Case No. BC391845

COMPLAINT FOR:

- (1) WILLFUL FAILURE TO PAY COMMISSIONS OR ENTER INTO A WRITTEN SALES CONTRACT (Cal. Civ. Code § 1738.10, et seq.);
- (2) ACCOUNTING OF COMMISSIONS;
- (3) BREACH OF CONTRACT;
- (4) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (5) UNJUST ENRICHMENT;
- (6) UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200 et seq.); and
- (7) CONSTRUCTIVE TRUST

24 DEMAND FOR JURY TRIAL

25 Plaintiffs, TAMI SMITH and TAMI H. SMITH, INC., allege as follows:

- 1. This action is brought to redress repeated violations of the California Independent Wholesale Sales Representatives Contractual Relations Act of 1990 (Cal. Civ. Code § 1738.10, et

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CIT/CASE: BC391845 LEA/JEF/1
RECEIPT #: C3H65798002
DATE PAID: 06/02/08 12:05:20 PM
PAYMENT: \$320.00
RECEIVED:
CHECK: 120.00
DEBIT: 120.00

1 seq.), the California Unfair Business Practices Statute (Cal. Bus. & Prof. Code § 17200 et seq.), as
2 well for breach of contract, breach of the covenant of good faith and fair dealing, unjust
3 enrichment, accounting of commissions, and constructive trust.

4 2. In the Independent Wholesale Sales Representatives Contractual Relations Act of
5 1990 (the "Act"), the California legislature found and declared that independent wholesale sales
6 representatives are a key ingredient to the California economy, that wholesale sales representatives
7 spend many hours developing their territory in order to properly market their products, and
8 therefore that they should be protected from unjust termination of the territorial market areas. The
9 Act requires manufacturers, distributors and jobbers to provide their wholesale sales
10 representatives with written contracts which comply with the terms of the law and forbids
11 contracts which attempt in any way to circumvent the requirements of the law.

12 3. Plaintiff, TAMI H. SMITH, is, and at all times relevant herein was, an individual
13 residing in the County of Los Angeles, State of California.

14 4. Plaintiff, TAMI H. SMITH, INC. is, and at all times relevant herein was, a
15 corporation organized under the laws of the State of California, which maintains its headquarters
16 and principal place of business in the County of Los Angeles.

17 5. Defendant, JAIME PRODUCTIONS, INC. is, and at all times relevant herein was,
18 a corporation organized under the laws of the State of California, which maintains its headquarters
19 and principal place of business in the County of Los Angeles.

20 6. Defendant, JAIME PRESSLY is, and at all times relevant herein was, an individual
21 residing in the County of Los Angeles, State of California.

22 7. Plaintiffs are ignorant of the true names and capacities of Defendants herein sued as
23 DOES 1-50, and therefore sue these defendants by such fictitious names. Plaintiffs will amend
24 this Complaint to allege their true names and capacities when ascertained.

25 8. Plaintiffs are informed and believe, and based thereon allege, that each of the
26 Defendants acted in all respects pertinent to this action as the agent and partner of the other
27 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and
28 the acts of each of the Defendants are legally attributable to the other Defendants. Plaintiffs are

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1 informed and believe, and based thereon allege, that each of the Defendants was the agent, partner,
2 servant, and employee of each of the other co-Defendants, and in doing the things alleged, acted in
3 the course and scope of such agency, partnership and employment.

4 9. On information and belief, Plaintiffs alleges that Defendant, J'AIME
5 PRODUCTIONS, INC. and DOES 1 through 50 are the alter egos of JAMIE PRESSLY, and vice
6 versa, at all times herein relevant in that:

- 7 (a) There is a unity of interest and ownership between the individuals and the
8 corporation that their individuality or separateness has ceased;
- 9 (b) Defendant, JAMIE PRESSLY and DOES 1 through 50 at all times herein
10 relevant were and now are the owners and holders of all of the stock of
11 J'AIME PRODUCTIONS, INC.;
- 12 (c) Defendant, JAMIE PRESSLY and DOES 1 through 50 at all times herein
13 relevant were the officers and/or directors of J'AIME PRODUCTIONS,
14 INC. or in control of the officers and other directors, if any, of J'AIME
15 PRODUCTIONS, INC.;
- 16 (d) Defendant, JAMIE PRESSLY and DOES 1 through 50 caused J'AIME
17 PRODUCTIONS, INC. to be formed and to conduct business without
18 adequate capitalization;
- 19 (e) Defendant, JAMIE PRESSLY and DOES 1 through 50 own and control all
20 the assets of J'AIME PRODUCTIONS, INC.;
- 21 (f) Defendant, JAMIE PRESSLY and DOES 1 through 50 co-mingled their
22 personal funds with the corporate funds of J'AIME PRODUCTIONS, INC.
23 and vice-versa;
- 24 (g) Defendant, JAMIE PRESSLY and DOES 1 through 50, and J'AIME
25 PRODUCTIONS, INC. did not observe the requisite corporate formalities;
- 26 (h) A grave injustice will result to Plaintiffs if the separate entity of J'AIME
27 PRODUCTIONS, INC. is not disregarded. Defendant, JAMIE PRESSLY
28 and DOES 1 through 50 should be held personally liable for the

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indebtedness of JAIME PRODUCTIONS, INC. to Plaintiffs in that:

- (i) Defendant, JAMIE PRESSLY and DOES 1 through 50 diverted funds from JAIME PRODUCTIONS, INC. in order to avoid personal obligations to creditors; and
- (ii) Defendant, JAMIE PRESSLY and DOES 1 through 50 formed JAIME PRODUCTIONS, INC. without adequate financing and caused JAIME PRODUCTIONS, INC. to become presently insolvent, become unable to pay its debts, and in particular become unable to pay its debts owed to Plaintiffs, and will continue to be unable to pay any judgment that may be awarded to Plaintiffs.

10. Plaintiffs, TAMI H. SMITH and TAMI H. SMITH, INC. (collectively "Plaintiffs") are in the wholesale apparel business representing and marketing lines of clothing. Defendant, JAIME PRODUCTIONS, INC. and DOES 1-50 (collectively "Defendants") are a clothing company owned and operated by celebrity, Defendant, JAMIE PRESSLY. Defendants are covered by and subject to the Act by virtue of being manufacturers, distributors, and/or jobbers.

11. On or about September 19, 2007, at Los Angeles, California, Plaintiffs and Defendants entered into a written agreement designating Plaintiffs as the wholesale sales representative of Defendants (the "Agreement"). (A true and correct copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein by this reference). Plaintiffs were to represent and market Defendants' line of clothing in the following states: California, Nevada, Oregon, Washington, Hawaii, Utah, Arizona, Colorado, Idaho, New Mexico, Alaska, Wyoming, and Montana (the "Territory").

FIRST CAUSE OF ACTION

(Willful Failure to Pay Commissions or Enter Into Written Sales Contract)

[Against all Defendants]

12. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 11 above as if fully set forth.

ORIGINAL FILED IN 10/2007

1 13. The Agreement provided for an initial term of one year, with an automatic renewal
2 until such time as a party provided 60 days written notice of its intent to terminate the Agreement.
3 The Agreement also provided in part that Plaintiffs were to be paid commissions at the rate of
4 12% percent on the net amount of sales made, shipped, and/or distributed into the Territory.
5 Further, Defendants were required to pay Plaintiffs a non-refundable contribution of \$250 per
6 month.

7 14. As Defendants' wholesale sales representative, Plaintiffs devoted substantial time
8 and effort representing, promoting, and marketing Defendants' products.

9 15. On or about February 25, 2008, contrary to the express terms of the Agreement and
10 less than six months into the term of the Agreement, Defendants improperly and unlawfully
11 terminated the Agreement. (A true and correct copy of the letter terminating the Agreement is
12 attached hereto as Exhibit "B" and incorporated herein by this reference). In willful violation of
13 the Act and the Agreement, Defendants have refused to pay Plaintiffs any commissions or other
14 compensation or reimbursements as provided in the Agreement despite Plaintiffs' substantial
15 devotion of time and effort in representing, promoting, and marketing Defendants' products.

16 16. In particular, in breach of the Agreement and the Act, Defendants have refused and
17 failed to pay the following: (1) commissions in an amount of approximately \$3,192.08 on sales
18 made prior to the date of the unlawful termination; (2) unreimbursed Los Angeles showroom fees
19 of \$1,900; (3) unreimbursed Dallas show fees in the amount of \$900; and (4) commissions in an
20 amount of at least \$50,000 on all future sales.

21 17. On or about March 6, 2008 and April 8, 2008, Plaintiffs provided Defendants with
22 written demands for payment concerning the foregoing owing amounts. Despite these demands,
23 Defendants failed to respond.

24 18. Pursuant to Section 1738.15 of the California Civil Code, Defendants shall be
25 liable to Plaintiffs for treble the damages alleged above because of Defendants' willful failure to
26 pay commissions and other payments due.

27 19. Further, as a result of Defendants' unlawful termination of, and refusal to recognize
28 the existence of the Agreement, Defendants are in willful violation of Sections 1738.13 and

1 1738.15 of the California Civil Code for failing to enter into a written contract after the Agreement
2 was terminated. Pursuant to Section 1738.15 of the California Civil Code, Defendants shall be
3 liable to Plaintiffs for treble the damages alleged above.

4 20. The acts, omissions and wrongs of Defendants, including violations of the Act,
5 have made it necessary for Plaintiffs' to retain an attorney and commence suit and thereby
6 incurring attorney's fees and costs, which fees and costs will continue through this litigation.
7 Pursuant to the provisions of California Civil Code section 1738.16, Plaintiffs are entitled to an
8 award of reasonable attorney's fees and costs and all other damages proximately caused by the
9 breach of the Agreement and violation of the Act.

10
11 **SECOND CAUSE OF ACTION**

12 **(For Accounting of Commissions)**

13 **[Against all Defendants]**

14 21. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 50
15 above as if fully set forth.

16 22. Defendants have not accounted for the aggregated amount of the orders during the
17 term of the Agreement, and have not paid Plaintiffs their share of the commissions, costs, or fees.
18 Plaintiffs do not know the precise amount of the aggregated orders on which to base their claim
19 for commissions because such orders can only be determined by an accounting of Defendants'
20 books and records. Plaintiffs are informed and believe and thereon allege that Defendants owes
21 Plaintiffs commissions in excess of \$50,000.00.

22 23. Plaintiffs have demanded an accounting by Defendants of the orders on which
23 Plaintiffs' commissions can be ascertained, and has demanded payment of commissions due to
24 them. Defendants have failed and refused, and continues to fail and refuse, to make such an
25 accounting, or to pay Plaintiffs the commissions due to them.

26 24. Pursuant to Section 1738.13(d) of the California Civil Code, Plaintiff is entitled to,
27 and seeks a court order for, an accounting of (1) the orders for which payment was made,
28 including the customer's name and invoice number; (2) the rate of commission on each order; and

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1 (3) information relating to any chargebacks included in the accounting;
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3 **THIRD CAUSE OF ACTION**

4 **(Breach of Contract)**

5 **[Against all Defendants]**

6 25. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 24
7 above as if fully set forth.

8 26. On or about February 25, 2008, Defendants breached the Agreement by terminating
9 it less than six months into the term and failing to pay commissions, reimbursements and other
10 payments due under the Agreement.

11 27. As a direct and proximate result of Defendants' breach of the Agreement, Plaintiffs
12 have sustained damages in an amount to be proven at trial, but in an amount in excess of \$50,000.
13

14 **FOURTH CAUSE OF ACTION**

15 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

16 **[Against all Defendants]**

17 28. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 27
18 above as if fully set forth.

19 29. The Agreement contains an implied covenant of good faith and fair dealing by
20 which each party agrees not to do anything which would unfairly deprive the other of the rights
21 and benefits of the Agreement.

22 30. Defendants breached the covenant of good faith and fair dealing by terminating the
23 Agreement without cause, in bad faith and for reasons extraneous to the Agreement.

24 31. As a direct and proximate result of Defendants' breach of the covenant of good
25 faith and fair dealing, Plaintiffs has incurred damages in excess of the jurisdictional minimum
26 according to proof at trial, but in excess of \$50,000.
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1 **FIFTH CAUSE OF ACTION**

2 **(Unjust Enrichment)**

3 **[Against all Defendants]**

4 32. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 31
5 above as if fully set forth.

6 33. Plaintiffs are informed and believe and thereon allege that when Defendants
7 terminated the Agreement, they acted for the express purpose of taking the fruits of Plaintiffs'
8 efforts, time and skill without compensating Plaintiffs. These acts were done with full knowledge
9 of Plaintiffs' contractual, economic rights, and entitlements to its accounts and territory.
10 Defendants sought to, and did, usurp Plaintiffs accounts in order to retain the benefits.

11 34. Plaintiffs have been unjustly deprived of their commissions, expenses, fees,
12 reorders and follow-on business. The unjust enrichment of Defendants and unjust deprivation of
13 Plaintiffs will continue in the future.

14 35. As a direct and proximate result of said wrongful conduct, Defendants having been
15 unjustly enriched at the expense of Plaintiffs, Plaintiffs have been damaged thereby. Ordinary
16 contract damages are not adequate to compensate Plaintiffs for the losses they suffered herein.
17 Plaintiffs lost the commissions, costs, and fees that are the fruits of their investment of time and
18 monies, reorders and follow-on business and said loss shall continue into the future. The exact
19 amount of Plaintiffs loss is in an amount in excess of the jurisdictional minimum of this Court.

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21 **SIXTH CAUSE OF ACTION**

22 **(Unfair Business Practices – Cal. Bus. & Prof. Code § 17200)**

23 **[Against all Defendants]**

24 36. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 35
25 above as if fully set forth.

26 37. Defendants' conduct constitutes unlawful, unfair or fraudulent business practices in
27 violation of California Business & Professions Code section 17200.

28 38. Plaintiffs are entitled to a preliminary and permanent injunction enjoining

1 Defendants from further violations of the Act.

2 39. Plaintiffs are entitled to an order disgorging Defendants of all profits they have
3 made and commissions they have wrongfully taken from Plaintiffs as a result of their violations of
4 the Act and providing restitution to Plaintiffs in an amount exceeding \$50,000.00 according to
5 proof at trial.

6 40. Plaintiffs are entitled to an award of attorneys' fees pursuant to California Code of
7 Civil Procedure section 1021.5 because: (1) an injunction against Defendants would result in the
8 enforcement of an important right affecting the public interest and confer a significant benefit on
9 the general public, namely the protection of all wholesale sales representatives in California; (2)
10 the necessity of bringing this action to protect the rights of wholesale sales representatives
11 throughout California and the financial burden it places on Plaintiffs make an award of attorneys'
12 fees appropriate; and (3) such fees should not, in the interest of justice, be paid out of any
13 recovery.

14
15 **SEVENTH CAUSE OF ACTION**

16 **(Constructive Trust)**

17 **[Against all Defendants]**

18 41. Plaintiffs reallege and herein incorporate by this reference Paragraphs 1 through 40
19 above as if fully set forth.

20 42. As more fully set forth above, Defendants engaged in the breach of the Agreement,
21 violations of the Act, and unfair business practices in violation of California Business &
22 Professions Code section 17200, et seq.

23 43. Through these wrongful acts, Defendants has obtained profits and commissions that
24 rightfully belong to Plaintiffs.

25 44. Defendants hold Plaintiffs' profits and commissions as constructive trustee for
26 Plaintiffs' benefit.

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1 Independent Wholesale Sales Representatives Contractual Relations Act and that it
2 provide restitution to all such sales representatives in an amount exceeding
3 \$50,000.00 according to proof at trial;

- 4 3. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5;

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6 **SEVENTH CAUSE OF ACTION**

- 7 1. For an order declaring that Defendants hold profits and commissions that rightfully
8 belong to Plaintiffs as constructive trustee for Plaintiffs' benefit;

9
10 **AS TO ALL CAUSES OF ACTION**

- 11 1. For interest on said sum at the full legal rate;
12 2. For costs of suit;
13 3. That the court adjudges and find that Defendant, JAMIE PRESSLY and DOES 1
14 through 50 are the alter egos of JAIME PRODUCTIONS, INC., and vice versa,
15 and that Defendant, JAMIE PRESSLY and DOES 1 through 50 be held personally
16 liable for any and all judgments against JAIME PRODUCTIONS, INC. and in
17 favor of Plaintiffs;
18 4. For such other and further relief the Court deems appropriate.

19 Dated: May 30, 2008

HURWITZ & ORIHUELA, LLP

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22 By: 

Cory H. Hurwitz

Nicolas Orihuela,

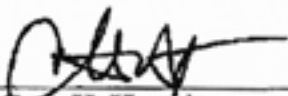
Attorneys for Plaintiffs, TAMI H. SMITH
and TAMI H. SMITH, INC.

DEMAND FOR JURY TRIAL

Plaintiffs, TAMI SMITH and TAMI H. SMITH, INC., hereby demand a trial by jury.

Dated: May 30, 2008

HURWITZ & ORIHUELA, LLP

By: 

Cory H. Hurwitz
Nicolas Orihuela,
Attorneys for Plaintiffs, TAMI H. SMITH
and TAMI H. SMITH, INC.



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