

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

Index No. 158540/2013

Date Purchased: September 18, 2013

\_\_\_\_\_  
AVRIL NOLAN,

Plaintiff,

Plaintiff designates New York  
County as the place of trial.

-against-

GETTY IMAGES (US), Inc.

Defendants.

**SUMMONS**

\_\_\_\_\_  
To the above named Defendant(s):

***You are hereby summoned*** to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within **twenty (20) days** after the service of this summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: September 18, 2013  
New York, New York

**Law Office of Erin Lloyd**  
Attorney for Plaintiff  
136 East 57<sup>th</sup> Street, Suite 1105  
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By: \_\_\_\_\_

Erin Lloyd, Esq.

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

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AVRIL NOLAN,

Plaintiff,

-against-

GETTY IMAGES (US), Inc.,

Defendant.

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Index No. 158540/2013

**AMENDED**  
**VERIFIED**  
**COMPLAINT**

**NATURE OF THE ACTION**

1. Plaintiff, Avril Nolan, seeks damages for violation of Civil Rights Law §§ 50 and 51 by Defendant, Getty Images (US), Inc. (hereinafter “Getty”) in connection with the unauthorized use of Plaintiff’s image for trade or advertising purposes within the State of New York.

**PARTIES AND VENUE**

2. Plaintiff is an individual who resides at 685 Manhattan Avenue, Apt. 2R, Brooklyn, NY 11222.
3. Upon information and belief, Getty is a domestic business corporation with its principal place of business in New York, NY.
4. Upon information and belief, Getty has its principal place of business at 75 Varick Street, New York, NY 10013.
5. Upon information and belief, Getty has been registered to do business in the State of New York since 1974.
6. Upon information and belief, Getty also maintains its Registered Agent’s office at CT Corporation System, 111 Eighth Avenue, New York, NY 10011.

7. Venue in this Court is appropriate pursuant to New York Civil Practice Law and Rules §§ 503 (a) and (c) based on location of Getty's principal office.

**FACTS RELEVANT TO ALL CAUSES OF ACTION**

8. On April 3, 2013, on page 10 of the free daily newspaper AM NY (hereinafter "AM NY"), the New York State Division of Human Rights (hereinafter the "Division") displayed a quarter-page color advertisement, consisting of a full color image of Plaintiff, with the words "I AM POSITIVE (+)" and "I HAVE RIGHTS" on the image itself, next to Plaintiff's face. Below the picture, the following information was included:

PEOPLE WHO ARE HIV POSITIVE ARE PROTECTED BY THE NEW YORK  
STATE HUMAN RIGHTS LAW. DO YOU KNOW YOUR RIGHTS?  
CONTACT THE NYS DIVISION OF HUMAN RIGHTS AT 1-888-392-3644  
OR WWW.DHR.NY.GOV.

9. Upon information and belief, prior to the publication, the Division, not a party in this action, licensed Plaintiff's image from Defendant Getty, pursuant to a License Agreement.
10. Upon information and belief, Getty is a worldwide commercial supplier of still images, illustrations and film footage.
11. Upon information and belief, Getty engages in the business of selling and/or licensing, and distributing, stock photographs depicting, among others, the likeness of Plaintiff, on the Internet and otherwise.
12. Upon information and belief, although Plaintiff's photograph was available in Getty's search base globally through the Internet, the License Agreement between Getty and the Division was executed within the State of New York and is subject to the laws of New York.

13. Upon information and belief, Defendant obtained Plaintiff's image from a photographer named Jena Cumbo (hereinafter the "Photographer"), in accordance with the Getty Images Contributor Agreement (hereinafter "Contributor Agreement").
14. Upon information and belief, pursuant to the Contributor Agreement, the Photographer submitted to Getty, among other photographs, Plaintiff's image.
15. The Photographer had no written release or authorization from Plaintiff to use or sell Plaintiff's image, as is required pursuant to New York law.
16. Upon information and belief, it is Getty's business practice to retain copies of all model releases executed by persons depicted in photographs, including Plaintiff.
17. Upon information and belief, Getty never requested proof that Plaintiff had executed a legally enforceable and binding written model release, or any type of release, to the Photographer for her image(s).
18. Upon information and belief, Defendant either knew or should have known that license of Plaintiff's image was without any written authorization.
19. Upon information and belief, Getty knowingly used Plaintiff's photograph absent written consent.
20. Plaintiff denies having ever signed a release or authorization to distribute or use her image by *anyone* as part of trade or for advertising purposes.
21. In any event, even if Plaintiff had consented to the use of her image by Photographer for limited purposes, which she did not, Defendant had an independent duty to seek and obtain a similar written consent, which it did not do.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF CIVIL RIGHTS LAW §§ 50 and 51**

22. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 21 with the same force and effect as if set forth at length herein.
  23. Defendant being in the business of selling and/or licensing, and distributing, stock photographs, licensed or sold Plaintiff's image to the Division.
  24. The Division subsequently used it for its own advertising purposes in a daily newspaper.
  25. Getty used Plaintiff's photograph for advertising purposes in order to solicit potential clientele willing to buy or license its products, mainly still images.
  26. Alternatively and additionally, Getty used Plaintiff's image for trade purposes both by listing it in its commercial catalog for purchase in order to draw trade to Getty, and by issuing a license for the use of Plaintiff's image in exchange for financial benefit.
  27. By the actions complained of herein, Defendant financially profited in its trade or business.
  28. The sale or license of Plaintiff's image to the Division took place within the State of New York and is governed by its laws.
  29. The sale or license of Plaintiff's photograph to the Division was unauthorized because Plaintiff has never given any written consent or release for her image to be used in any advertising campaign or as part of trade, commercial or advertising purposes.
  30. Defendant violated Plaintiff's Civil Rights Law § 51 by using Plaintiff's image for trade or advertising purposes within the New York State absent any written consent.
- Plaintiff has been damaged by Defendant's conduct.

**PLAINTIFF HAS ESTABLISHED THE DEMANDED DAMAGES**

31. As further detailed in the Verified Complaint, submitted herewith, Plaintiff has suffered injury and is entitled to recovery against Defendant as follows:

- a. Compensatory damages in an amount to be determined at trial but no less than \$200,000;
- b. An award of attorney's fees and costs for commencement and prosecution of this action; and
- c. Punitive damages in an amount to be determined at trial but no less than \$250,000.

*Compensatory Damages*

32. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 31 with the same force and effect as if set forth at length herein.

33. Defendant used Plaintiff's image in an inappropriate manner by selling or licensing it, without Plaintiff's consent, to the Division which, subsequently, used it for its advertisement in AM NY, in a defamatory fashion, imputing a loathsome disease to Plaintiff.

34. Upon information and belief, AM NY is Manhattan's highest circulation daily newspaper.

35. Had not it been for Defendant's conduct, and had Defendant fulfilled its duty under New York law to ensure that Plaintiff signed a written model release authorizing the use and sale or licensing of her image, Plaintiff's photograph would not have appeared in a local newspaper.

36. Plaintiff learned about the publication of her image through a public message posted on her Facebook page, alerting her and anyone else who was connected with Plaintiff through Facebook, to the image and advertisement.

37. Upon learning of the publication, Plaintiff became instantly upset and apprehensive that her relatives, potential romantic partners, clients, as well as bosses and supervisors might have seen the advertisement.
38. Feeling humiliated and embarrassed, Plaintiff was forced to confess to her bosses that her image had been used in an advertisement for HIV services, implying that she was infected with HIV, in a newspaper often used by her own clients for advertising and that is distributed to tens of thousands of New Yorkers every day.
39. Plaintiff was also approached by her pilates instructor, who told Plaintiff she had seen the advertisement containing Plaintiff's image.
40. Plaintiff has suffered mental distress and anguish as a result of the publication of her picture in NY AM.
41. Ever since the publication, Plaintiff has suffered disturbance of her peace of mind and injury to her personal feelings, as well as consequences to her professional reputation and relationships.

*Punitive Damages*

42. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 41 with the same force and effect as if set forth at length herein.
43. Upon information and belief, Defendant is aware that New York State requires model releases for use of an individual's photograph to be in writing, signed by the subject.
44. Plaintiff denies having ever signed an authorization or release to use or distribute her image by *anyone* for the purposes of trade or advertising.
45. Plaintiff also denies having orally consented to such use.
46. The Photographer has acknowledged that she obtained no such release.

47. New York Civil Rights Law § 50 makes the use of the picture of any living person for trade or advertising purposes without *written consent* a misdemeanor, and § 51 provides that exemplary damages are available where the defendant acts knowingly in violation of that protection.
48. Upon information and belief, despite its extensive experience in the field and its awareness of the law, Getty failed to seek any proof that the Photographer had obtained Plaintiff's release – or the release of any of the other subjects of Photographer's images that were simultaneously licensed or sold to Getty.
49. Accordingly, upon information and belief, Getty knew or should have known it did not have Plaintiff's written consent when it sold or licensed Plaintiff's photograph to the Division.
50. Nevertheless, Getty did sell or license Plaintiff's image to the Division.
51. Plaintiff's right of privacy, accorded by the Statute, gives her a right to live her life quietly, happily and be protected against commercial use of her image by entities like Getty, absent written consent.
52. Getty being an experienced and professional enterprise in its business abused its position of a superior party by consciously using Plaintiff's photograph to its economic benefit in a clear violation of her civil rights.
53. It cannot be disputed Getty made an unauthorized use of Plaintiff's image with either knowledge or with reckless and willful disregard of Plaintiff's rights.
54. Not only did Getty, upon information and belief, knowingly use Plaintiff's image within the prohibition of the Statute warranting an award of punitive damages, but it also commercially exploited Plaintiff's image for its trade and/or advertising purposes.



55. Upon being served with a cease and desist order, counsel for Getty acknowledged that it would comply with the demand, but pointed to the indemnification agreement allegedly contained in the licensing agreement between itself and the Photographer, in an effort to shift liability away from itself.
56. Upon information and belief, Getty relies solely on independent photographers and others that provide it with images for licensing to obtain and warrant that the proper release has been obtained, despite the fact that Getty has an independent obligation under the law to determine that the proper release(s) have been obtained to permit its commercial use of the images and material.
57. Upon information and belief, Getty has instituted practices based on a belief that it can avoid liability by requiring photographers and other licensees or sellers of data and images to indemnify it if it is later determined that the photographer cannot provide a legally enforceable release, despite having its own independent duty, as an entity that engages in the sale and trade and licensing of images, to obtain or verify the existence of the proper release.
58. Getty's website boasts that it has over 24 million images in its portfolio, and that it is the leading provider of stock photography and editorial images, yet it has eschewed its responsibility to comply with the local laws in which it operates, to the injury of New Yorkers.
59. Getty's disregard for the law, to the detriment of individuals with limited means or financial ability and incentive to challenge it, coupled with injuries that may prove difficult or impossible to establish in some instances, justifies the imposition of punitive damages in an amount to be determined at trial, but in no case less than \$250,000.

**WHEREFORE**, Plaintiff demands judgment as follows:

- a) On Plaintiff's First Cause of Action, compensatory damages in an amount to be determined at trial but no less than \$200,000.00;
- b) On Plaintiff's First Cause of Action, an award of punitive damages for a its reckless and knowing use of Plaintiff's image without written consent in violation of New York law, in an amount to be determined at trial but no less than \$250,000.00;
- c) An award of costs, disbursements, attorney's fees on First Cause of Action under which such an award may be made;
- d) Such other, further or different relief as to the Court may seem just and equitable.

Dated: September 18, 2013  
New York, New York

**Law Office of Erin Lloyd**  
Attorney for Plaintiff  
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By: \_\_\_\_\_  
Erin Lloyd, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
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AVRIL NOLAN,

Plaintiff,

Index No.

-against-

GETTY IMAGES (US), Inc.,

Defendant.

ATTORNEY

VERIFICATION

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I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, state that I am the attorney of record for the plaintiff in the within action; that I have read the foregoing Complaint and know its contents; that it is true to my knowledge, except as to matters alleged to be on information and belief, and as to those matters I believe it to be true.

The reason that this verification is made by me and not by the plaintiff is because the plaintiff is not located in the county in which your affirmant maintains her office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Records contained in the file maintained in our Office and conversations had with the plaintiff, as well as plaintiff's review of the allegations made herein.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: September 18, 2013  
New York, New York

**THE LAW OFFICE OF ERIN LLOYD**  
*Attorneys for Plaintiff Avril Nolan*  
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By: \_\_\_\_\_  
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