

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE WEINSTEIN COMPANY, LLC,

: Index No. 150019/2009

Plaintiff,

: AFFIDAVIT OF BRYAN M.
: SULLIVAN

vs.

LIONS GATE ENTERTAINMENT CORP.,

Defendant.
-----X

STATE OF CALIFORNIA)
) SS.:
COUNTY OF LOS ANGELES)

Bryan M. Sullivan, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and am a partner at with the law firm of Glaser, Weil, Fink, Jacobs & Shapiro, LLP, attorneys of record herein for Defendant Lions Gate Entertainment Corp. The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

2. I represent Lionsgate Films Inc. in the lawsuit against The Weinstein Company, LLC ("Weinstein"), currently pending in the Superior Court of the State of California for the County of Los Angeles ("LASC"), being *Lionsgate Films, Inc. v. The Weinstein Company, LLC*, LASC Case No. BC 406990 (the "California Action"). I have been informed that the complaint initiating this lawsuit was filed on the morning of February 4, 2009, at 8:55 a.m. PST. Attached hereto as Exhibit "A" is a true and correct copy of the complaint in the California Action.

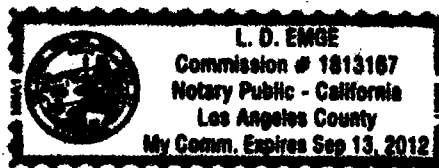
3. Immediately following the filing of the complaint in the California Action, I caused that complaint to be served on the agent for the service of process for Weinstein, which is CSC Lawyers Incorporating Service ("Weinstein's Agent"). I have been informed that the complaint in the California action was served on Weinstein's agent on February 4, 2009 at 11:35 a.m. PST. Attached hereto as Exhibit "B" is a true and correct copy of the Proof of Service of

Summons and Complaint on Defendant The Weinstein Company, LLC (the "Proof of Service"), which I caused to be filed with the LASC. Paragraph 5(a) of the Proof of Service states that service was completed at 11:35 a.m. PST.

Raymond M. Sullivan

Sworn to before me this
9th day of FEBRUARY, 2009

[Signature]
Notary Public



COPY

**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

FEB 04 2009

John A. Clarke, Executive Officer/Clerk

By Cynthia M. Jacobs, Deput
CYNTHIA M. JACOBS

1 Patricia L. Glaser, State Bar No. 55668
2 Bryan M. Sullivan, State Bar No. 209743
3 GLASER, WEIL, FINK, JACOBS & SHAPIRO, LLP
4 10250 Constellation Boulevard, 19th Floor
5 Los Angeles, California 90067
6 Telephone: (310) 553-3000
7 Facsimile: (310) 556-2920

8 Attorneys for LIONSGATE FILMS INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 LIONSGATE FILMS INC., a Delaware
12 corporation,

13 Plaintiff,

14 v.

15 THE WEINSTEIN COMPANY, LLC, a
16 Delaware limited liability corporation; DOES
17 I thru 10,

18 Defendants.

Case No. BC406990

**COMPLAINT FOR DECLARATORY
RELIEF**

19 NATURE OF THE CASE

20 By this action, Plaintiff Lionsgate Films, Inc. ("Lionsgate") seeks a judicial determination
21 that, among other things, The Weinstein Company, LLC ("Weinstein") does not have any right, title
22 or interest in the 2009 Sundance Award winning film entitled *Push: Based on the Novel by Sapphire*
23 (the "Film"). During the time that Lionsgate was negotiating for, among other things, the United
24 States and Canadian distribution rights for the Film, Weinstein asserted that it had reached an
25 agreement for, among other things, those very rights and threatened to enforce its alleged rights
26 under that purported agreement. However, the producers of the Film and their representatives
27 unequivocally denied that any agreement had been reached with Weinstein. Relying on these
28 representations, Lionsgate entered into a written agreement with the producers of the Film for,

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1 among other things, the United States and Canadian distribution rights for the Film. In light of
2 Weinstein's threat to enforce its alleged agreement with the producers of the Film, Lionsgate brings
3 this action for the following judicial declarations:

4 (a) Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates entered
5 into an enforceable or binding agreement for any rights in the film entitled *Push*:
6 *Based on the Novel by Sapphire*; and

7 (b) Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates has any
8 right, title or interest in the film entitled *Push: Based on the Novel by Sapphire*.

9 **PARTIES**

10 1. Plaintiff Lionsgate Films Inc. ("Lionsgate") is a Delaware corporation whose
11 principal place of business is located at 2700 Colorado Avenue, Suite 200, Santa Monica, California
12 90404. Lionsgate is an independent producer and distributor of motion pictures, television
13 programming, home entertainment, family entertainment, video-on-demand and digitally delivered
14 content.

15 2. Defendant The Weinstein Company, LLC ("Weinstein") is a Delaware limited
16 liability corporation whose principal place of business is 345 Hudson Street, 13th Floor, New York,
17 New York, 10014. Weinstein is an independent film studio founded by brothers Harvey and Bob
18 Weinstein in 2005 after the pair left the Disney-owned Miramax Films, which they had co-founded
19 in 1979. Lionsgate is informed and believes and on that basis alleges that Weinstein maintains an
20 office in Los Angeles, California.

21 3. Lionsgate is ignorant of the true names and capacities of the defendants sued herein
22 as Does 1 through 10 inclusive (the "Doe Defendants"), whether individual, corporate or otherwise,
23 and therefore sues these defendants by such fictitious names. Lionsgate will amend this Complaint
24 to allege their true names and capacities, if and when they are ascertained. Lionsgate is informed
25 and believes and on that basis alleges that the Doe Defendants, at all times herein, acted as co-
26 conspirators and/or agents of Weinstein. Lionsgate is further informed and believes and on that
27 basis alleges that the inclusion of the Doe Defendants may be necessary for a full and complete
28 determination of the rights of the parties to this action.

1 **JURISDICTION AND VENUE**

2 4. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
3 jurisdiction is proper in the Superior Court of California for the County of Los Angeles.

4 5. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper in
5 the Superior Court of California for the County of Los Angeles.

6 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

7 6. *Push: Based on the Novel by Sapphire* (the "Film") is a film about Precious Jones, an
8 illiterate high-school girl who is pregnant for the second time with her own father's child and is
9 ruled by a mother who keeps her imprisoned emotionally and physically. The Film follows her
10 story as she is accepted into an alternative school where a teacher helps her find a new direction for
11 her life. The Film premiered at the January 2009 Sundance Film Festival and was the recipient of
12 several awards, including the Grand Jury Prize: U.S. Dramatic, and the Audience Award: U.S.
13 Dramatic.

14 7. Prior to the Film's success at the 2009 Sundance Film Festival, the producers of the
15 Film and their representatives (collectively, the "Producers") entered into negotiations with
16 Lionsgate whereby Lionsgate would receive, among other things, the exclusive distribution rights to
17 the Film in the United States and Canada in all media and certain rights with respect to, among other
18 things, all remakes, prequels and sequels (the "Rights") in exchange for certain guaranteed
19 compensation, bonuses for box office achievements and for the nomination or receipt of certain film
20 awards, such as a Golden Globe or an Academy Award. These negotiations continued after the
21 2009 Sundance Film Festival ended on or about January 25, 2009.

22 8. On or about January 28, 2009, during the negotiations between Lionsgate and the
23 Producers, Weinstein contacted Lionsgate stating that Weinstein had already reached an agreement
24 with the Producers for the Rights to the Film. Weinstein also told Lionsgate not to interfere with
25 Weinstein's alleged agreement for the Rights to the Film.

26 9. Lionsgate was aware that Weinstein had approached the Producers about obtaining
27 the Rights to the Film. Indeed, at one point, Weinstein had suggested that it and Lionsgate pursue
28 joint negotiations, but Lionsgate rejected this suggestion. However, prior to being contacted by

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1 Weinstein on or about January 28, 2009, Lionsgate did not have any knowledge regarding
2 Weinstein's claim that it had reached a final agreement with the Producers for the Rights to the Film.

3 10. Lionsgate immediately contacted the Producers and asked them whether they had
4 reached an agreement with Weinstein for the Rights to the Film. While the Producers
5 acknowledged that they had been negotiating with Weinstein, they unequivocally denied that any
6 final, binding or enforceable deal for the Rights to the Film had been reached with Weinstein.

7 11. On or about January 29, 2009, Lionsgate informed Weinstein that the Producers
8 denied they had reached an agreement with Weinstein for Rights to the Film. Weinstein responded
9 by again asserting that, contrary to the Producers' denial, it reached an agreement with the Producers
10 for the Rights to the Film.

11 12. Thereafter, Lionsgate again confirmed with the Producers of the Film that they had
12 not reached an agreement for the Rights to the Film with Weinstein. The Producers specifically told
13 Lionsgate that several material deal points had not even been agreed to, including, among others, the
14 division of profits between Weinstein and the Producers and whether rights in international
15 territories could be granted due to the Producers' prior deal with an international sales agent for
16 certain international rights to the Film. The Producers also stated that no final agreement could have
17 been reached because the negotiations were conducted through the Producers' representatives and
18 those representatives had to obtain the Producers' approval before any deal could be finalized, and
19 that Weinstein was on notice of this requirement.

20 13. The Producers also informed Lionsgate that Weinstein had threatened litigation to
21 enforce its purported rights under the alleged agreement which Weinstein asserted existed with the
22 Producers.

23 14. In light of the threat of litigation, Lionsgate requested that the Producers specifically
24 represent in the agreement for the Rights to the Film that no verbal or written agreement existed
25 with Weinstein for the Rights to the Film. The Producers agreed to such representation in the
26 written agreement for the Rights to the Film.

27 15. Thereafter, Lionsgate negotiated and executed a written agreement with the
28 Producers for the Rights to the Film.

1 16. Lionsgate is informed and believes and on that basis alleges that Weinstein still
2 asserts that it had an agreement with the Producers for the Rights to the Film. Accordingly, with no
3 adequate remedy at law to resolve this dispute, Lionsgate brings this declaratory relief action to
4 judicially confirm that:

5 (a) Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates entered
6 into an enforceable or binding agreement for any rights in the film entitled *Push:*
7 *Based on the Novel by Sapphire;* and

8 (b) Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates has any
9 right, title or interest in the film entitled *Push: Based on the Novel by Sapphire.*

10 **DECLARATORY RELIEF CAUSE OF ACTION**

11 17. A current and actual controversy exists between Lionsgate and Weinstein regarding
12 the Rights to the Film and Lionsgate does not have an adequate remedy at law to resolve this
13 controversy.

14 18. Declaratory relief will resolve some or all of the disputes and controversies between
15 Lionsgate and Weinstein.

16 19. Based on the above alleged facts, Lionsgate seeks a judicial declaration that:

17 (a) Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates
18 entered into an enforceable or binding agreement for any rights in the film
19 entitled *Push: Based on the Novel by Sapphire;* and

20 (b) Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates
21 has any right, title or interest in the film entitled *Push: Based on the Novel by*
22 *Sapphire.*

23 **WHEREFORE,** Lionsgate prays judgment against Weinstein, as follows:

24 1. For a judicial declaration that neither the Weinstein Company, LLC nor any of its
25 subsidiaries or affiliates entered into an enforceable or binding agreement for any rights in the film
26 entitled *Push: Based on the Novel by Sapphire.*

27 ///

28 ///

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2. For a judicial declaration that Neither the Weinstein Company, LLC nor any of its subsidiaries or affiliates has any right, title or interest in the film entitled *Push: Based on the Novel by Sapphire*.

3. For costs and expenses incurred in this action; and

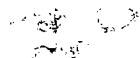
4. For such other and further relief which may be deemed just and proper.

Dated: February 4, 2009

GLASER, WEIL, FINK, JACOBS & SHAPIRO, LLP

By: 
PATRICIA L. GLASER
Attorneys for LIONSGATE FILMS INC.

Exhibit B



COPY

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Los Angeles Superior Court**

FEB 06 2009

John A. Clarke, Executive Officer/Clerk

By  Dept
RAUL SANCHEZ

5 Attorneys for Plaintiff LIONSGATE FILMS INC.
6
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 LIONSGATE FILMS INC., a Delaware
corporation,

13 Plaintiff,

14 v.

15 THE WEINSTEIN COMPANY, LLC, a
16 Delaware limited liability corporation

17 Defendant.
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Case No. BC 406990

**PROOF OF SERVICE OF SUMMONS
AND COMPLAINT ON DEFENDANT
THE WEINSTEIN COMPANY, LLC**

[Honorable Hon. Helen I. Bendix, Dept. 18]
[Complaint filed: February 4, 2009]

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Attorney or Party without Attorney: PATRICIA L. GLASER, Bar #055668 GLASER, WEIL, FINK, JACOBS & SHAPIRO LLP 10250 CONSTELLATION BLVD. 19TH FLOOR LOS ANGELES, CA 90067 Telephone No: 310-553-3000 FAX No: 310-556-2920			For Court Use Only		
Attorney for: Plaintiff			Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court: LOS ANGELES COUNTY SUPERIOR COURT, CENTRAL DISTRICT					
Plaintiff: LIONSGATE FILMS, INC., ETC. Defendant: THE WEINSTEIN COMPANY, LLC, ETC.					
PROOF OF SERVICE SUMMONS & COMPLAINT		Hearing Date:	Time:	Dept/Div:	Case Number: BC406990

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET; CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION; NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE; NEW FROM THE LOS ANGELES SUPERIOR COURT ADR DEPARTMENT; SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES ALTERNATIVE DISPUTE RESOLUTION PACKAGE; LOS ANGELES COUNTY DISPUTE RESOLUTION PROGRAMS ACT (DRPA) CONTRACTORS; STIPULATION TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR).
3. a. Party served: THE WEINSTEIN COMPANY, LLC, A DELAWARE LIMITED LIABILITY CORPORATION
 b. Person served: BECKY DEGEORGE, CSC LAWYERS INCORPORATING SERVICE, REGISTERED AGENT.
4. Address where the party was served: 2730 GATEWAY OAKS DRIVE
 SUITE 100
 SACRAMENTO, CA 95833
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Feb. 04, 2009 (2) at: 11:35AM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 on behalf of: THE WEINSTEIN COMPANY, LLC, A DELAWARE LIMITED LIABILITY CORPORATION
 Under CCP 416.10 (corporation)
7. Person Who Served Papers:
 - a. Michael Morris
 - d. The Fee for Service was: Recoverable Cost Per CCP 1033.5(a)(4)(B)
 - e. I am: (3) registered California process server
 - (i) Independent Contractor
 - (ii) Registration No.: 04-009
 - (iii) County: Placer
 - (iv) Expiration Date: Thu, Jul. 22, 2010



First Legal Support Services SM
 ATTORNEY SERVICES
 1814 "I" STREET
 Sacramento, CA 95814
 (916) 444-5111, FAX 443-3111

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Thu, Feb. 05, 2009

(Michael Morris) 4289521.patgla.189900