Plaintiffs, Plaintiffs, N. ONE AMERICA PRODUCTIONS, INC, a California Corporation; EVERYMAN PICTURES, a California Corporation; GOLD/MILLER PRODUCTIONS, National edition of the control of the corporation; GOLD/MILLER PRODUCTIONS, National edition of the corporation; GOLD/MILLER PRODUCTIONS, National edition of the corporation; and ROES 1 through 50, inclusive. Defendants. COMPLAINT FOR (1) FRAUD; (2) RESCISSION OF CONTRACT; (3) COMMON LAW FALSE LIGHT; [CAL. CIV. CODE 3344]; (5) APPROPRIATION OF LIKENESS; AND inclusive. (6) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS INITIAL CASE MANAGEMENT REVIEW AND CONFERENCE FEB 2 7 2007 Judge Joseph S. Biderman Doof & S. 30 AMM AND CONFERENCE FEB 2 7 2007 Judge Joseph S. Biderman Doof & S. 30 AMM	1 2 3 4 5 6 7 8 9 10	OLIVIER A. TAILLIEU (S.B. #206546) GERMAN A. MARCUCCI (S.B. #222237) ZUBER & TAILLIEU LLP 9595 Wilshire Boulevard, 9th Floor Beverly Hills, California 90212 Telephone: (310) 300-8480 Facsimile: (310) 300-8481 Attorneys for PLAINTIFFS JOHN DOE 1 and JOHN DOE 2 SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES - WEST DISTRICT SANTA MONICA COURTHOUSE JOHN DOE 1, an individual; JOHN Case No. SC091723
28 COMPLAINT	13 14 15 16 (a) 17 18 19 20 21 22 23 24 25 26 27	Plaintiffs, V. ONE AMERICA PRODUCTIONS, INC., a California Corporation; EVERYMAN PICTURES, a California Corporation; GOLD/MILLER PRODUCTIONS, business (4) STATUTORY FALSE LIGHT; Corporation; and ROES 1 through 50, inclusive. Defendants. COMPLAINT FOR (1) FRAUD; (2) RESCISSION OF CONTRACT; (3) COMMON LAW FALSE LIGHT; COMMON LAW FALSE LIGHT; COMMON LAW FALSE LIGHT; CALL CIV. CODE 3344]; (5) APPROPRIATION OF LIKENESS; AND (6) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS INITIAL CASE MANAGEMENT REVIEW AND CONFERENCE FEB 2 7 2007 Judge Joseph S. Biderman Door C. (8) 3 OMMON LAW FALSE LIGHT; (9) RESCISSION OF CONTRACT; (1) FRAUD; (2) RESCISSION OF CONTRACT; (3) COMMON LAW FALSE LIGHT; (6) APPROPRIATION OF LIKENESS; AND (6) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS INITIAL CASE MANAGEMENT REVIEW AND CONFERENCE FEB 2 7 2007 Judge Joseph S. Biderman Door C. (8) 3 OMMON LAW FALSE LIGHT; (9) PROPRIATION OF LIKENESS; AND (1) FRAUD; (2) RESCISSION OF CONTRACT; (3) COMMON LAW FALSE LIGHT; (6) APPROPRIATION OF LIKENESS; AND (6) NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

COMES NOW THE PLAINTIFFS, JOHN DOE 1 AND JOHN DOE 2, FOR THEIR COMPLAINT, ALLEGE AS FOLLOWS:

SUMMARY OF ACTION

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- Sasha Baron Cohen is a prankster. His M.O. consists of 1. creating likeable yet outrageous characters and then unleashing these characters into selected individuals for public viewing. The funny part is when we, the audience, see how these individuals react to him.
- Until recently, his musings could be found on "Da Ali G Show," which only aired on HBO and which received moderate success. What is most impressive about Mr. Cohen is his uncanny ability to fool interviewees into his traps-including a Presidential candidate and Congressman from both sides of the isles (who have staff whose job it is to screen such pranks). In other words, Mr. Cohen and his staff lie really well.
- 3. One of the characters made famous on Ali G is Borat, a Kazak news reporter. Borat, it seems, has overgrown his pint size format and has become a full length picture-Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan (the "Film"). The format of the film is no different than what is described above. People are tricked in making fools out of themselves. The film has been described in many, colorful ways. Some call it hilarious and some call it offensive. Where one falls on that line depends largely one's tolerance for incest and penis jokes.
- Needless to say, the movie is doing very well domestically. The Film was originally released in 837 theaters nationwide on November 3, 2006 and

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is set to expand to 2,400 theaters on November 10, 2006. See a true and correct copy of a November 7, 2006 Daily Variety news article confirming this information included herewith as "Exhibit 2." It is the only movie ever to gross over \$26 million while playing at less than 1000 locations. The problem, however, is that its success rests on the backs of unsuspecting players. This lawsuit seeks to remedy that.

PARTIES

- 1. The PLAINTIFFS consist of JOHN DOE 1 and JOHN DOE 2, (the "PLAINTIFFS") who brings this action under fictitious names to protect themselves from any additional and unnecessary embarrassment. PLAINTIFF JOHN DOE 1 was, at all relevant times, under the age of 21. The PLAINTIFFS reside in the state of South Carolina.
- 2. DEFENDANT ONE AMERICA PRODUCTIONS INC., ("DEFENDANT ONE AMERICA") is a California Corporation doing business within the State of California.
- 3. DEFENDANT EVERYMAN PICTURES ("DEFENDANT EVERY MAN") is a California Corporation doing business within the State of California.
- 4. DEFENDANT GOLD/MILLER PRODUCTIONS
 ("DEFENDANT GOLD/MILLER") is doing business within the State of California.

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DEFENDANT TWENTIETH CENTURY-FOX FILM
 CORPORATION ("DEFENDANT TWENTIETH CENTURY") is a Delaware
 Corporation with its primary place of business within the State of California.

- 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of DEFENDANTS ROES 1-50, inclusive, are unknown to PLAINTIFF, who therefore sues said DEFENDANTS by such fictitious names. PLAINTIFF alleges on information and belief that each of the DEFENDANTS designated herein as a fictitiously named defendant is, in some manner, responsible for the events and happenings referred to, either contractually or tortiously, and/or that such fictitiously named DEFENDANTS claim some right, title or interest to the property described herein below and/or that such fictitiously named DEFENDANTS are liable in some manner for the obligation described herein below. When PLAINTIFF ascertains the true names and capacities of ROES 1-50, PLAINTIFF will amend this complaint accordingly
- 7. At all times herein mentioned, all of the DEFENDANTS, including the ROE DEFENDANTS, were the agents, servants and employees of all the other DEFENDANTS and at all of said times were acting in the course and scope of their said agency, service and employment.

JURISDICTION AND VENUE

- 8. This is an unlimited case, over which this Court has jurisdiction. The total amount of damages sought exceeds \$25,000.
- 9. Moreover, this Court has personal jurisdiction over all the DEFENDANTS because at all times mentioned herein, DEFENDANTS are located in the County of Los Angeles, State of California.

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10. In addition, venue is proper in the County of Los Angeles pursuant to California Code of Civil Procedure Sec. 395(a), which provides that the action may be tried in "the county that the defendants or some of them reside."

FACTS

- 11. On or about October 28, 2005, PLAINTIFFS and other members of PLAINTIFF's college fraternity, while at the fraternity, were interviewed by DEFENDANTS for potential participation in the Film.
- 12. During the interview, and also thereafter, DEFENDANTS told PLAINTIFFS and other members of PLAINTIFFS' college fraternity that the Film would not be shown in the United States and would not disclose their names or the names of their fraternity or university.
- 13. Ultimately, PLAINTIFFS were selected by DEFENDANTS to participate in the Film. Shortly thereafter, DEFENDANTS took PLAINTIFFS, one of which was under the age of 21, to a drinking establishment "to loosen up" and provided alcoholic beverages to PLAINTIFFS, including the PLAINTIFF who was under 21 years old.
- 14. After a while of heavy drinking by the PLAINTIFFS,
 DEFENDANTS presented PLAINTIFFS with a "Standard Consent Agreement"
 (the "Agreement") for them to sign in order to be able to use PLAINTIFFS in "a
 documentary-style film" which as DEFENDANTS described would only be shown
 in Europe and would never be shown in the United States. A true and correct copy
 of a portion of the Agreement is included herewith as "Exhibit 1."

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15. Based on DEFENDANTS' representations and because they were under the influence of alcohol, PLAINTIFFS signed the Agreement.

Immediately thereafter, and while still well under the influence of the alcohol, provided to them by DEFENDANTS, DEFENDANTS escorted PLAINTIFFS to a motor-home where the filming and audiotaping would take place. There, PLAINTIFFS were encouraged to continue drinking, which they did.

16. Unbeknownst to PLAINTIFFS, DEFENDANTS has no intention of limiting release of the Film to Europe and intended to release the film in the United States all along. DEFENDANTS further had every intention of displaying PLAINTIFFS' names and the names of their fraternity and university.

17. Believing the film would not be viewed in the United States, and at the encouragement of DEFENDANTS, PLAINTIFFS engaged in behavior that they otherwise would not have engaged in. Then Film was indeed released in the United States and PLAINTIFFS' said behavior was included as part of the Film without their consent.

18. As a result of the foregoing, PLAINTIFFS have suffered and will continue to suffer humiliation, mental anguish, and emotional and physical distress, loss of reputation, goodwill and standing in the community in which PLAINTIFFS live, work and learn, all to PLAINTIFFS' damage in an amount according to proof.

COMPLAINT

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FIRST CAUSE OF ACTION FRAUD

(Against all Defendants)

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19. PLAINTIFFS hereby incorporate by reference all prior paragraphs of this complaint, and makes said paragraphs a part of this, the first cause of action, as though fully set forth herein.

capacity solicited, interviewed and secured persons, including PLAINTIFFS to

DEFENDANTS are the producers for the Film and in that

In securing PLAINTIFFS to participate in the Film,

DEFENDANTS represented to PLAINTIFFS that the Film would only be aired in

Europe and would not be aired in the United States. DEFENDANTS further told

fraternity or university. In further securing PLAINTIFFS participation in the Film, DEFENDANTS provided and served PLAINTIFFS, one of whom was under the

age of 21 with alcoholic beverages, causing them to be well under the influence of

PLAINTIFFS to be videotaped and audiorecorded for the Film immediately after

PLAINTIFFS that they would not disclose their names or the names of their

alcohol before signing the Agreement. Moreover, DEFENDANTS took

signing the Agreement and while still well under the influence of alcohol.

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participate in the Film.

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22. The foregoing were misrepresentations, or omissions, of material facts in that DEFENDANTS, at all times, intended to release the Film in the United States and intended to disclose PLAINTIFFS' names and the names of their fraternity and university. Furthermore, PLAINTIFFS believed that they would be given an opportunity to affirm or disaffirm the Agreement while sober after PLAINTIFFS were videotaped and audiotaped.

23. DEFENDANTS made the above representations and omissions in with the intent that PLAINTIFFS would execute the Agreement and participate in the Film.

- 24. PLAINTIFFS did rely thereon and participated in the Film.
 PLAINTIFFS were justified in their reliance because they had reviewed
 DEFENDANTS' website and, at the time, believed the Film to be a legitimate project.
- 25. PLAINTIFFS, at all relevant times, were unaware of both the falsity of the material representations made, and the actuality of the material facts omitted by DEFENDANTS and further, PLAINTIFFS justifiably acted in reliance upon the truth and accuracy of DEFENDANTS' misrepresentations and omissions.
- 26. The depiction created by DEFENDANTS were offensive and objectionable to PLAINTIFFS and to a reasonable person of ordinary sensibilities in that it made PLAINTIFFS the objects of ridicule humiliation, mental anguish, and emotional and physical distress, loss of reputation, goodwill and standing in the community in which PLAINTIFFS live, work and learn, all to PLAINTIFFS' damage in an amount according to proof.

27. DEFENDANTS made the material misrepresentations and omissions of fact to PLAINTIFFS with the intent that PLAINTIFFS rely thereon, and as such (i) acted with conscious disregard for PLAINTIFFS' rights such as to constitute malice under California Civil Code § 3294, (ii) committed despicable conduct that subjected PLAINTIFFS to unjust hardship in conscious disregard of PLAINTIFFS' rights, such as to constitute oppression under California Civil Code § 3294, and (iii) committed fraud, as defined in California Civil Code § 3294, in the form of intentional misrepresentation and concealment of material facts known to DEFENDANT thereby entitling PLAINTIFFS to punitive damages in an amount appropriate to punish or set an example of this DEFENDANT.

SECOND CAUSE OF ACTION – RESCISSION OF CONTRACT

(Against all Defendants)

- 28. On or about October 28, 2005, in South Carolina, PLAINTIFFS and DEFENDANTS purportedly entered into a written contract whereby PLAINTIFFS would each receive \$200.00 for the opportunity to appear in DEFENDANTS' film. A partial copy of the contract is attached as "Exhibit 1" and incorporated by reference herein.
- 29. On or about October 28, 2005, in South Carolina,
 DEFENDANTS knowing the representations to be false and with the intent to
 deceive PLAINTIFFS and to induce them to enter into the contract, falsely and
 fraudulently represented to plaintiff that the Film would never be aired in the
 United States. DEFENDANTS further served large amounts of alcohol to
 PLAINTIFFS immediately prior to presenting them the Agreement to sign.

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At the time the representations were made, at the time PLAINTIFFS entered into the contract and at the time PLAINTIFFS rendered their performance under the contract, PLAINTIFFS did not know the representations were false, but believed them to be true and reasonably relied on them. Had PLAINTIFFS known the true facts or been given the Agreement to sign while they were sober and not under the influence of alcohol, they would not have entered into the contract and would not have rendered or accepted performance thereunder.

Under the terms of the contract, on or about October 28, 2005. and while still under the influence of alcohol, PLAINTIFFS allowed themselves to be videotaped and audiotpaed for the Film

- On or about October 28, 2005, DEFENDANTS delivered the \$200.00 to each of the PLAINTIFFS
- Thereafter, on or about November 3, 2006, PLAINTIFFS discovered that DEFENDANTS' representations were untrue and that the Film was being shown in the United States.
- PLAINTIFFS will suffer substantial harm and injury under the contract if it is not rescinded in that as a result of DEFENDANTS' conduct. PLAINTIFFS have been depicted in a false light as further describe herein.
- PLAINTIFFS intends service of the summons and complaint in 35. this action to serve as notice of rescission of the contract and hereby offers to restore all consideration furnished by DEFENDANTS under the contract on condition that DEFENDANT refrain from further displaying the Film.

36. As a result of entering into the contract with DEFENDANTS, PLAINTIFFS have suffered ridicule humiliation, mental anguish, and emotional and physical distress, loss of reputation, goodwill and standing in the community in					
which PLAINTIFFS live, work and learn, all to PLAINTIFFS' damage in an					
amount according to proof.					
37. In performing the acts herein alleged, DEFENDANTS					
intentionally misrepresented to and concealed from PLAINTIFFS, material facts					
known to DEFENDANTS, specifically that the Film would be shown in the United					
States and that PLAINTIFFS would not be depicted in a false light with the					
intention on the part of DEFENDANTS of depriving PLAINTIFFS of their					
reputation, goodwill and standing in the community thereby justifying an award of					
punitive damages against DEFENDANTS.					
THIRD CAUSE OF ACTION -					

COMMON LAW FALSE LIGHT

(Against all Defendants)

PLAINTIFFS hereby incorporate by reference all prior paragraphs of this complaint, and makes said paragraphs a part of this, the first cause of action, as though fully set forth herein.

PLAINTIFFS' consent, invaded PLAINTIFFS' right to privacy by videotaping and

audiotaping then for the Film in a manner that falsely attributed to PLAINTIFFS

certain stereotypical views of minorities.

COMPLAINT

On or about October 28, 2005, DEFENDANTS, without

	1 40. The disclosure by DEFENDANTS created publicity in the sense
:	of a public disclosure to a large number of people in that the Film has been released
:	and is being shown countrywide in the United States
	41. The depiction created by DEFENDANTS placed PLAINTIFFS
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8	42. The depiction created by DEFENDANTS was offensive and
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11	anguish, and emotional and physical distress, loss of reputation, goodwill and
12	and learn, all to
13	PLAINTIFFS' damage in an amount according to proof.
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15	43. The depiction created by DEFENDANTS was done with malice
16	in that it was made either with knowledge of its falsity or in reckless disregard of
17	its truth in that DEFENDANTS depicted PLAINTIFFS as being insensitive to
18	minorities even though they are not.
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20	44. Within 20 days after PLAINTIFFS learned of the publication or
21	broadcast, PLAINTIFFS served on DEFENDANTS a demand for a retraction as
22	required by Section 48a of the Civil Code of the State of California. A copy of that
23	demand is attached hereto, marked Exhibit 2, and incorporated herein by reference.
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25	45. Up to and including the date of the filing of this complaint,
26	DEFENDANTS have failed and refused to publish a retraction as required by law.
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1 In creating the above described depiction, DEFENDANTS acted with hatred and ill will toward plaintiff within the meaning of Section 2 3 48a(4)(c), (d) of the Civil Code, in that they failed to completely disregard PLAINTIFFS' rights and PLAINTIFFS therefore seek an award of punitive damages. FOURTH CAUSE OF ACTION -STATUTORY LAW FALSE LIGHT [CAL. CIV. CODE 3344] (Against all Defendants) PLAINTIFFS hereby incorporate by reference all prior paragraphs of this complaint, and makes said paragraphs a part of this, the first cause of action, as though fully set forth herein. On or about October 28, 2005, DEFENDANTS, without PLAINTIFFS' consent, invaded PLAINTIFFS' right to privacy by videotaping and audiotaping them for the Film in a manner that falsely attributed to PLAINTIFFS' certain stereotypical views of minorities. The disclosure by DEFENDANTS created publicity in the sense 49. of a public disclosure to a large number of people in that the Film has been released and is being shown countrywide in the United States The depiction created by DEFENDANTS placed PLAINTIFFS in a false light in the public eye in that DEFENDANTS' depiction of PLAINTIFFS falsely depicted them as insensitive to minorities. 111

 51. The depiction created by DEFENDANTS was offensive and objectionable to DEFENDANTS and to a reasonable person of ordinary sensibilities in that it made plaintiff the object of ridicule humiliation, mental anguish, and emotional and physical distress, loss of reputation, goodwill and standing in the community in which PLAINTIFFS live, work and learn, all to PLAINTIFFS' damage in an amount according to proof.

- 52. The depiction created by DEFENDANTS was done with malice in that it was made either with knowledge of its falsity or in reckless disregard of its truth in that DEFENDANTS depicted PLAINTIFFS as being insensitive to minorities even though they are not.
- 53. In creating the above described depiction, DEFENDANTS acted with hatred and ill will toward plaintiff within the meaning of Section 48a(4)(c), (d) of the Civil Code, in that they failed to completely disregard PLAINTIFFS' rights and PLAINTIFFS therefore seek an award of punitive damages.

FIFTH CAUSE OF ACTION – APPROPRIATION OF LIKENESS

(Against all Defendants)

- 54. PLAINTIFFS hereby incorporate by reference all prior paragraphs of this complaint, and makes said paragraphs a part of this, the first cause of action, as though fully set forth herein.
- 55. On or about October 28, 2005, DEFENDANTS, knowingly and without PLAINTIFFS' prior consent, invaded PLAINTIFFS rights to privacy by

appropriating PLAINTIFFS' name, voice, visual image and likeness by 1 videorecording and audiorecording PLAINTIFFS and using said recordings in the 2 Film which falsely depicted PLAINTIFFS as being insensitive to minorities. 3 4 5 The appropriation was unauthorized and without the prior 6 consent of PLAINTIFFS 7 8 DEFENDANTS' conduct involved the appropriation of PLAINTIFFS' name, voice and likeness. DEFENDANTS' conduct involved the 9 appropriation of visual images of PLAINTIFFS and PLAINTIFFS are readily 10 identifiable in the visual images in that any person viewing the visual images with 11 the naked eye can reasonably determine that the persons depicted in them are 12 13 **PLAINTIFFS** 14 15 The appropriation by defendant was for the purpose of 58. distributing the Film and soliciting individuals to pay to view the Film. 16 17 18 The depiction created by DEFENDANTS was offensive and objectionable to DEFENDANTS and to a reasonable person of ordinary 19 20 sensibilities in that it made plaintiff the object of ridicule humiliation, mental 21 anguish, and emotional and physical distress, loss of reputation, goodwill and standing in the community in which PLAINTIFFS live, work and learn, all to 22 23 PLAINTIFFS' damage in an amount according to proof. 24 111 111 25 26 28 111

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SIXTH CAUSE OF ACTION -NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(Against all DEFENDANTS)

- PLAINTIFFS hereby incorporates by reference all prior paragraphs of this complaint, and makes said paragraphs a part of this, the fourth cause of action, as though fully set forth herein.
- DEFENDANTS owed a duty to the general public, as well as PLAINTIFFS in particular, to not subject PLAINTIFFS to emotional distress.
- DEFENDANTS breached that duty when they subjected PLAINTIFFS to the emotional distress alleged herein.
- 63. DEFENDANTS were both the direct and proximate cause for the emotional distress caused.
 - PLAINTIFF suffered damage, in an amount to be proven at

WHEREFORE, PLAINTIFFS pray judgment against DEFENDANTS, and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

- 1. For an injunction from:
 - a) Displaying or exploiting the image and likeness of PLAINTIFFS, and each of them, in the film Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan (the "FILM"), or on television, DVD, internet devices, or in any other media whatsoever; and
 - b) Displaying or exploiting the image and likeness of PLAINTIFFS, and each of them, in any advertising or promotional campaigns associated with the FILM.
- 2. For PLAINTIFFS' general damages according to proof;
- For PLAINTIFFS' loss of income, wages and earning potential according to proof;
 - For PLAINTIFFS' medical and related damages according to proof;
- For declaratory relief against DEFENDANTS, and each of them, to enjoin them from continuing to engage in the unlawful conduct alleged herein;
- 6. For prejudgment interest according to proof, pursuant to Civil Code § 3291;
 - 7. For PLAINTIFFS' costs of suit herein;

COMPLAINT

-1	8. For PLAINTIFFS' attorney fees [California Civil Code §3344];
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3	9. For punitive damages; and
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5	10. For such other and further relief as to the Court may deem just and
6	proper.
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8	Dated: November 2, 2006 ZUBER & TAILLIEU LLP
9	
10	By: Joseph
11	OLIVIER A. TAILLIEU, ESQ.
12	Attorney for PLAINTIFFS JOHN DOE 1 and JOHN DOE 2
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