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 CLERK U.S. DISTRICT COURT  
 CENTRAL DIST. OF CALIF.  
 LOS ANGELES

BY \_\_\_\_\_

7 Attorneys for Plaintiff  
 8 NICKY O. HILTON

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11 CV06 07257R (PJux)

12 NICKY O. HILTON, an individual,

CASE NO.

13 Plaintiff,

COMPLAINT FOR:

14 vs.

- (1) VIOLATION OF § 43(a) OF LANHAM ACT (15 U.S.C. § 1125(a));
- (2) STATUTORY MISAPPROPRIATION OF IDENTITY (California Civil Code § 3344);
- (3) COMMON LAW MISAPPROPRIATION OF IDENTITY;
- (4) CONSTRUCTIVE TRUST

15 ENEJIKO SMITH, an individual,

16 Defendant.

17 DEMAND FOR JURY TRIAL

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COMPLAINT

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Plaintiff Nicky O. Hilton ("Plaintiff") alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because Plaintiff's First Claim for Relief arises under federal law, including, without limitation, 15 U.S.C. § 1125(a).

2. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a), because those claims arise from the same case or controversy underlying Plaintiff's federal claim.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to the claims stated herein occurred in this District.

**THE PARTIES**

4. Plaintiff is an individual who resides in this District. Plaintiff is an international celebrity whose image and name are well known and are featured in a wide array of entertainment and celebrity media throughout this country and the world.

5. Defendant Eneliko Smith ("Defendant") is an individual who, Plaintiff is informed and believes, resides in Lake Tahoe, California.

**SUMMARY OF CASE**

6. In 2004, Plaintiff began developing a boutique hotel chain named "Nicky O," after her first name and middle initial. After almost two years of negotiations with various parties and other work, the first "Nicky O" hotel is scheduled to open in early 2007.

7. One person with whom Plaintiff had discussions in 2005 but never reached any agreement was Defendant, who held himself out as an experienced operator and marketer of boutique hotels. In mid-2006, months after Plaintiff's and Defendant's discussions had ended with no deal, Plaintiff discovered that, during their discussions in July 2005, Defendant secretly and fraudulently filed an Intent to Use Application with the United States Patent and Trademark Office for the name "Nicky O" for "Resort lodging services," a true copy of which is attached hereto as Exhibit 1. When Plaintiff

1 demanded that Defendant withdraw the fraudulent application, Defendant not only  
2 refused, but admitted -- in writing -- that he was "actively seeking alternative business  
3 partners" with whom to exploit Plaintiff's name without her permission.

4 8. Plaintiff files this action to enjoin Defendant from using her name in  
5 commerce and for resulting damages, including attorneys' fees and costs.

6 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

7 9. In or about November 2004, Plaintiff and her representatives began  
8 developing a business plan to operate boutique hotels named "Nicky O," Plaintiff's first  
9 name and middle initial. The plan contemplated the formation of a company to run the  
10 hotels, to which Plaintiff would license her unique and famous name in exchange for  
11 compensation and other rights. Plaintiff's name, "Nicky O," was the foundation and  
12 source of value of this concept, because Plaintiff's name could attract a valuable  
13 demographic of young, affluent guests.

14 10. In or about April 2005, after Plaintiff and her representatives spent months  
15 developing this concept and negotiating with third parties to exploit it, Plaintiff and her  
16 representatives entered into discussions with Defendant, who held himself out as a  
17 manager and developer of hotels, regarding the possibility that Defendant might  
18 manage a "Nicky O" hotel.

19 11. Throughout these discussions, Defendant repeatedly acknowledged in  
20 writing Plaintiff's (obvious) exclusive ownership of her name "Nicky O" and that any  
21 deal would involve Plaintiff's licensing that name to the entity formed to run the hotels.  
22 In addition, Defendant stated in writing on August 26, 2005 that "Nicky O" is "perfect"  
23 for the hotel concept Plaintiff developed and that "Nicky brings a well known name and  
24 an emerging public figure to the table."

25 12. Ultimately, Plaintiff reached no agreement with Defendant and, in late  
26 2005, Plaintiff moved on and negotiated with others.

27 13. Unbeknownst to Plaintiff or her representatives, on July 22, 2005, during  
28 these discussions (and one day after Defendant acknowledged in writing that he had not

1 reached any agreement with Plaintiff, let alone one to exploit her name), Defendant  
2 secretly filed an Intent to Use Application with the U.S. Patent and Trademark Office  
3 for the name "Nicky O" for "Resort lodging services," a true copy of which is attached  
4 hereto as Exhibit 1.

5 14. Almost a year later, as Plaintiff finalized plans to open the first "Nicky O"  
6 hotel with third parties, Plaintiff discovered Defendant's secret and fraudulent  
7 application and demanded that Defendant withdraw it. Defendant refused, and instead  
8 boldly admitted in writing that he is "actively seeking alternative business partners"  
9 with whom to exploit Plaintiff's name without her permission.

10 **FIRST CLAIM FOR RELIEF**

11 **(Violation of Section 43(a) of the Lanham Act [15 U.S.C. § 1125(a)])**

12 15. Plaintiff incorporates by reference paragraphs 1 through 14, inclusive, of  
13 this Complaint as if set forth in full herein.

14 16. Defendant's use in commerce of Plaintiff's name "Nicky O" in direct  
15 competition with Plaintiff, including his "actively seeking ... business partners" to  
16 exploit Plaintiff's name without her permission, is likely to cause confusion, mistake or  
17 deception, in that it falsely suggests Plaintiff's approval of and affiliation with  
18 Defendant's use of Plaintiff's name.

19 17. Based on the foregoing, Defendant's use in commerce of Plaintiff's name  
20 is a false designation of origin in violation of Section 43(a) of the Lanham Act, 15  
21 U.S.C. § 1125(a).

22 18. As a result of Defendant's false designation of origin, Plaintiff has suffered  
23 and will continue to suffer irreparable harm for which she has no adequate remedy at  
24 law. Therefore, Plaintiff is entitled to injunctive relief enjoining Defendant, and all  
25 those acting in concert and participation with Defendant, from using Plaintiff's name  
26 "Nicky O" in commerce.

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1 19. Plaintiff is entitled to all remedies provided by 15 U.S.C. § 1117(a),  
2 including up to three times the amount of any actual damages suffered by Plaintiff as a  
3 result of Defendant's conduct.

4 20. Defendant's conduct alleged above was willful and deliberate, entitling  
5 Plaintiff to an award of attorneys' fees pursuant to 15 U.S.C. § 1117(a).

6 **SECOND CLAIM FOR RELIEF**

7 **(Statutory Misappropriation of Identity [California Civil Code § 3344])**

8 21. Plaintiff incorporates by reference paragraphs 1 through 20, inclusive, of  
9 this Complaint as if set forth in full herein.

10 22. Plaintiff is informed and believes, and thereon alleges, that Defendant is  
11 "actively seeking ... business partners" to exploit Plaintiff's name without her  
12 permission.

13 23. Accordingly, Defendant is knowingly using Plaintiff's name for purposes  
14 of advertising or selling, or soliciting purchases of, goods or services without Plaintiff's  
15 permission in violation of California Civil Code § 3344(a).

16 24. Pursuant to California Civil Code § 3344(a), Defendant is liable to Plaintiff  
17 in an amount equal to the greater of \$750 or the actual damages suffered by Plaintiff as  
18 a result of Defendant's unauthorized use of Plaintiff's name, and any profits from the  
19 unauthorized use.

20 25. Defendant engaged in the foregoing conduct with oppression, fraud and  
21 malice, entitling Plaintiff to an award of punitive damages against Defendant.

22 26. Plaintiff also is entitled to attorneys' fees and costs incurred in this action  
23 pursuant to California Civil Code § 3344(a).

24 **THIRD CLAIM FOR RELIEF**

25 **(Common Law Misappropriation of Identity)**

26 27. Plaintiff incorporates by reference paragraphs 1 through 26, inclusive, of  
27 this Complaint as if set forth in full herein.

1 28. By his conduct alleged above, Defendant has used Plaintiff's name and  
2 identity without her consent and for his commercial advantage.

3 29. As a result of such use, Plaintiff has been damaged in an amount according  
4 to proof at trial.

5 30. Defendant engaged in the foregoing conduct with oppression, fraud and  
6 malice, entitling Plaintiff to an award of punitive damages against Defendant.

7 **FOURTH CLAIM FOR RELIEF**

8 **(Constructive Trust)**

9 31. Plaintiff incorporates by reference paragraphs 1 through 30, inclusive, of  
10 this Complaint as if set forth in full herein.

11 32. To the extent Defendant has received or receives in the future any  
12 advantage or benefit (including any advantage or benefit under the Lanham Act) or  
13 money for or based on the use of Plaintiff's name, Defendant has or will have all the  
14 duties and obligations of a trustee for Plaintiff with respect to such advantage, benefit or  
15 money.

16 33. Therefore, a constructive trust should be imposed for Plaintiff's benefit  
17 upon any and all such advantage, benefit or money held by or purportedly owing to  
18 Defendant.

19 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

20 On the First Claim for Relief (Violation of Section 43(a) of the Lanham Act [15  
21 U.S.C. § 1125(a)]):

22 1. For temporary, preliminary and permanent injunctive relief enjoining  
23 Defendant from using in any manner Plaintiff's name "Nicky O" in commerce, including  
24 an order that Defendant withdraw his fraudulent Intent to Use Application for "Nicky O"  
25 filed with the United States Patent and Trademark Office on July 22, 2005;  
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1           2.     For up to three times the amount of actual damages suffered by Plaintiff  
 2 according to proof, any profits attributable to Defendant's false designation of origin, and  
 3 attorneys' fees and costs incurred by Plaintiff in this action;

4           On the Second Claim for Relief (Statutory Misappropriation of Identity [California  
 5 Civil Code § 3344]):

6           1.     For an award in an amount equal to the greater of \$750 or the actual  
 7 damages suffered by Plaintiff as a result of Defendant's unauthorized use of Plaintiff's  
 8 name, and any profits from the unauthorized use;

9           2.     For attorneys' fees and costs incurred by Plaintiff in this action;

10          3.     For punitive damages;

11          On the Third Claim for Relief (Common Law Misappropriation of Identity):

12          1.     For damages according to proof;

13          2.     For punitive damages;

14          On the Fourth Claim for Relief (Constructive Trust):

15          1.     For the imposition of a constructive trust for Plaintiff's benefit over any and  
 16 all advantage, benefit or money Defendant has received or receives in the future for or  
 17 based on the use of Plaintiff's name;

18          On Each and Every Claim for Relief:

19          1.     For interest at the highest rate allowed by law;

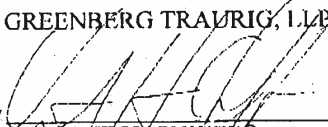
20          2.     For costs of suit incurred herein; and

21          3.     For such further relief as the Court deems just.

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 23 DATED: November 14, 2006

GREENBERG TRAURIG, LLP

24  
 25 By

  
 VINCENT H. CHIEFFO  
 Attorneys for Plaintiff  
 NICKY O. HILTON

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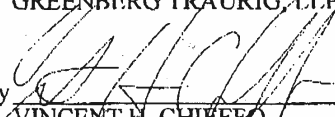
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

DATED: November 14, 2006

GREENBERG TRAURIG, LLP

By



VINCENT H. CHIEPPO  
Attorneys for Plaintiff  
NICKY O. HILTON

