

Court of Appeals
STATE OF NEW YORK

KAREN GRAVANO,

Plaintiff-Appellant,

—against—

TAKE-TWO INTERACTIVE SOFTWARE, INC. and ROCKSTAR GAMES,

Defendants-Respondents.

RECORD ON APPEAL

JEREMY FEIGELSON
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6000
Facsimile: (212) 909-6836
Attorneys for Defendants-Respondents

THOMAS A. FARINELLA
LAW OFFICE OF
THOMAS A. FARINELLA, PC
260 Madison Avenue, 8th Fl.
New York, New York 10016
Telephone: (917) 319-8579
Facsimile: (646) 349-3209
Attorneys for Plaintiff-Appellant

TABLE OF CONTENTS

	PAGE
Statement Pursuant to CPLR § 5531.....	1
Pre-Argument Statement, filed March 16, 2016	2
Notice of Appeal, dated March 16, 2016.....	5
Order of the Honorable Joan M. Kenney, dated March 11, 2016, Appealed From	6
Summons and Verified Complaint, dated February 15, 2014	8
Amended Verified Complaint, dated March 27, 2014	15
Exhibit A to Amended Verified Complaint— Images of Karen Gravano and “Antonia Bottino” Character	26
Notice of Motion, by Defendants, for an Order to Dismiss the Amended Verified Complaint and for Sanctions, dated April 17, 2014	27
Affirmation of Stephanie L. Gal, for Defendants, in Support of Motion, dated April 17, 2014.....	29
Exhibit A to Gal Affirmation— Verified Complaint, dated February 15, 2014 (Reproduced herein at pp. 9-14)	32
Exhibit B to Gal Affirmation— Amended Verified Complaint, dated March 27, 2014, with attached Exhibit A (Reproduced herein at pp. 15-26).....	32
Exhibit C to Gal Affirmation— Letter from Counsel for Plaintiff to Take-Two, dated November 20, 2013	33

Exhibit D to Gal Affirmation— E-mail Chain between Counsel for Plaintiff and Take-Two that includes E-mails from the Period of November 21, 2013 through November 25, 2013, with attached Pictures	35
Exhibit E to Gal Affirmation— E-mail Chain between Counsel for Take-Two and Counsel for Plaintiff	39
Exhibit F to Gal Affirmation— Letter from Counsel for Take-Two to Counsel for Plaintiff, dated January 29, 2014	59
Exhibit G to Gal Affirmation— E-mail Chain between Counsel for Take-Two and Counsel for Plaintiff that includes E-mails, dated March 27, 2014, with attached Stipulation	73
Exhibit H to Gal Affirmation— E-mail from Counsel for Plaintiff to Counsel for Take-Two, dated March 28, 2014	77
Exhibit I to Gal Affirmation— Letter from Counsel for Take-Two to Counsel for Plaintiff, dated March 29, 2014	78
Exhibit J to Gal Affirmation— Article entitled, “Grand Theft Auto Is Today’s Great Expectations,” dated September 20, 2013	80
Exhibit K to Gal Affirmation— Article entitled, “GTA 5 Review: A Dazzling but Monstrous Parody of Modern Life,” dated September 16, 2013	82
Exhibit L to Gal Affirmation— Article entitled, “‘Grand Theft Auto V’ Crosses \$1B In Sales, Biggest Entertainment Launch in History,” dated September 20, 2013	88
Affidavit of Jeff Rosa, for Defendants, in Support of Motion, sworn to March 17, 2014	90

Exhibit 1 to Rosa Affidavit— Notice of Hard Copy Exhibit Filing: Physical Copy of GTAV (Physical Exhibit to be Submitted to the Court).....	94
Exhibit 2 to Rosa Affidavit— Transcripts of Burial Random Event	95
Exhibit 3 to Rosa Affidavit— Notice of Hard Copy Exhibit Filing: Physical Copy of DVD of “Burial” Random Event from “Grand Theft Auto V” (Physical Exhibit to be Submitted to the Court)	129
Exhibit 4 to Rosa Affidavit— Notice of Hard Copy Exhibit Filing: Physical Copy of “Grand Theft Auto V Signature Series Guide” (Physical Exhibit to be Submitted to the Court)	130
Affidavit of Karen Gravano, Plaintiff, in Opposition to Motion, sworn to April 29, 2014	131
Exhibit A to Gravano Affidavit— Images of Karen Gravano and “Antonia Bottino” Character (Reproduced herein at p. 26)	139
Exhibit B to Gravano Affidavit— Tweets on Twitter, dated October 2013	140
Exhibit C to Gravano Affidavit— Tweets on Twitter	141
Exhibit D to Gravano Affidavit— Tweets on Twitter, dated October 4, 2013	143
Exhibit E to Gravano Affidavit— Excerpts from Karen Gravano’s Book.....	145
Exhibit F to Gravano Affidavit— Article about Karen Gravano	147
Exhibit G to Gravano Affidavit— Excerpts from Karen Gravano’s Book.....	148

Exhibit H to Gravano Affidavit— Excerpts from Karen Gravano’s Book.....	149
Exhibit I to Gravano Affidavit— Excerpts from Karen Gravano’s Boo	150
Exhibit J to Gravano Affidavit— The New York Times Article entitled, “Jury-Fixing Case Dropped After Arrest of Gravano,” dated May 3, 2000.....	151
Exhibit K to Gravano Affidavit— Amended Verified Complaint, dated March 27, 2014 (Reproduced herein at pp. 15-25)	153
Unsigned Affidavit of Isys Shah, for Plaintiff, in Opposition to Motion, filed April 29, 2014	154
Unsigned Affidavit of Edwin Sullivan, for Plaintiff, in Opposition to Motion, filed April 29, 2014	157
Unsigned Affidavit of Samantha Welborne, for Plaintiff, in Opposition to Motion, filed April 29, 2014.....	161
Affidavit of Samantha Welborne, for Plaintiff, in Opposition to Motion, sworn to April 29, 2014.....	164
Affirmation of Thomas A. Farinella, for Plaintiff, in Opposition to Motion, dated April 29, 2014.....	167
CNN Article entitled, “Police: 8 Year-Old Shoots, Kills Elderly Caregiver after Playing Video Game,” dated August 26, 2013	170
Affidavit of Edwin Sullivan, for Plaintiff, in Opposition to Motion, sworn to April 29, 2014.....	172
Affidavit of Isys Shah, for Plaintiff, in Opposition to Motion, sworn to April 29, 2014.....	176
Certification Pursuant to CPLR § 2105	179

**ADDITIONAL DOCUMENTS ON APPEAL TO THE NEW YORK STATE
COURT OF APPEALS**

Statement Pursuant to CPLR 5531	180
Order Granting Leave to Appeal to the Court of Appeals, dated February 16, 2017	181
Appellate Division, First Department Order Appealed From dated September 1, 2016, with Notice of Entry	182
Certification Pursuant to CPLR § 2105	188

STATEMENT PURSUANT TO CPLR § 5531

SUPREME COURT OF THE STATE OF NEW YORK
 APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

-----	X
KAREN GRAVANO,	:
Plaintiff-Respondent,	:
	:
-against-	:
	:
	:
TAKE-TWO INTERACTIVE SOFTWARE, INC. and	:
ROCKSTAR GAMES,	:
Defendants-Appellants.	:
-----	X

STATEMENT PURSUANT TO CPLR 5531

1. The Index Number in the trial court was 151633/2014.
2. The full names of the parties are Plaintiff-Respondent Karen Gravano and Defendants-Appellants Take-Two Interactive Software, Inc., and Rockstar Games, Inc.
3. The action was commenced in the Supreme Court, New York County.
4. A Verified Complaint was filed on February 15, 2014 and served with a summons on or about February 25, 2014. An Amended Verified Complaint was filed and served on March 28, 2014. No answer has been served.
5. Plaintiff-Respondent seeks damages and injunctive relief for alleged violations of her right of publicity and privacy under Sections 50 and 51 of the New York Civil Rights Law.
6. The appeal is from an order of the Supreme Court of the County of New York, Joan M. Kenney, J., dated March 11, 2016 and entered in the New York County Clerk's Office on March 14, 2016.
7. The appeal is being perfected on the full record method.

PRE-ARGUMENT STATEMENT, FILED MARCH 16, 2016 [2-4]

FILED: NEW YORK COUNTY CLERK 03/16/2016 03:13 PM

INDEX NO. 151633/2014

NYSCEF DOC. NO. 82

RECEIVED NYSCEF: 03/16/2016

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

-----	X	
KAREN GRAVANO,	:	
	:	
Plaintiff,	:	
	:	Index No. 151633/2014
	:	
- against -	:	Assigned to Judge Joan M. Kenney
	:	IAS Part 8
	:	
TAKE-TWO INTERACTIVE SOFTWARE, INC.,	:	PRE-ARGUMENT STATEMENT
and ROCKSTAR GAMES,	:	
	:	
Defendants.	:	
-----	X	

Pursuant to Rule 600.17 of the Appellate Division, First Judicial Department, Supreme Court of the State of New York, Defendants-Appellants hereby set forth the following:

1. The title of the action is KAREN GRAVANO v. TAKE-TWO INTERACTIVE SOFTWARE, INC. and ROCKSTAR GAMES.

2. The full names of the parties are Plaintiff-Respondent Karen Gravano and Defendants-Appellants Take-Two Interactive Software, Inc. and Rockstar Games, Inc.

3. Counsel for Defendants-Appellants:

Jeremy Feigelson
Jared I. Kagan
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000

4. Counsel for Plaintiff-Respondent:

Thomas A. Farinella
Law Office of Thomas A. Farinella, PC
260 Madison Avenue, 8th floor
New York, New York 10016
(917) 319-8579

5. This is an appeal from an order of the Supreme Court of the County of New York, Joan M. Kenney, J., entered in the New York County Clerk's Office on March 14, 2016. A copy of the order is annexed hereto as Exhibit A.

6. This is an action for alleged violations of Plaintiff-Respondent's right of publicity and privacy under the laws of New York, California, and New Jersey, seeking damages and injunctive relief.

7. The Supreme Court of the State of New York, County of New York denied Defendants-Appellants' pre-answer motion, pursuant to CPLR §§ 3211(a)(1) and (a)(7), to dismiss the Amended Verified Complaint's first cause of action for alleged violations of Plaintiff-Respondent's right of publicity and privacy under New York law, and denied Defendants-Appellants' motion for sanctions pursuant 22 NYCRR § 130-1.1 and/or CPLR § 8303-a. The Supreme Court granted Defendants-Appellants' pre-answer motion, pursuant to CPLR §§ 3211(a)(1) and (a)(7), to dismiss the Amended Verified Complaint's second through fifth causes of action alleging violations of Plaintiff-Respondent's right of publicity and privacy under New Jersey and California law.

8. Defendants-Appellants seek the reversal of the order denying dismissal of Plaintiff-Respondent's first cause of action for alleged violations of her right of publicity under Sections 50 and 51 of the New York Civil Rights Law on the ground that Plaintiff-Appellant has not stated a claim as a matter of law. Defendants-Appellants also seek reversal of the order denying Defendants-Appellants' application for sanctions on the ground that Plaintiff-Respondent's Amended Verified Complaint is frivolous.

9. Counsel for Defendants-Appellants knows of no related action or proceeding now pending, other than the appeal noted below, in any court of this or any other jurisdiction.

10. Another appeal is not pending in this action.

11. Defendants-Appellants filed a separate notice of appeal today in LINDSAY LOHAN v. TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, ROCKSTAR GAMES, INC., and ROCKSTAR NORTH, Index No. 156443/2014, appealing an order of Supreme Court of the County of New York, Joan M. Kenney, J., entered in the New York County Clerk's Office on March 14, 2016 that denied Defendants-Appellants' motion (i) pursuant to CPLR §§ 3211(a)(1), (a)(5), (a)(7), and (a)(8), to dismiss the plaintiff's claim for

alleged violations of her right of publicity and privacy under Sections 50 and 51 of the New York Civil Rights Law, and (ii) for sanctions pursuant 22 NYCRR § 130-1.1 and/or CPLR § 8303-a. A copy of the order is annexed hereto as Exhibit B.

NOTICE OF APPEAL, DATED MARCH 16, 2016

FILED: NEW YORK COUNTY CLERK 03/16/2016 03:13 PM

INDEX NO. 151633/2014

NYSCEF DOC. NO. 81

RECEIVED NYSCEF: 03/16/2016

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

-----	X	
KAREN GRAVANO,	:	
	:	
Plaintiff,	:	
	:	Index No. 151633/2014
	:	
- against -	:	Assigned to Judge Joan M. Kenney
	:	IAS Part 8
	:	
TAKE-TWO INTERACTIVE SOFTWARE, INC.,	:	NOTICE OF APPEAL
and ROCKSTAR GAMES,	:	
	:	
Defendants.	:	
-----	X	

PLEASE TAKE NOTICE THAT Defendants Take-Two Interactive Software, Inc. and Rockstar Games, Inc. hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, from the Order of the Supreme Court of the State of New York, County of New York, made in this action by Hon. Joan M. Kenney and entered in the New York County Clerk's Office on March 14, 2016, denying Defendants' pre-answer motion to dismiss the Amended Verified Complaint's first cause of action pursuant to Sections 3211(a)(1) and (a)(7) of the New York Civil Practice Law and Rules ("CPLR"), and denying Defendants' application for sanctions pursuant to Sections 130-1.1(a) of title 22 of the New York Codes, Rules and Regulations and/or Section 8303-a of the CPLR.

Dated: March 16, 2016
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jeremy Feigelson

Jeremy Feigelson (jfeigels@debevoise.com)
Jared I. Kagan (jikagan@debevoise.com)
919 Third Avenue
New York, New York 10022
(212) 909-6000

Counsel for Defendants

ORDER OF THE HONORABLE JOAN M. KENNEY, DATED MARCH 11, 2016,
APPEALED FROM [6-7]

FILED: NEW YORK COUNTY CLERK 03/14/2016 09:54 AM

NYSCEF DOC NO. 79

RECEIVED NYSCEF 03/14/2016

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

JOAN M. KENNEY
J.S.C.

PRESENT:

Justice

PART

8

Index Number : 151633/2014
GRAVANO, KAREN
vs.
TAKE-TWO INTERACTIVE
SEQUENCE NUMBER : 002
DISMISS

INDEX NO.

MOTION DATE

15/633/14

MOTION SEQ. NO.

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

No(s).

Answering Affidavits — Exhibits _____

No(s).

Replying Affidavits _____

No(s).

Upon the foregoing papers, it is ordered that this motion is

In this action alleging a violation of plaintiff's right to privacy, defendants seeks a pre-answer order, pursuant to CPLR 3211(a)(1) and (7), dismissing the amended complaint.

The application to dismiss, pursuant to CPLR 3211(a)(1), is denied. The "documents" relied upon by movants, to assert that the images in question are not those of the plaintiff, is vehemently and factually contested by the plaintiff. These factual disputes require a determination by the trier of facts and said documents cannot, at this juncture, support an application to dismiss based on the self-serving statements that the images are not those of the plaintiff's.

The application seeking dismissal for failure to state a cause of action, pursuant to CPLR 3211(a)(7), is denied and granted, in part. When deciding whether or not a complaint should be dismissed pursuant to CPLR 3211(a)(7), the complaint must be construed in the light most favorable to the plaintiff, and all factual allegations must be accepted as true, limiting the inquiry to whether or not the complaint states, in some recognizable form, any cause of action known to our law (see, *World Wide Adjustment Bureau et al., v Edward S. Gordon Company, Inc., et al.*, 111 AD2d 98 [1st Dept, 1985]). In assessing the sufficiency of the complaint, this court must also consider the allegations made in both the complaint and the accompanying affidavit, submitted in opposition to the motion, as true and resolve all inferences which reasonably flow therefrom, in favor of the plaintiff (*Joel v. Weber*, 166 Ad2d 130, [1st Dept, 1991]). The sufficiency of a pleading to state a cause of action generally depends upon whether or not there is substantial compliance with CPLR 3013, which requires that statements in a pleading be sufficiently particular to give the court and parties notice of the transactions or occurrences intended to be proved and the material elements of each cause of action. Pleadings should not be dismissed or ordered amended unless the allegations therein are not sufficiently particular to apprise the court and parties of the subject matter of the controversy. Further, every pleading question should be approached in the light of CPLR 3026

Dated: MARCH 11, 2016

JOAN M. KENNEY, J.S.C.
J.S.C. *[Signature]*

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

pg of pg 2

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

requiring that pleadings shall be liberally construed and that defects shall be ignored if a substantial right of a party is not prejudiced. Thus, the burden is placed upon one who attacks a pleading for deficiencies in its allegations to show that he is prejudiced. The test of prejudice is to be given primary emphasis. Thereby, the court disregards pleading irregularities, defects, or omissions that are not such as to reasonably mislead one as to the identity of the transactions or occurrences sought to be litigated or as to the nature and elements of the alleged cause or defense. In this case, plaintiff has alleged cause(s) of action alleging a violation of a right to privacy pursuant to New York Civil Rights Law section 50 and 51.

Plaintiff has, however, also set forth causes of actions that are not recognized in the State of New York, and must be dismissed, pursuant to CPLR 3211(a)(7). There is no basis in law, or in fact, as to why this Court would apply the laws governed in the State of New Jersey and the State of California. If plaintiff claims that she was injured in those states, then she may commence actions in those states against defendants, if applicable. It is further noted that plaintiff did not address defendants arguments against dismissal of claims wherein the laws of New Jersey and California may apply. As such, the 2nd, 3rd, 4th, and 5th causes of actions, are dismissed.

Accordingly, it is

ORDERED that the within pre-answer motion to dismiss, is denied and granted, in part ; and it is further

ORDERED that the 1st cause of action of the amended complaint, shall remain; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants and against plaintiff dismissing the 2nd, 3rd, 4th and 5th causes of action in the amended complaint; and it is further

ORDERED that the application for sanctions, is denied, within this Court's discretion; and it is further

ORDERED that the defendants shall answer the amended complaint within 30 days from the date of this order; and it is further

ORDERED that the parties appear for a compliance conference on June 9, 2016 at ~~10:00~~ 9:00 a.m. in Room 304 located at 71 Thomas Street, NYC 10013.


 JOAN M. KENNEY 3/11/16
 J.S.C.

pg. 282

SUMMONS AND VERIFIED COMPLAINT, DATED FEBRUARY 15, 2014 [8- 14]

FILED: NEW YORK COUNTY CLERK 02/24/2014

NYSCEF DOC. NO. 1

INDEX NO. 151633/2014

RECEIVED NYSCEF: 02/24/2014

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**-----X
KAREN GRAVANO,**PLAINTIFF,****Index Number:****Date Purchased:****Plaintiff(s) designate(s)****NEW YORK****County as the place of trial.****- against -****The basis of venue is:****CPLR 509.****SUMMONS****TAKE-TWO INTERACTIVE SOFTWARE, INC.
AND ROCKSTAR GAMES,****DEFENDANT(S).**

-----X

To the above named Defendant(s)

You are hereby summoned to answer the verified complaint in this action and to serve a copy of your answer, or, if the verified complaint is not served with the verified summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 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: February 15, 2014

THOMAS A. FARINELLA, P.C.

Attorney(s) for Plaintiff(s)

Office and Post Office Address

147 West 35th Street, Suite 1008

New York, NY 10001

(917) 319-8579

FILED: NEW YORK COUNTY CLERK 02/24/2014

NYSCEF DOC. NO. 2

INDEX NO. 151633/2014

RECEIVED NYSCEF: 02/24/2014

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X
KAREN GRAVANO,

PLAINTIFF,

INDEX NO.

- against -

VERIFIED COMPLAINT

TAKE-TWO INTERACTIVE SOFTWARE, INC.
AND ROCKSTAR GAMES,
DEFENDANT(S).

-----X

Plaintiff, Karen Gravano, by her attorney THOMAS A. FARINELLA, P.C., complaining
of the Defendant(s), alleges as follows:

1. Plaintiff is an individual and resident of the County of New York, and State of New York.
2. Upon information and belief, Defendant is a corporation authorized to do business hereto were doing business in the State of New York, County of New York with offices located at 622 Broadway New York, NY 10012.
3. Upon information and belief, Defendant(s) are engaged in the business and practice of developing video games and publishing them for profit. Grand Theft Auto V is a video game published by Rockstar Games.
4. On September 17, 2013 Grand Theft Auto V was released for the Playstation and XBOX 360 video consuls for which the video game is played.

AS AND FOR A FIRST CAUSE OF ACTION

5. Plaintiff is a person well known nationally and internationally as such. Notwithstanding the fact that Plaintiff has the utmost respect for the writers and creators of the Grand Theft Auto V video game but her story is unique and is hers to tell not that of the writer in the video game.

It is for this reason that the use of the Plaintiff's name, image and likeness in the Grand Theft Auto V video game is so utterly damaging to the Plaintiff.

6. Upon information and belief, commencing prior to and on or about September 17, 2013, Defendant committed a tortious act and is continuing to commit tortious acts within the county of New York, which have caused and are continuing to cause injury to the Plaintiff.

7. Upon information and belief, prior to and on or about September 17, 2013, Defendant distributed video games bearing the Plaintiff's name, likeness, image and personal life story in New York County (and other places at this time), for advertising and trade purposes.

8. Defendant's use of Plaintiff's name, likeness and image for advertising and trade purposes, was without the consent, written or oral, of Plaintiff or anyone authorized by her to give such consent, and as such, constitutes a violation of Section 50 of the Civil Rights Law of the State of New York.

9. If Defendant continues to use Plaintiff's name, likeness and image in connection with the advertisement and solicitation of business and converts, Plaintiff will be irreparably damaged in a manner and to an extent not compensable by money damages.

10. Defendant has acted knowingly, willfully, and in bad faith.

11. By reason of the foregoing and pursuant to Section 51 of the Civil Rights Law of the State of the State of New York, Plaintiff demands that Defendant be prevented from using her name and image or any part thereof in any advertisement, and solicitation of business.

AS AND FOR A SECOND CAUSE OF ACTION

12. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 8 hereof with the same force and effect as if herein set forth at length. Plaintiff and some of Plaintiff's story are well know. However, some aspects of her story are somewhat

obscure to the average person and Defendant used those aspects as well. The timeline for which this information was released is against the Plaintiff's wishes. This has damaged Plaintiff because the Plaintiff is releasing a second book containing the parts of the not so known aspects of the story used by the Defendant.

13. Defendant has been in the business of video game production for the past three decades and knew or should have known that using Plaintiff's story and image without prior written consent would violate Plaintiff's rights.

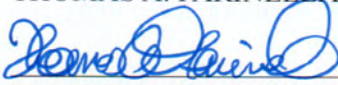
14. Plaintiff's privacy rights should not have been violated given Defendant's stature, robust resources and ability to properly research all aspects of the story and images included in the video game. Moreover, Defendant could have properly sought out the Plaintiff's permission with relative ease which may have averred this action.

15. Defendant's use of Plaintiff's name, likeness and image, in its advertisements results in the implicit association and endorsement of the Defendant's purposes. Absent the Plaintiff's consent, this is impermissible and is a direct misappropriation and destruction of Plaintiff's name, likeness, personal life story and damage.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- (1) Compensatory damages of at least twenty (20) million dollars.
- (2) Exemplary damages of at least twenty (20) million dollars.
- (3) Requiring Defendant to account to Plaintiff for all proceeds derived from their wrongful conduct; and
- (4) Such other and further relief as to the Court may seem just and proper under all the circumstances, including, but not limited to, plaintiffs' costs and attorneys' fees in this action.

Dated: New York, NY
February 15, 2014

Your, Etc.
THOMAS A. FARINELLA P.C.

By: THOMAS A. FARINELLA, ESQ.
Attorney for Plaintiff
147 West 35th Street, STE. 1008
New York, NY 10001

VERIFICATION

STATE OF NEW YORK)
 : SS.:
 COUNTY OF NEW YORK)

I, the undersigned, being duly sworn, deposes and says:

I am the plaintiff in the within action; that I have read the foregoing verified complaint, and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and to those matters, I believe it to be true.


 KAREN GRAVANO

Sworn to before me this
^{February}
 14th day of January 2014.



Notary Public

THOMAS A. FARINELLA
 Notary Public, State of New York
 No. 02FA6072305
 Qualified in New York County
 Commission Expires: April 1, 20¹⁴

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Summons and Verified Complaint and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1

Dated: New York, New York
February 15, 2014



THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 W. 35th Street, STE. 1008
New York, NY 10001
(917) 319-8579

AMENDED VERIFIED COMPLAINT, DATED MARCH 27, 2014 [15-25]

FILED: NEW YORK COUNTY CLERK 03/28/2014

INDEX NO. 151633/2014

NYSCEF DOC. NO. 24

RECEIVED NYSCEF: 03/28/2014

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X

KAREN GRAVANO,

INDEX NO. 151633/2014

PLAINTIFF,

- against -

AMENDED

VERIFIED COMPLAINT

TAKE-TWO INTERACTIVE SOFTWARE, INC.

AND ROCKSTAR GAMES,

DEFENDANT(S).

-----X

Plaintiff, Karen Gravano, by her attorney THOMAS A. FARINELLA, P.C., for her first amended complaint, amending as of course pursuant to CPLR 3025(a) alleges as follows:

Plaintiff is an individual and resident of the County of New York, and State of New York.

1. Defendant TAKE-TWO INTERACTIVE SOFTWARE, INC. was and now is at all relevant times a corporation authorized to do business hereto were doing business with a usual place of business located at 622 Broadway New York, NY 10012.
2. Defendant ROCKSTAR GAMES was and now is at all relevant times a corporation authorized to do business hereto were doing business with a usual place of business located at 622 Broadway New York, NY 10012.
3. Upon information and belief, at all times hereinafter mentioned, defendant(s), a multi-billion dollar business, transacted and conducted business within the State of New York or contracted to supply goods in the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, defendant(s) regularly do or solicit business or engage in other persistent courses of conduct or derives substantial revenue from goods used or consumed in the State of New York.
5. Upon information and belief, at all times hereinafter mentioned, the defendant(s) expected or should have reasonably expected its acts to have consequences in the State of New York and that it derives substantial revenue from interstate or international commerce.
6. Defendant(s) are engaged in the business and practice of developing, trading and selling, advertising and marketing and distributing certain products for consumer use and specifically publishing products known as “video games” for profit.
7. On September 17, 2013, defendant(s) in the course of its trade and business made available for sale, marketing and distribution certain video games, specifically a certain video game “Grand Theft Auto V” (“GTA V”), which said video games were distributed to and sold by numerous and various retailers internationally, including the City of New York.
8. Upon release of the aforesaid video game, GTA V, the defendant(s) used a portrait of Plaintiff for a character in GTA V, a copy of which is annexed as Exhibit A.
9. Defendant(s) used Plaintiff’s portrait and voice without Plaintiff’s written consent.
10. Defendants(s) used Plaintiff’s portrait and voice without Plaintiff’s knowledge.
11. Defendant(s) used Plaintiff’s portrait in GTA V to be generally published and distributed internationally for trade and advertising purposes without the written consent of the Plaintiff.
12. The portrait of the plaintiff used by the Defendant’s unauthorized and unlawful.

13. Defendant(s) unauthorized use of plaintiff's portrait in GTA V for the purposes of advertising or trade in that the GTA V character had the plaintiff's likeness and many unequivocal aspects of plaintiff's identity.
14. The GTA V character Antonia Bottinno is not only a portrait of the plaintiff but tells a story in GTA V which is identical to the Plaintiff's life story
15. Defendant(s) used Plaintiff's likeness in the GTA V character's story that are almost indistinguishable to the Plaintiff's life.
16. The particulars include, but are limited to, the father is named "Sammy," a former "Gambetti" family underboss who became a snitch and gained many enemies, forcing the character to "move out West" in order to remain safe.
17. The character is on a television show "Wise Bitches.," Enemies attempt to bury the character alive because she should "pay for her fathers actions."
18. The player receives \$60,000.00, paid by the characters father, as a reward for her rescue. This is not a coincidence; Plaintiff's father, Sammy, was a mob boss for the Gambino family who testified against individuals involved in mob crimes.
19. The Plaintiff and her family were forced to move out west because of death threats due to the actions of her father, an appalling parallel to the GTA V character.
20. Plaintiff's father paid a juror \$60,000 to ensure a hung jury in one of his trials. She was also a cast member on "Mob Wives" a reality TV show.
21. Defendant(s) took direct quotes from Plaintiff's book, a New York Times best seller, for the GTA V character.
22. Defendant(s) used Plaintiff's "screen persona" by taking direct statements that Plaintiff made on "Mob Wives," a reality television show, for the GTA V character.

23. Defendant(s) knowingly, willfully and intentionally used, displayed and published the portrait in such a manner that was forbidden and unlawful.
24. Defendant(s) have benefitted and been unjustly enriched by the use of Plaintiff's portrait without her consent.
25. Multiple people in the general public have reached out to the Plaintiff believing the Antonia Bottino character was Karen Gravano, the Plaintiff, creating consumer confusion in the market place.
26. Sections 50 and 51 of the New York Civil Rights Law prohibit the use of a person's name, portrait, picture or voice for the purpose of advertising or trade without the written consent of the subject.
27. Defendant(s) aforesaid acts done without Plaintiff's consent constitute a blatant violation of the Civil Rights Law of the State of New York

FIRST CAUSE OF ACTION

Violation of Privacy Right Under New York CPLR § 50 and 51

28. The Plaintiff alleges and incorporates herein by reference each and every allegation set forth in the foregoing paragraphs.
29. This action is for violation of Plaintiff's statutory right of privacy pursuant to sections 50 and 51 of the New York Civil Rights Law.
30. Defendant has, knowingly, and without Plaintiff's prior consent, violated Plaintiff's right of privacy by appropriating Plaintiff's likeness by including her portrait and "screen persona" in its video games.
31. The appropriation of Plaintiff's likeness was unauthorized and without the prior consent of plaintiff.

32. Defendants' aforesaid acts, both in concert and severally, have caused and are causing great and irreparable harm and damage to Plaintiff, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.
33. As a result of the Defendants' knowing violation of the Civil Rights Law, punitive damages should be assessed against Defendants
34. Plaintiff also seeks to recover her damages sustained as a result of Defendants' unlawful acts, together with an accounting of Defendants' profits arising from such activities, and that the Court exercise its discretion and enter a judgment for such additional sums as the Court shall find to be just, according to the egregious nature of the acts of Defendant(s).

SECOND CAUSE OF ACTION

Invasion of Privacy - Appropriation of Likeness Under New Jersey Law

35. The Plaintiff alleges and incorporates herein by reference each and every allegation set fourth in the foregoing paragraphs.
36. Defendant(s) have invaded Plaintiffs right to privacy by appropriating and incorporating Plaintiff identify and likeness into its video games.
37. Defendant(s) have invaded Plaintiff's rights intentionally and with full and complete knowledge that its use of Plaintiff's identity was unauthorized and without the prior license or consent of Plaintiff.
38. Defendant(s) conduct involved the appropriation of Plaintiff likeness because the use of Plaintiff portrait and "screen persona" implied that she acquiesced to the inclusion of her likeness in Defendant's video games.
39. Defendants' aforesaid acts, both in concert and severally, have caused and are causing great and irreparable harm and damage to Plaintiff, and unless preliminarily and

- permanently restrained by this Court, said irreparable injury will continue.
40. Plaintiff also seeks to recover her damages sustained as a result of Defendants' unlawful acts, together with an accounting of Defendants' profits arising from such activities, and that the Court exercise its discretion and enter a judgment for such additional sums as the Court shall find to be just, according to the egregious nature of the acts of Defendant(s).

THIRD CAUSE OF ACTION

Invasion of Privacy - Appropriation of Likeness for Commercial Purposes Under New Jersey Law

41. The Plaintiff alleges and incorporates herein by reference each and every allegation set forth in the foregoing paragraphs.
42. Defendant(s), knowingly and without Plaintiffs prior consent, invaded Plaintiffs right to privacy by appropriating Plaintiffs likeness by including her portrait and "screen persona" in its video games.
43. The appropriation of Plaintiffs likenesses was unauthorized and without the prior consent of Plaintiff.
44. Plaintiff is informed and believes, and thereon alleges that as a result of advantage accruing to Defendant(s) from its infringement of Plaintiffs identity, Plaintiff has been and/or will be deprived of monetary sums in an amount to be determined at trial.
45. Defendants' aforesaid acts, both in concert and severally, have caused and are causing great and irreparable harm and damage to Plaintiff, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.
46. Plaintiff also seeks to recover her damages sustained as a result of Defendants' unlawful acts, together with an accounting of Defendants' profits arising from such activities, and that the Court exercise its discretion and enter a judgment for such additional sums as the

Court shall find to be just, according to the egregious nature of the acts of Defendant(s).

FOURTH CAUSE OF ACTION

(Deprivation of Rights of Publicity Violation of California Civil Code § 3344)

47. Plaintiff hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.
48. Defendant(s) have knowingly and intentionally utilized and continue to utilize the portrait, likenesses, and “screen persona” of Plaintiff in video games produced by Defendant(s) without the consent Plaintiff. This conduct has occurred throughout the nation, specifically in California.
49. Defendant(s) have used and continues to use Plaintiff’s portrait and likenesses for the purposes of advertising, selling and soliciting purchases of GTA V video games.
50. As a result of Defendants’ misappropriation of Plaintiff’s publicity rights, Plaintiff has been injured.
51. Defendants’ aforesaid acts, both in concert and severally, have caused and are causing great and irreparable harm and damage to Plaintiff, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.
52. Plaintiff also seeks to recover her damages sustained as a result of Defendants’ unlawful acts, together with an accounting of Defendants’ profits arising from such activities, and that the Court exercise its discretion and enter a judgment for such additional sums as the Court shall find to be just, according to the egregious nature of the acts of Defendant(s).

FIFTH CAUSE OF ACTION

(Violation of Rights of Publicity California Common Law)

53. Plaintiff hereby incorporates by reference the allegations contained in the foregoing

paragraphs as if fully set forth herein.

54. Pursuant to its unlawful conspiracy, Defendants' have utilized and continue to utilize the portrait, likenesses and "screen persona" of Plaintiff in GTAV video games without her consent and for their own commercial advantage.
55. As a result of Defendants' misappropriation of their publicity rights Plaintiff has been injured.
56. Defendants' aforesaid acts, both in concert and severally, have caused and are causing great and irreparable harm and damage to Plaintiff, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.
57. Plaintiff also seeks to recover her damages sustained as a result of Defendants' unlawful acts, together with an accounting of Defendants' profits arising from such activities, and that the Court exercise its discretion and enter a judgment for such additional sums as the Court shall find to be just, according to the egregious nature of the acts of Defendant(s).
58. As a result of the Defendant's knowing violation of the Civil Rights Law, punitive damages should be assessed against Defendants in the sum of \$20,000,000.00.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- (1) Compensatory damages of at least twenty (20) million dollars.
- (2) Restraining the use of Plaintiff's image, name, likeness and personal life story;
- (3) Awarding punitive damages in the sum of at least twenty (20) million dollars;
- (4) Requiring Defendant to account to Plaintiff for all proceeds derived from their wrongful conduct;
- (5) Such other and further relief as to the Court may seem just and proper

JURY DEMAND

Plaintiff hereby demands trial by a jury on all issues within the matter.

Dated: New York, NY
March 27, 2014

THOMAS A. FARINELLA P.C.

____/s/Thomas A.Farinella_____

By: THOMAS A. FARINELLA, ESQ.

Attorney for Plaintiff

147 West 35th Street, STE. 1008

New York, NY 10001

VERIFICATION

STATE OF NEW YORK)
 : SS.:
 COUNTY OF NEW YORK)

I, the undersigned, being duly sworn, deposes and says:

I am the plaintiff in the within action; that I have read the foregoing verified complaint, and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and to those matters, I believe it to be true.


 KAREN GRAVANO

Sworn to before me this
 27th day of March 2014.



Notary Public

THOMAS A. FARINELLA
 Notary Public, State of New York
 No. 02FA6072305
 Qualified in New York County
 Commission Expires: April 1, 2014

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Summons and Verified Complaint and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1

Dated: New York, New York
March 27, 2014

_____/s/Thomas A. Farinella_____
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 W. 35th Street, STE. 1008
New York, NY 10001
(917) 319-8579

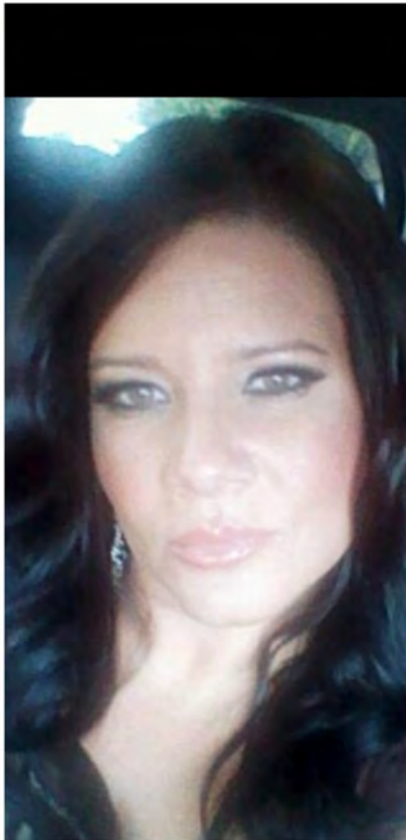
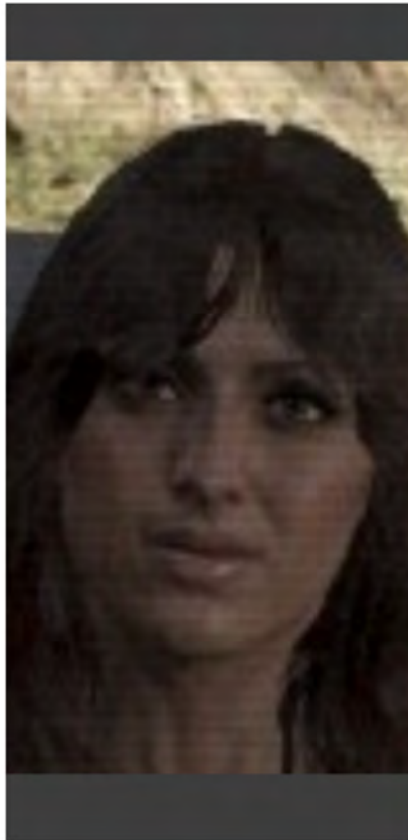
EXHIBIT A TO AMENDED VERIFIED COMPLAINT -
IMAGES OF KAREN GRAVANO AND "ANTONIA BOTTINO" CHARACTER

FILED: NEW YORK COUNTY CLERK 03/28/2014

NYSCEF DOC. NO. 25

INDEX NO. 151633/2014

RECEIVED NYSCEF: 03/28/2014



**NOTICE OF MOTION, BY DEFENDANTS, FOR AN ORDER TO DISMISS THE
AMENDED VERIFIED COMPLAINT AND FOR SANCTIONS, DATED APRIL 17, 2014
[27-28]**

FILED: NEW YORK COUNTY CLERK 04/17/2014

NYSCEF DOC. NO. 29

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/17/2014

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

<p>----- x</p> <p>KAREN GRAVANO,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>TAKE-TWO INTERACTIVE SOFTWARE, INC. and ROCKSTAR GAMES,</p> <p style="text-align: right;">Defendants.</p> <p>----- x</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>NOTICE OF MOTION TO DISMISS THE AMENDED COMPLAINT AND FOR SANCTIONS</p> <p>Index No. 151633/2014 Hon. Joan M. Kenney IAS Part 8</p> <p>Motion Sequence 002</p> <p><u>Oral Argument Requested</u></p>
--	--	--

PLEASE TAKE NOTICE that upon the annexed Affirmation of Stephanie L. Gal, dated April 17, 2014, and the exhibits annexed thereto, the Affidavit of Jeff Rosa, dated March 17, 2014, and the exhibits annexed thereto, and upon all pleadings and proceedings herein, the defendants will move this Court in Room 130 at the New York County Courthouse, 60 Centre Street, New York, New York, on the 6th day of May, 2014, at 9:30 a.m., for an order directing entry of judgment dismissing the amended verified complaint pursuant to sections 3211(a)(1) and (a)(7) of the New York Civil Practice Law & Rules ("CPLR"), with prejudice and with costs and disbursements, and for an order imposing sanctions pursuant to sections 130-1.1(a) of title 22 of the New York Codes, Rules and Regulations and/or CPLR § 8303-a, and for such other relief as the Court may deem just and proper.

The above-entitled action is for alleged violation of New York Civil Rights Law Sections 50 and 51, California Civil Code Section 3344, the right of publicity under California common law and right of privacy against appropriation of one's likeness under New Jersey common law.

Pursuant to CPLR § 2214(b), answering affidavits and/or notice of cross motion and supporting papers, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

Dated: New York, New York
April 17, 2014

/s/ Jeremy Feigelson
 Jeremy Feigelson
 Jared I. Kagan
 Stephanie L. Gal
 DEBEVOISE & PLIMPTON LLP
 919 Third Avenue
 New York, NY 10022
 Telephone: (212) 909-6000
 jfeigels@debevoise.com
 jikagan@debevoise.com
 slgal@debevoise.com

Attorneys for Defendants

TO: Thomas A. Farinella, Esq.
 THOMAS A. FARINELLA, P.C.
 147 West 35th Street, Suite 1008
 New York, NY 10001
 Telephone: (917) 319-8579
 tf@lawtaf.com

Attorneys for Plaintiff

**AFFIRMATION OF STEPHANIE L. GAL, FOR DEFENDANTS, IN SUPPORT OF MOTION,
DATED APRIL 17, 2014 [29-31]**

FILED: NEW YORK COUNTY CLERK 04/17/2014

NYSCEF DOC. NO. 31

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/17/2014

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

----- x
KAREN GRAVANO,

Plaintiff,

- against -

TAKE-TWO INTERACTIVE SOFTWARE, INC.:
and ROCKSTAR GAMES,

Defendants.

**AFFIRMATION OF STEPHANIE L. GAL
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE AMENDED
COMPLAINT AND FOR SANCTIONS**

Index No. 151633/2014

Hon. Joan M. Kenney

IAS Part 8

Motion Sequence 002
----- x

I, Stephanie L. Gal, an attorney at law admitted to practice before the courts of this state,
affirm under penalty of perjury as follows:

1. I am an associate with the firm of Debevoise & Plimpton LLP ("Debevoise"), attorneys for Defendants Take-Two Interactive Software, Inc. ("Take-Two") and Rockstar Games, Inc. in this action, and am a member in good standing of the Bar of the State of New York.
2. I submit this affirmation in support of Defendants' Motion to Dismiss and for Sanctions. Annexed as **Exhibit A** hereto is a true copy of the Verified Complaint filed by Plaintiff, dated February 15, 2014.
3. Annexed as **Exhibit B** hereto is a true and correct copy of the Amended Verified Complaint filed by Plaintiff, dated March 28, 2014.
4. Annexed as **Exhibit C** hereto is a true and correct copy of a letter from counsel for Plaintiff to Take-Two, dated November 20, 2013.

5. Annexed as **Exhibit D** hereto is a true and correct copy of an email chain between counsel for Plaintiff and Take-Two that includes emails from the period of November 21, 2013 through November 25, 2013. Appended to the end of the email chain are pictures that Take-Two sent to Counsel for Plaintiff as attachments to the November 21, 2013, 4:23 pm email.

6. Annexed as **Exhibit E** hereto is a true and correct copy of an email chain between Debevoise, counsel for Take-Two, and counsel for Plaintiff, and between counsel for Plaintiff and Take-Two. The dates of the emails range from November 21, 2013 through January 30, 2014.

7. Annexed as **Exhibit F** hereto is a true and correct copy of a letter from Debevoise on behalf of Take-Two to counsel for Plaintiff, dated January 29, 2014.

8. Annexed as **Exhibit G** hereto is a true and correct copy of an email chain between Debevoise, counsel for Take-Two, and counsel for Plaintiff that includes emails dated March 27, 2014.

9. Annexed as **Exhibit H** hereto is a true and correct copy of an email from counsel for Plaintiff to Debevoise, counsel for Take-Two, dated March 28, 2014.

10. Annexed as **Exhibit I** hereto is a true and correct copy of a letter from Debevoise on behalf of Take-Two to counsel for Plaintiff, dated March 29, 2014.

11. Annexed as **Exhibit J** hereto is a true and correct copy of an article entitled “*Grand Theft Auto* Is Today’s *Great Expectations*,” published on time.com, dated September 20, 2013.

12. Annexed as **Exhibit K** hereto is a true and correct copy of an article entitled “GTA 5 review: a dazzling but monstrous parody of modern life,” published on theguardian.com, dated September 16, 2013.

13. Annexed as **Exhibit L** hereto is a true and correct copy of an article entitled “Grand Theft Auto V’ Crosses \$1B In Sales, Biggest Entertainment Launch In History”, published on forbes.com, dated September 20, 2013.

I affirm under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 17, 2014


Stephanie L. Gal

**EXHIBIT A TO GAL AFFIRMATION -
VERIFIED COMPLAINT, DATED FEBRUARY 15, 2014
(REPRODUCED HEREIN AT PP. 9-14)**

**EXHIBIT B TO GAL AFFIRMATION -
AMENDED VERIFIED COMPLAINT, DATED MARCH 27, 2014, WITH ATTACHED EXHIBIT
A
(REPRODUCED HEREIN AT PP. 15-26)**

**EXHIBIT C TO GAL AFFIRMATION -
LETTER FROM COUNSEL FOR PLAINTIFF TO TAKE-TWO, DATED NOVEMBER 20,
2013 [33-34]**

**THE LAW OFFICE OF
THOMAS A. FARINELLA**

147 West 35 th Street Suite 1008 New York, NY 10001 TEL: (917) 319-8574 FAX: (646) 349-3209	TF@LAWTAE.COM	
--	--	--

November 20, 2013

VIA FEDERAL EXPRESS, EMAIL AND FAX

Attention: General Counsel
Take-Two Interactive Software, Inc.
Rockstar Games
622 Broadway
New York, NY 10012

Re: Karen Gravano Cease and Desist

Dear General Counsel:

This law firm represents Karen Gravano and is sending this letter without prejudice to any of our client's rights in law or equity, all of which are expressly reserved.

It has come to our attention that you have produced, manufactured and distributed to the public our client, Karen Gravano's likeness without her knowledge and or consent. Furthermore, you have and continue to unlawfully use Karen Gravano's likeness for commercial gains. You have willfully violated my client's likeness and right to publicity; specifically, you have embodied a character that mirrors Karen Gravano's likeness and life story in the Grand Theft Auto V video game ("Video Game"). Your actions constitute likeness and right of publicity infringement which at minimum is a violation of New York State law. Karan Gravano is the owner of her likeness and right of publicity in various aspects of the Video Game that your company produces. All aspects of the Mob Bosses Daughter, Antonia Bottino, a character in the video game, is an infringement of Karen Gravano's likeness and right to publicity under New York State law.

This letter will confirm that my client has not granted any rights to you, nor has any other licensee or assignee been granted any rights to exploit her likeness or right of publicity. Any manufacture, distribution or sale, as well as other exploitation of Karen Gravano's likeness and right of publicity constitutes an infringement of my client's rights in same.

In view of the foregoing, demand is hereby made that Rockstar Games: (A) cease and desist from each and every unlawful use of Karen Gravano's likeness in the Grand Theft Auto video game and (B) withdraw all copies of the offending Grand Theft Auto V video games from the distribution chain and recall all copies heretofore sold by you and your distributors, (C) account to my firm all sums received by you with respect to the infringing product and (D) destroy all copies of the offensive material within your custody and/or control, and forward to me a sworn certificate of such destruction.

In the event you fail to meet this demand, please be advised that Karen Gravano has asked me to communicate to you that she will contemplate pursuing all available legal remedies, including seeking monetary damages, injunctive relief, and all other remedies available.

Unless steps are taken within ten (10) days from the date of this letter to comply with the foregoing demands, we will vigorously pursue all legal remedies against you.

Sincerely,


Thomas A. Farinella, Esq.

cc: Karen Gravano

**EXHIBIT D TO GAL AFFIRMATION -
E-MAIL CHAIN BETWEEN COUNSEL FOR PLAINTIFF AND TAKE-TWO THAT INCLUDES
E-MAILS FROM THE PERIOD OF NOVEMBER 21, 2013 THROUGH NOVEMBER 25,
2013, WITH ATTACHED PICTURES [35- 38]**

From: Gena Feist (T2 NY) <Gena.Feist@take2games.com>
Sent: Monday, November 25, 2013 5:53 PM
To: Thomas Farinella
Cc: Hector Baldonado, Esq.
Subject: RE: GTAV Karen Gravano

Hi Thomas

Your client's physical appearance is not recognizable as nor reasonably resembles the character in the game. That is simply a fact that is clear from the images I sent you.

In regards to the "life story" claim -- I haven't dismissed your client's claim. I have asked you to state it with particularity which is what your client would need to do to "seek a resolution" through the law. Considering you have alleged Ms. Gravano's "life story" rights have been infringed by my company, I expect that you would have gathered those facts and analyzed them prior to making that claim on her behalf. No meeting is necessary for you to provide me with the facts that for the basis of the claim you are asserting.

I am out of the office this week but if you can send me a list of "life story" elements and GTAV elements that you believe are legally actionable under NY law, I am happy to schedule a call for next week.

Best regards,
Gena

From: Thomas Farinella [tf@lawtaf.com]
Sent: Monday, November 25, 2013 5:37 PM
To: Gena Feist (T2 NY)
Cc: Hector Baldonado, Esq.
Subject: Re: GTAV Karen Gravano

Ms. Feist:

We stand by our client and re-assert our claims and hope that you will reconsider having a discussion regarding our claims.

If you continue to dismiss our claims without a discussion then my client is prepared to seek a resolution through all means afforded to her in law.

Thomas Farinella, Esq.
Law Office of Thomas Farinella
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you

received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Nov 22, 2013, at 10:51 AM, "Gena Feist (T2 NY)" <Gena.Feist@take2games.com> wrote:

Hi Thomas

The images are quite clear and there is no reasonable argument that the depiction infringes Ms Gravano's rights. Its a frivolous claim.

In regards to the life story claim, there is no need to meet. If you have a claim regarding her "life story", please state it with particularity.

Thank you.

Best regards,
Gena

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Friday, November 22, 2013 10:09 AM
To: Gena Feist (T2 NY)
Cc: Hector Baldonado, Esq. <Hector@Hblaw1.com>
Subject: Re: GTAV Karen Gravano

Dear Ms. Feist:

Thank you for your response. I reassert that Rockstar Games has violated my clients rights. As per the images sent by you, we believe they support our claim.

The appropriate provision of the law that provides for relief is found in Article 5 of the NY Civil Rights Law Section 51.

With regard to the the infringement of her likeness and life story, I would be willing to meet with you in order to further discuss the matter.

Thomas Farinella, Esq.
Law Office of Thomas Farinella
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or

the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Nov 21, 2013, at 4:23 PM, "Gena Feist (T2 NY)" <Gena.Feist@take2games.com> wrote:

Thomas

Your letter regarding GTAV was directed to me.

In regards to the physical likeness of Antonia Bottino, there is no resemblance between that character and Karen Gravano save for both being female and having brown hair. Images of the character and Ms. Gravano are attached.

In regards to the claim that Ms. Gravano's "life story" is infringed by the character Antonia Bottino, we again disagree. Moreover, it is unclear what you are referring to in our game and under what law you are claiming Ms. Gravano is entitled to recovery.

To the extent that your client continues to press the "life story" claim, please inform me of the specific provision(s) of law implicated and the specific Gravano "life story" events and Bottino character elements that support the claim.

Best regards,
Gena

Gena A. Feist
Vice President & Associate General Counsel
Take Two Interactive
622 Broadway
New York, NY 10012
Ph: 646-536-2999
Fax: 646-536-2923
Email: Gena.Feist@Take2Games.com

<Bottino Gravano doc.docx>

<demand.pdf>



EXHIBIT E TO GAL AFFIRMATION -
E-MAIL CHAIN BETWEEN COUNSEL FOR TAKE-TWO AND COUNSEL FOR PLAINTIFF
[39- 58]

From: Feigelson, Jeremy
Sent: Thursday, January 30, 2014 6:13 PM
To: 'tf@lawtaf.com'
Cc: 'Hector@Hblaw1.com'
Subject: Re: GTAV Karen Gravano

Tom and Hector -

In fairness to you and Ms. Gravano, we simply wanted to be clear that our previous position did not change in the absence of a TRO or PI. We stand by that position, well-supported by the law as explained in our letter.

Thank you -

Jeremy

From: Thomas Farinella [mailto:tf@lawtaf.com]
Sent: Thursday, January 30, 2014 05:55 PM Eastern Standard Time
To: Feigelson, Jeremy
Cc: Hector Baldonado, Esq. <Hector@Hblaw1.com>
Subject: Re: GTAV Karen Gravano

Jeremy:

I respect your stance but respectfully disagree. Quite frankly, I am taken aback by your repeated threats of sanctions. The judicial system is in place to resolve disputes when parties cannot. In this case, our attempts at resolution have been pushed aside which leaves us no other recourse than to seek resolution through the courts.

Thomas Farinella, Esq.
Law Office of Thomas Farinella, P.C.
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and

cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 30, 2014, at 5:05 PM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Tom and Hector –

Thank you for this advice. With regard to e-filing. I am not sure what consent you are asking for. None is needed for an e-filing in NY Supreme. In any event, to the extent you believe that you need our consent, you have it.

Just so there is no doubt, I need to be clear that Take-Two would seek immediate dismissal, with sanctions, costs and fees, regardless of whether there is a motion for preliminary relief. A complaint would be meritless whether or not a TRO or PI is sought. The reasons for this are laid out in the points and authorities in our letter from yesterday. We respectfully invite Ms. Gravano and you to further consider the letter before filing a case that would be quickly dismissed.

Thanks –

Jeremy

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Thursday, January 30, 2014 2:12 PM
To: Feigelson, Jeremy
Cc: Hector Baldonado, Esq.
Subject: Re: GTAV Karen Gravano

Jeremy:

We have reviewed your email and we will not be seeking a TRO. However, after reading the letter and authorities we are firm that we are entitled to file an action. We further believe that we have a strong case rooted in the law.

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
 147 35th Street Suite 1008
 New York, NY 10001
 Tel: (917) 319-8579
 Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular

230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 30, 2014, at 12:24 PM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Tom – I will confer with my client on the consent request. As a courtesy, could you please let me know:

- If the filing you refer to would include a TRO application or just a complaint
- When you plan to file
- If you not only received my email from yesterday, but whether you and Hector have had the chance to review the letter and authorities

Thank you –

Jeremy

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Thursday, January 30, 2014 11:43 AM
To: Feigelson, Jeremy
Cc: Hector Baldonado, Esq.
Subject: Re: GTAV Karen Gravano

Jeremy:

We have received your email. Do you and your client consent to electronic filing in the Supreme Court New York County?

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
 147 35th Street Suite 1008
 New York, NY 10001
 Tel: (917) 319-8579
 Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not

intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 30, 2014, at 11:31 AM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Gentlemen – Just in case there were any issues with the attachment size, I thought I should follow up to be sure that you received yesterday's email and letter. Could you please confirm receipt? Thank you – Jeremy

Jeremy Feigelson
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Direct dial: 212-909-6230
Direct fax: 212-521-7230
jfeigelson@debevoise.com

* * * * *

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

From: Feigelson, Jeremy
Sent: Wednesday, January 29, 2014 4:03 PM
To: 'Thomas Farinella'; 'Hector Baldonado, Esq.'
Subject: RE: GTAV Karen Gravano

Dear Tom and Hector – Please see attached letter. Hard copy follows by overnight delivery. Thank you – Jeremy

Jeremy Feigelson
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Direct dial: 212-909-6230
Direct fax: 212-521-7230
jfeigelson@debevoise.com

* * * * *

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to

which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Sunday, January 26, 2014 9:48 PM
To: Feigelson, Jeremy
Cc: Hector Baldonado, Esq.; Gena Feist
Subject: Re: GTAV Karen Gravano

Dear Jeremy:

As discussed on our conference call last week, I am sending this email solely as a matter of discussion and I reserve all of my client's rights.

Facts as they pertain to the matter above include but are not limited to the following:

My client was made aware of the character Antonia Bottino after friends and family asked her if she was aware that she was in the Grand Theft Auto V video game.

There are multiple instances in which the character tells a story that mirrors Mrs. Gravano's name, likeness and personal life story. The character uses the phrase, "You're in the life right?," a catch phrase that my client has coined in magazine articles, her book and on the television show Mob Wives. We have direct evidence that supports this assertion.

Another significant mirroring of my client's likeness is the fact that Antonia Bottino's father is the right hand man to Don Gravelli (John Gotti) who is a mob boss. This mirror's Mrs. Gravano's father. The right hand man's name just happens to be Sammy Bottino (Sammy Gravano)

who happens to be a snitch. Antonia Bottino also happens to have been offered a reality tv show on mob bitches (Mob Wives). The coincidences start to add up and build as her story progresses.

If taken individually an argument could be made that there is a similarity but taken in it's entirety it's a direct mirror image of Mrs. Gravano's likeness and life story. With many other connections that have been identifiable it seems less than likely these are simply coincidental similarities.

Case Law

§ 50. Right of privacy

A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

§ 51. Action for injunction and for damages

Any person whose name, portrait [fig 1] , picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait [fig 2] , picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait [fig 3] , picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation from selling or otherwise transferring any material containing such name, portrait [fig 4] , picture or voice in whatever medium to any user of such name, portrait [fig 5] , picture or voice, or to any third party for sale or transfer

directly or indirectly to such a user, for use in a manner lawful under this article; nothing contained in this article shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this article shall be so construed as to prevent any person, firm or corporation from using the name, portrait [fig 6] , picture or voice of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait [fig 7] , picture or voice used in connection therewith; or from using the name, portrait [fig 8] , picture or voice of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait [fig 9] , picture or voice used in connection therewith. Nothing contained in this section shall be construed to prohibit the copyright owner of a sound recording from disposing of, dealing in, licensing or selling that sound recording to any party, if the right to dispose of, deal in, license or sell such sound recording has been conferred by contract or other written document by such living person or the holder of such right. Nothing contained in the foregoing sentence shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal law or state law.

Courts have construed the portrait/picture provisions of the statute somewhat broadly, to include “any recognizable likeness, not just an actual photograph.” *Burck v. Mars, Inc.*, 571 F.Supp. 2d 446, 451 (S.D.N.Y. 2008).

The statute covers a representation if it “conveys the essence and likeness of an individual,” even if the representation is not completely photo-realistic. *Onassis v. Christian Dior-New York*, 472 N.Y.S. 2d 254, 261 (N.Y. Sup. Ct. 1984).

The right of publicity guarantees celebrities the exclusive right to control and profit from the commercial marketing of their own valuable likenesses. *Haelan Lab., Inc. v. Topps Chewing Gum, Inc.* 202 F.2d 866.

Decisions concerning the issues of what constitutes a "portrait or picture" provide excellent examples of this policy broad interpretation. "Portrait or picture" is not limited to photographs, "but generally comprises those representations which are recognizable as likeness of the complaining individual." *Ali v. Playgirl, Inc.*, 477 F. Supp 723, 726 (S.D.N.Y 1978).

Thomas Farinella, Esq.
Law Office of Thomas Farinella, P.C.
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 23, 2014, at 11:20 PM, "Feigelson, Jeremy"
<jfeigelson@debevoise.com> wrote:

Tom – Thank you for this advice. We look forward to receiving the documentation. Regards – Jeremy

Jeremy Feigelson
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Direct dial: 212-909-6230

Direct fax: 212-521-7230
jfeigelson@debevoise.com

* * * * *

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

From: Thomas Farinella <tf@lawtaf.com>
Sent: Thursday, January 23, 2014 11:14 PM
To: Feigelson, Jeremy
Cc: Hector Baldonado, Esq.
Subject: Re: GTAV Karen Gravano

Jeremy:

We have taken in to consideration your email and position on the matter between our respective clients and firmly believe that the facts as they are, heavily weigh on the side of my client.

I, however, have discussed the matter with my client and her attorney and have been given the authorization to extend you a professional courtesy and not file the TRO tomorrow, due to the fact that you were not a party to this matter prior to today.

Please be advised that this delay is a professional courtesy only and does not limit my client's rights to seek any action afforded her under the law.

I shall send you some documentation regarding the issue at hand which shall be for discussion purposes only.

I reserve all of my clients customary rights.

Tom

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
147 35th Street Suite 1008
New York, NY 10001
 Tel: (917) 319-8579
 Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a

federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 23, 2014, at 10:08 PM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Thomas –

Thank you for the note. As discussed, please get back to me tonight and let me know whether your client plans to go forward with the TRO application tomorrow.

It may help to briefly sum up what I said at the end of our phone conversation earlier. As we see it, Ms. Gravano has two choices. First, she can go ahead with the TRO tomorrow. With all respect, there is no doubt that a court will deny the TRO in short order. Leaving aside the serious difficulties with Ms. Gravano's position on the merits, the issue of delay alone will be fatal to a TRO application. The game has been in the marketplace for over four months, and as you acknowledged on the phone tonight, Ms. Gravano herself has been aware of it since October. Second, Ms. Gravano can hit the pause button – that is, instead of seeking a TRO tomorrow, you can send us a draft of your complaint (or any other document you want to send us that articulates the claim – which we continue to not understand the basis for, either on the law or the facts). We will review whatever you send us confidentially and in good faith, and talk with you about whether there is any basis for resolution. If there is not a basis for resolution, then you would be free to proceed in court next week, including by seeking a TRO if you so desire.

It seems to us that the second option is clearly better and more efficient for both sides. As discussed, if this dispute does go into formal litigation mode, then Take-Two will be committed to fully defending it, will seek all appropriate relief, and will not discuss any other approach.

We look forward to hearing from you tonight. Thanks –

Jeremy

Jeremy Feigelson
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Direct dial: 212-909-6230
Direct fax: 212-521-7230
jfeigelson@debevoise.com

* * * * *

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Thursday, January 23, 2014 7:28 PM
To: Feigelson, Jeremy

Cc: Hector Baldonado, Esq.
Subject: Re: GTAV Karen Gravano

Jeremy:

I will be consulting with my client at 8:00pm. I will follow up after I talk to her.

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
 147 35th Street Suite 1008
 New York, NY 10001
 Tel: (917) 319-8579
 Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 23, 2014, at 6:10 PM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Thomas – As promised, here are my contact details. Please be in touch later tonight after you have conferred with your client and had the chance to further consider the points made in the call just now. Thank you -

Jeremy Feigelson
 Debevoise & Plimpton LLP
 919 Third Avenue
 New York, New York 10022
 Direct dial: 212-909-6230
 Direct fax: 212-521-7230
jfeigelson@debevoise.com

* * * * *

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

From: Gena Feist (T2 NY) [<mailto:Gena.Feist@take2games.com>]
Sent: Thursday, January 23, 2014 5:32 PM
To: Thomas Farinella
Cc: Feigelson, Jeremy
Subject: RE: GTAV Karen Gravano

US/CAN Toll free: 1-877-647-3411
 Int'l Toll: 1-719-867-0497
 Participant Passcode: 545 520 7985

From: Gena Feist (T2 NY)
Sent: Thursday, January 23, 2014 5:22 PM
To: 'Thomas Farinella'
Cc: jfeigelson@debevoise.com
Subject: RE: GTAV Karen Gravano

Hi Thomas. My apologies, I called your office number in the signature not the cell phone in the body. Re our California case, costs were awarded at District Court and Appellate level. Re the notice issue, we can discuss at 5:30.

Best regards,
 Gena

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Thursday, January 23, 2014 5:05 PM
To: Gena Feist (T2 NY)
Subject: Re: GTAV Karen Gravano

Ms. Feist:

I wrote in my letter that I should be contacted on 516-359-5585. In response to you calling me and received no answer I have not received any calls from you on my private cell today. So please call me on 516-359-5585.

Also, in my letter and email I specifically stated that I intended on filing at the New York County Supreme Court on January 24, 2014 @ 2:00 pm.

The court deems 24 hours notice appropriate pursuant to the rules on seeking a TRO. Please see the email attached at the bottom.

With regard to the California case and the responsibility of costs it is my understanding from the research I have done the costs were as a result of the appeal.

Nevertheless, I will expect your call on my private cell 516-359-5585 at 5:30pm.

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
 147 35th Street Suite 1008
 New York, NY 10001
 Tel: (917) 319-8579
 Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 23, 2014, at 4:50 PM, "Gena Feist (T2 NY)" <Gena.Feist@take2games.com> wrote:

Yes but may not be in my office so let me call you. Should I call the number below?

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Thursday, January 23, 2014 04:33 PM
To: Gena Feist (T2 NY)
Subject: Re: GTAV Karen Gravano

Are you available at 5:30 today?

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
147 35th Street Suite 1008
New York, NY 10001
 Tel: (917) 319-8579
 Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any

discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Jan 23, 2014, at 4:14 PM, "Gena Feist (T2 NY)"
<Gena.Feist@take2games.com> wrote:

Thomas

I have attempted to call you and there was no answer so I am emailing you.

Take-Two has tried, more than once, to see if there is a possible resolution to this matter short of litigation. Please see my emails to you of November 21, 22 and 25, 2013 (attached). Our position then and now remains the same: You need to explain the claim to us in enough detail for us to assess it. You have yet to provide that explanation. Indeed, you have not been in touch with us at all in two months before suddenly announcing today that you plan to seek a TRO tomorrow.

To the extent that your earlier emails attempt to describe a claim, the position you state is wrong on the facts and the law. As I have explained before, the character "Antonia Bottino" in GTAV simply is not based on, nor does she resemble, your client. Even if the facts were otherwise, Take-Two would be well within its legal and First Amendment rights to use this character. Although we did not base the character on Ms. Gravano, Section 51 of the Civil Rights Law does not require the producer of an artistic work based on real-life events to get permission from persons who are depicted in the work. Moreover, New York law simply does not recognize any rule that so-called "life story" rights must be purchased, or any other sort of consent must be obtained, before a real person can be depicted in an artistic work.

Your advice that you plan to seek a TRO is incomplete as a matter of procedure, and improper as a matter of law. Similar attempts to obtain such relief, even when granted, have been promptly overturned by the Appellate Division. If you do plan to seek a TRO, then please advise us immediately of exactly where and when you will do so. Your failure to do so renders your application ex parte. Whether or not you so advise us, please

provide a copy of this email and its attachments to the court with any application that you make.

As I have advised you before, Take-Two is fully committed to defending meritless claims against it; please advise your client that in a similar matter in California, we not only prevailed at every level but obtained an order for over \$300,000 in costs. If you and your client persists in pursuing this meritless and frivolous case, we will defend ourselves vigorously and then seek all available sanctions, fees, and costs available to our company.

Best regards,
Gena

From: Thomas Farinella [<mailto:tf@lawtaf.com>]
Sent: Thursday, January 23, 2014 1:55 PM
To: Gena Feist (T2 NY)
Subject: Re: GTAV Karen Gravano

Dear Ms. Feist:

My name is Thomas Farinella and as you are aware, I am counsel to Mrs. Karen Gravano. Please be advised that we have attempted on several occasions to resolve the matter concerning Mrs. Gravao and Take-Two Interactive and Rockstar Games. Moreover, our demand to cease and desist from violating Mrs. Gravano's rights have been met with inaction on your part.

Since you have failed to cease and desist nor have you attempted to resolve the issues as stated in my letter to you, dated November 20, 2013, we have come to the conclusion that the only alternative is to commence an action against Take-Two Interactive and Rockstar Games.

As such, pursuant to court rules, I'm proving you advance notice that I will be filing an Order To Show Cause seeking a TRO in the New York County Supreme Court on Friday January 24, 2014 @ 2:00 pm.

Please feel free to contact me on my private cell
private cell phone (516) 359-5585.

Thomas Farinella, Esq.
Law Office of Thomas Farinella, P.C.
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Nov 22, 2013, at 10:10 AM, Thomas Farinella
<tf@lawtaf.com> wrote:

Dear Ms. Fiest:

Thank you for your response. I reassert that Rockstar Games has violated my clients rights. As per the images sent by you, we believe they support our claim.

The appropriate provision of the law that provides for relief is found in Article 5 of the NY Civil Rights Law Section 51.

With regard to the the infringement of her likeness and life story, I would be willing to meet with you in order to further discuss the matter.

Thomas Farinella, Esq.
Law Office of Thomas Farinella
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the

purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Nov 21, 2013, at 4:23 PM, "Gena Feist (T2 NY)"
<Gena.Feist@take2games.com>
wrote:

Thomas

Your letter regarding GTAV was directed to me.

In regards to the physical likeness of Antonia Bottino, there is no resemblance between that character and Karen Gravano save for both being female and having brown hair. Images of the character and Ms. Gravano are attached.

In regards to the claim that Ms. Gravano's "life story" is infringed by the character Antonia Bottino, we again disagree. Moreover, it is unclear what you are referring to in our game and under what law you are claiming Ms. Gravano is entitled to recovery.

To the extent that your client continues to press the "life story" claim, please inform me of the specific provision(s) of law implicated and the specific Gravano "life story" events and

Bottino character
elements that support
the claim.

Best regards,
Gena

Gena A. Feist
Vice President &
Associate General
Counsel
Take Two Interactive
622 Broadway
New York, NY 10012
Ph: 646-536-2999
Fax: 646-536-2923
Email:
Gena.Feist@Take2Games.com

<Bottino Gravano
doc.docx>

<demand.pdf>

<mime-attachment>

<Bottino Gravano doc.docx>

**EXHIBIT F TO GAL AFFIRMATION -
LETTER FROM COUNSEL FOR TAKE-TWO TO COUNSEL FOR PLAINTIFF, DATED
JANUARY 29, 2014 [59- 72]**

DEBEVOISE & PLIMPTON LLP

919 Third Avenue
New York, NY 10022
Tel 212 909 6000
www.debevoise.com

Jeremy Feigelson
Partner
Tel 212 909 6230
Fax 212 521 7230
jfeigelson@debevoise.com

January 29, 2014

BY EMAIL AND FEDERAL EXPRESS

Law Office of Thomas A. Farinella, P.C.	Hector Baldonado, Esq.
147 West 35th Street, Suite 1008	515 Madison Ave
New York, NY 10001	New York, NY 10022
tf@lawtaf.com	hector@hblaw1.com

Karen Gravano

Dear Tom and Hector:

On behalf of Take-Two Software Interactive, Inc. ("Take-Two"), this responds to Tom's email of Sunday night, January 26. Take-Two has considered the points made there, but disagrees with them for the reasons explained in detail below. We continue to hope that Ms. Gravano will choose to avoid court proceedings, given the multiple cases making clear why any lawsuit or TRO application would be futile. Should Ms. Gravano choose to proceed, however, this will again put both her and you on notice that Take-Two will seek sanctions, costs, and attorney fees for defending against what would be a frivolous lawsuit.

1. **Ms. Gravano has no viable right of publicity claim.** Creative and expressive works like Grand Theft Auto V simply are not subject to right of publicity claims under Section 51 of the New York Civil Rights Law. For that reason, New York courts consistently reject claims under Section 51 by plaintiffs who say they are the basis for characters in creative works. As the courts have made clear, "works of fiction and satire do not fall within the narrow scope of the statutory phrase 'advertising' and 'trade'" in Section 51. *See Hampton v. Guare*, 195 A.D.2d 366, 366 (1st Dep't 1993) (internal citations omitted). Such creative works therefore are absolutely protected against Section 51 claims. *Id.*

GTA V unquestionably falls within the protections of this legal rule. It consists of 150 hours of interactive gameplay. The game has a rich array of content, characters and plotlines that criticize and parody countless aspects of modern life, including pop culture, organized crime and reality television. GTA V has been widely acclaimed both for its overall quality and its social commentary. *See, e.g., Keith Stuart, GTA 5 review: a*

dazzling but monstrous parody of modern life, The Guardian (Sept. 16, 2013), available at <http://www.theguardian.com/technology/2013/sep/16/gta-5-review-grand-theft-auto-v> (praising GTA V as “an extraordinary universe that functions not only as an exciting, diverse setting but also as a pulverising, nihilistic satire on western society.”).

It is beyond dispute that a plaintiff simply cannot state a claim under Section 51 on the basis that a fictional character in a creative work embodied their life story without their consent. We urge you to review, for example, the recent case of *Mother v. The Walt Disney Co.*, No. 103662/2012, 2013 WL 497173, at *1 (N.Y. Sup. Feb. 6, 2013). A copy is enclosed. The plaintiff in *Mother* claimed that a character in “Sister Act” was modeled on her. Even though the court explicitly stated that it assumed that claim was true, it nonetheless dismissed the Section 51 complaint, stating that “the New York statutes and common law” regarding right of publicity simply do not apply. *Id.*

Indicating just how well-settled this principle is in New York law, the *Mother* court cited *Toscani v. Hersey*, 271 A.D. 445, 448 (1st Dep’t 1946) -- decided nearly 70 years ago. There the plaintiff’s claim that he was the basis of a character in a novel and play was dismissed as well. As the *Toscani* court held, Section 51 “**was not intended to give a living person a cause of action for damages based on the mere portrayal of acts and events concerning a person designated fictitiously in a novel or play merely because the actual experiences of the living person had been similar to the acts and events so narrated.**” *Id.* at 448 (emphasis added).

In *Hampton*, 195 A.D.2d at 366, a plaintiff who claimed he had been depicted in a stage play lost his Section 51 claim on exactly these grounds. The Appellate Division reconfirmed that works of fiction and satire are entirely outside the scope of Section 51. *Id.* As a courtesy, copies of the *Hampton* and *Toscani* cases are attached in addition to *Mother*. We are prepared to provide copies of any of the other cases cited in this letter as well if that is helpful to you.

The courts’ rejection of these claims follows the general rule that Section 51 is to be “narrowly construed” in light of free speech concerns. See *Messenger v. Gruner + Jahr Print & Publ.*, 94 N.Y.2d 436, 441 (2000) (rejecting Section 51 claim based on photograph of plaintiff in nonfiction magazine). The statute is “strictly limited to nonconsensual commercial appropriations of the name, portrait or picture of a living person.” *Id.* at 441 (quoting *Finger v. Omni Publs. Intl.*, 77 N.Y.2d 138, 141 (N.Y. 1990)). **Only a case involving an actual advertisement falls within Section 51.** *Id.* at 442; *Burck v. Mars, Inc.*, 571 F. Supp. 2d 446, 451 (S.D.N.Y. 2008) (“Sections 50 and 51 are limited in their reach because of the First Amendment [T]hey do not apply to works of art.”). There are narrow exceptions for “advertisements in disguise,” *Messenger*, 94 N.Y.2d at 442-43, and for works that hold themselves out as nonfiction biographies but actually are invented stories embodying “substantial fictionalization.” *Id.* at 446. Neither exception has any possible application to the facts here. GTA V is

plainly an interactive video game and not an advertisement. GTA V also is not held out as a nonfiction biography of Ms. Gravano or anyone else. Just the opposite: As noted, the game has been widely acclaimed as a parody.

Your Sunday night email advances two main points on behalf of Ms. Gravano. With respect, both points miss the mark.

First, your email incorrectly argued that New York courts have construed Section 51 to cover situations like this one. None of the cases cited in your email were on point, however, because none of them involved a creative work of fiction; none involved a plaintiff claiming that a fictional character in a creative work was actually them; and none even discuss the rule that claims based on such a theory are flatly impermissible under Section 51. Thus, none of those cases remotely supports any claim by Ms. Gravano.

Second, it is argued that the “Antonia Bottino” character resembles Ms. Gravano so closely that the two are “mirror images.” That is incorrect on the facts and not relevant under the law. ***To be clear: Even if a court accepted the “mirror images” point as true, Ms. Gravano’s claim still would be summarily dismissed under the principle of the Mother, Hampton and Toscani cases.***

In point of fact, whatever few similarities exist between the “Antonia Bottino” character’s backstory and Ms. Gravano’s life are hardly unique to Ms. Gravano. Rather, they represent common elements in popular discussions and portrayals of organized crime and the relatives of its members. The differences between the fictional “Antonia Bottino” character and Ms. Gravano far outweigh the similarities. Notably, the entire plotline experienced by “Antonia Bottino” during GTA V gameplay – i.e., being kidnapped and nearly buried alive, then being violently rescued by a heroic passer-by – has no parallel in Ms. Gravano’s own life. These and other differences provide further grounds for rejection of a Section 51 claim.¹

2. This case would not meet the rigorous standards for a TRO. As we have explained, a TRO application would fail for multiple reasons. First, creative works, including works already in distribution, are particularly protected under the First

¹ Without going into all the other points of difference, we note that the game character no more resembles Ms. Gravano than countless other women with medium length brown hair. The character states that her father *refused* to let her appear on a reality TV show, in contrast to Ms. Gravano. There is no merit to the notion that Ms. Gravano has any legal claim related to her use of the phrase “the life,” which has been used to refer to the Mafia lifestyle for decades. *See, e.g.*, the famous 1990 movie *Goodfellas*.

Amendment against injunctions that would restrain their distribution. *See, e.g., Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (upholding “heavy presumption against” effort to stop further circulation of publication that was already in the market). Second, Ms. Gravano’s four-month delay in proceeding since the release of GTA V last September would be fatal. *See, e.g., Dennis v. Buffalo Fine Arts Acad.*, 15 Misc.3d 1106(A), 836 N.Y.S.2d 498, at *4 (N.Y. Sup. 2007) (denying injunctive relief where plaintiff sought to halt art auction after waiting four months to commence action). You have acknowledged to us that Ms. Gravano has been personally aware of GTA V, and her purported grievance with it, since October.

Even if Ms. Gravano could get past these hurdles, her TRO application would be denied because she cannot meet her burden of establishing the basic elements of a TRO: likelihood of success on the merits, irreparable harm, and a balance of the equities in favor of her as the movant. *See George v. Hynes*, No. 100730/13, 2013 WL 6856598, at *2-4 (N.Y. Sup. Dec. 13, 2013) (denying TRO for failure to show any of the required three elements):

- There is no likelihood of success whatsoever under Section 51, for the reasons stated above.
- There is no irreparable harm, because Section 51 provides for money damages. *See Paulsen v. Personality Posters, Inc.*, 299 N.Y.S.2d 501, 510 (N.Y. Sup. 1968) (denying preliminary injunction on Section 51 claim where “monetary damages will be available to [plaintiff] and will serve to fully and adequately compensate him”).
- The balance of the equities clearly favors Take-Two, given that the game is already in widespread distribution and embodies free speech values. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

3. If Ms. Gravano does proceed in court, then Take-Two will have no choice but to fully defend the case including seeking sanctions, costs and fees. For all the reasons explained in this letter and the earlier correspondence, the proposed claim is without any merit whatsoever and we have no doubt it would fail. As noted in our earlier conversations, this claim is so clearly without merit that, in the event of a lawsuit, Take-Two would take all available steps to obtain appropriate sanctions, costs, and attorneys’ fees. *See, e.g., 22 NYCRR §130-1.1(a)* (courts may award “any party . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct”; “The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both.”); *Tag 380, LLC v. Ronson*, 89 A.D.3d 411 (1st Dep’t 2011)

Messrs. Farinella and Baldonado

5

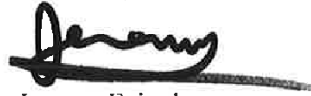
January 29, 2014

(upholding Special Referee's recommended award of over \$811,000 in attorney's fees to defendants pursuant to 22 NYCRR § 130-1.1(a)) (Special Referee's report available at http://decisions.courts.state.ny.us/fcas/fcas_docs/2009SEP/300101396200413SCIV.pdf); *Strunk v. N.Y. State Bd. of Elections*, 29 Misc.3d 1203(A) (N.Y. Sup. 2013) (awarding defendants over \$167,000.00 in costs and attorney's fees pursuant to 22 NYCRR § 130-1.1(a)).

If Ms. Gravano does go forward in court, we ask that this letter be attached both to her initial pleading and to any TRO application that she files.

Please feel free to contact me with any questions. Take-Two reserves all rights.

Very truly yours,



Jeremy Feigelson

Enclosures: *Hampton*, *Mothers* and *Toscani* cases

cc: Gena A. Feist, Esq., Take-Two



195 A.D.2d 366

Page 1

195 A.D.2d 366

(Cite as: 195 A.D.2d 366, 600 N.Y.S.2d 57)



Hampton v Guare
195 A.D.2d 366, 600 N.Y.S.2d 57
N.Y.A.D.,1993.

195 A.D.2d 366, 600 N.Y.S.2d 57, 1993 WL 257577,
21 Media L. Rep. 1767

David Hampton, Appellant,
v.
John Guare et al., Respondents.
Supreme Court, Appellate Division, First Department,
New York

(July 13, 1993)

CITE TITLE AS: Hampton v Guare

Order and judgment, Supreme Court, New York County (Edward Lehner, J.), entered on April 29, 1992 and May 28, 1992, respectively, which, *inter alia*, granted defendants' motion to dismiss the plaintiff's amended complaint, unanimously affirmed, with costs.

In the underlying action, plaintiff, an aspiring actor who has been convicted of attempted burglary and repeatedly arrested for criminal impersonation, larceny and related offenses, seeks \$60,000,000 compensatory and punitive damages against the author, producers, publisher and purchaser of the film rights to the award-winning play, "Six Degrees of Separation". The play was inspired in part by a widely reported criminal scam in which the plaintiff had convinced several affluent New Yorkers to allow him into their homes and to give him money and other things of value by pretending that he knew their children from college, and that he was the son of the actor Sidney

Poitier.

We agree with the IAS Court that the first and second causes of action of the plaintiff's amended complaint fail to state a cognizable claim for commercial misappropriation under [sections 50 and 51 of the Civil Rights Law](#) or for the purported invasion of the plaintiff's common-law right of privacy. There is no common-law right of privacy in this State, only the remedy created by [Civil Rights Law §§ 50 and 51](#) (*Freihofer v Hearst Corp.*, 65 NY2d 135, 140). No cause of action was stated under [Civil Rights Law §§ 50 and 51](#) because plaintiff's name, portrait or picture were not used in the play (*Wojtowicz v Delacorte Press*, 43 NY2d 858), and works of fiction and satire do not fall within the narrow scope of the statutory phrases "advertising" and "trade" (*University of Notre Dame Du Lac v Twentieth Century-Fox Film Corp.*, 22 AD2d 452, *affd on opn at App Div* 15 NY2d 940).

The IAS Court also properly determined that the preemptive effect of the Civil Rights Law is fatal to the third, fourth *367 and fifth causes of action of the plaintiff's amended complaint alleging common-law conversion, common-law tort and unjust enrichment where, as here, the plaintiff has no property interest in his image, portrait or personality outside the protections granted by the Civil Rights Law (*Stephano v News Group Pubs.*, 64 NY2d 174, 183; *Preston v Bregman Prods.*, 765 F Supp 116, 120; *Allen v Men's World Outlet*, 679 F Supp 360, 365). We have reviewed the plaintiff's remaining arguments and find them to be without merit.

Concur--Carro, J. P., Rosenberger, Wallach, Kupferman and Rubin, JJ.

Copr. (c) 2014, Secretary of State, State of New York
N.Y.A.D.,1993.

Hampton v Guare

195 A.D.2d 366

Page 2

195 A.D.2d 366

(Cite as: 195 A.D.2d 366, 600 N.Y.S.2d 57)

195 A.D.2d 366, 600 N.Y.S.2d 576021993 WL
25757799921 Media L. Rep. 17673230, 600 N.Y.S.2d
576021993 WL 25757799921 Media L. Rep.
17673230, 600 N.Y.S.2d 576021993 WL
25757799921 Media L. Rep. 17673230

END OF DOCUMENT

Supreme Court, New York.
 New York County
 Queen MOTHER Dr. Delois Blakely, Plaintiff,
 v.
 THE WALT DISNEY COMPANY, et al., Defendants.
 No. 103662/2012.
 February 6, 2013.

West Headnotes

Limitation of Actions 241 ⚡55(1)

241 Limitation of Actions

241II Computation of Period of Limitation

241III(A) Accrual of Right of Action or Defense

241k55 Torts

241k55(1) k. In general. [Most Cited Cases](#)

Cause of action for the alleged use of plaintiff's name, picture, or voice without written consent accrued, and the one year limitations period began to run, from the date the movie was first published. [McKinney's Civil Rights Law § 51](#); [McKinney's CPLR 215\(3\)](#).

Decision/Order

[Marcy S. Friedman](#), J.S.C.

Motion Seq.: 001

In this action for “[u]nauthorized depiction, production, portrayal, presentation in cinematic form and commercial exploitation,” plaintiff alleges that defendants used “elements of her actual life experiences” without her consent for the movie “Sister Act,” its sequel, and the Broadway production by the same name. (Compl. at 2.) Plaintiff, *pro se*, seeks \$1 billion in damages. (*Id.* at 4.) Defendants move to dismiss the complaint on the grounds that it fails to state a claim and is barred by the statute of limitations and by laches.

It is well settled that on a motion to dismiss addressed to the face of the pleading, “the pleading is to be afforded a liberal construction (*see*, [CPLR 3026](#)). [The court] accept[s] the facts as alleged in the complaint as true, accord[s] plaintiffs the benefit of every possible favorable inference, and determine[s] only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88 [1994]. *See also* 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144 [2002].) “The motion must be denied, if from the pleadings’ four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law.” (*Richbell Information Services, Inc. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 289, 765 N.Y.S.2d 575 [1st Dept 2003] [internal

quotation omitted].) However, “the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts.” (*Robinson v. Robinson*, 303 A.D.2d 234, 235, 757 N.Y.S.2d 13 [1st Dept 2003]. See also *Water St. Leasehold LLC v. Deloitte & Touche LLP*, 19 A.D.3d 183, 796 N.Y.S.2d 598 [1st Dept 2005], lv *denied* 6 N.Y.3d 706 [2006].)

Plaintiff cites Sections 50 and 51 of the New York Civil Rights Law as the basis for her claim. Section 51 provides that “[a]ny person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained ... may ... sue and recover damages for any injuries sustained by reason of such use....” Section 50 provides that a person who uses “the name, portrait or picture of any living person without having first obtained the written consent of such person” for advertising or trade is guilty of a misdemeanor.

Section 50 of the Civil Rights Law is inapplicable as it does not provide a private right of action, but rather authorizes criminal prosecution for unauthorized use by the appropriate authorities.

Section 51 claims must be brought within one year of accrual. (CPLR 215 [3]; *Costanza v. Seinfeld*, 279 A.D.2d 255, 255-56, 719 N.Y.S.2d 29 [1st Dept 2001].) A claim accrues when the alleged unauthorized use is first published. The single publication rule applies to claims arising under § 51, regardless of when an allegedly injured party learned of the publication. (*Nussenzweig v. diCorcia*, 9 N.Y.3d 184, 188 [2007]; *Bostwick v. Christian Oth, Inc.*, 91 A.D.3d 463, 936 N.Y.S.2d 176 [1st Dept 2012].) Thus, plaintiff’s claims accrued when the motion pictures were released or, at the latest, when the Broadway play opened. Plaintiff does not dispute defendants’ contention that the “Sister Act” movies were released in 1992 and 1993, respectively, and that the Broadway play opened on April 10, 2011. (Defendants Memo in Support at 2.) As more than one year has elapsed since the most recent of these events, plaintiff’s claims are clearly time-barred.

Even if this action were not time barred, the complaint does not state a cause of action under § 51. Plaintiff alleges not that defendants used her “name, portrait, picture or voice,” but rather that the “Sister Act” movies and Broadway production are “a veritable similitude of plaintiff’s actual life experiences as a Nun.” (Compl. First Cause of Action, ¶ 4.) It is well settled that § 51 “was not intended to give a living person a cause of action for damages based on the mere portrayal of acts and events concerning a person designated fictitiously in a novel or play merely because the actual experiences of the living person had been similar to the acts and events so narrated.” (*Toscani v. Hersey*, 271 A.D. 445, 448, 65 N.Y.S.2d 814 [1st Dept 1946]. See also *Wojtowicz v. Delacorte Press*, 43 N.Y.2d 858 [1978], *aff’d* 58 A.D.2d 45, 47, 395 N.Y.S.2d 205 [1st Dept 1977].)

Plaintiff has cited no authority to the contrary. The cases relied on by plaintiff all involve the use of an actual picture, whether moving or still, of the allegedly aggrieved party. *Candelaria v. Spurlock*, 2008 WL 2640471 [ED NY 2008] [use of plaintiff’s image in a documentary]; *D’Andrea v. Rafla-Demetrious*, 972 F.Supp. 154 (E.D.N.Y.1997) [use of plaintiff’s picture in an advertising brochure]; *Gallon v. Hustler Magazine, Inc.*, 732 F.Supp. 322 [ND NY 1990] [use of plaintiff’s picture in a magazine].) Plaintiff alleges no such use of her picture.

To the extent that plaintiff premises her complaint on common law rights, the complaint also does not state a cause of action. New York does not recognize a common law right of privacy. (*Messenger v. Gruner & Jahr Print. & Publ.*, 94 N.Y.2d 436, 441 [2000]; *Thomas v. Northeast Theatre Corp.*, 51 A.D.3d 588, 589, 859 N.Y.S.2d 415 [1st Dept 2008].)

For the purposes of this motion, this court has assumed the truth of plaintiff's allegations that the various "Sister Act" productions are based on her life experiences. However, the New York statutes and common law do not support plaintiff's claim.

It is accordingly hereby ORDERED that defendants' motion to dismiss the complaint is granted with prejudice.

This constitutes the decision and order of the court.

Dated: New York, New York

February 6, 2013

<<signature>>

MARCY S. FRIEDMAN, J.S.C.

Mother v. The Walt Disney Co.
2013 WL 497173 (N.Y.Sup.) (Trial Order)

END OF DOCUMENT



271 A.D. 445

Page 1

271 A.D. 445

(Cite as: 271 A.D. 445, 65 N.Y.S.2d 814)

C

Toscani v Hersey
271 A.D. 445, 65 N.Y.S.2d 814
N.Y.A.D. 1 Dept. 1946.

271 A.D. 445, 65 N.Y.S.2d 814, 71 U.S.P.Q. 281

FRANK E. TOSCANI, Respondent,
v.
JOHN HERSEY et al., Defendants, and ALFRED A.
KNOPE, Appellant.
Supreme Court of New York, Appellate Division,
First Department.

November 15, 1946.

CITE TITLE AS: Toscani v Hersey

Civil rights

Use of 'name, portrait or picture' for trade purposes --- (1) Plaintiff sues under [section 51 of Civil Rights Law](#) authorizing damages for use of 'name, portrait or picture' for trade purposes without party's consent; plaintiff alleges appellant published novel and play wherein events and acts narrated as fiction were, in main, events and acts concerning plaintiff; such narration alleged to be 'portrayal' of plaintiff in violation of statute; motion to dismiss causes of action granted --- (2) Statute not intended to give cause of action based on mere portrayal of acts and events concerning fictitious person because actual experience of living person has been similar thereto

1. Plaintiff in this action seeks damages under [section 51 of the Civil Rights Law](#) on the ground that a novel and a play published by defendant-appellant contained a 'portrayal' of plaintiff and an exploitation of his acts, life and personality in violation of said statute which

authorizes an action where any person's 'name, portrait or picture' is used for the purposes of trade without his consent. The gravamen of the causes of action based on said section is that both the novel and the play contain events and acts purporting to relate to a central figure who is described as the senior civil affairs officer of the Allied Military Government in a town in Sicily--which, like the officer, is fictitiously named--and that the events and acts so narrated relate in the main to events and acts concerning him while he was, in fact, the senior civil affairs officer of the Allied Military Government in a town in Sicily during the military occupation. Defendant's motion to dismiss said causes of action is granted.

2. The language used in [section 51](#) was not intended to give a living person a cause of action for damages based on the mere portrayal of acts and events concerning a person designated fictitiously in a novel or play merely because the actual experiences of the living person had been similar to the acts and events so narrated. So to construe the statute would broaden its scope far beyond anything warranted by the meaning that would ordinarily be ascribed to the words 'name, portrait or picture' especially when they are considered in the light of the history of the statute. (*Bims v. Vitagraph Co.*, 210 N. Y. 51, distinguished.)
[271 A.D. 445 \(1946\)](#)

APPEAL from so much of an order of the Supreme Court at Special Term (LEVY, J.), entered June 21, 1946, in Bronx County, as (1) denied a motion by defendant-appellant for a dismissal of the fourth and fifth causes of action set forth in the amended complaint, and (2) denied a motion by said defendant to strike from said amended complaint so much of paragraphs '42nd' and '53rd' thereof as read: 'and held up to public scorn and ridicule'.

Arthur E. Farmer of counsel (*Benjamin H. Stern* with him on the brief, *Stern & Reubens*, attorneys), for appellant.

(Cite as: 271 A.D. 445, 65 N.Y.S.2d 814)

Edward E. Bianco of counsel (*Max Gross* with him on the brief), for respondent.

*446 CALLAHAN, J.

This appeal presents the question of the sufficiency of two causes of action in plaintiff's complaint which attempt to set forth claims for damages under [section 51 of the Civil Rights Law](#). The 'Fourth' cause of action refers to a novel published by appellant, and the 'Fifth' cause of action to a written play published by him, both of which bore the title: 'A Bell for Adano.' For the purpose of this appeal we may consider the causes of action attacked as if they were one, for the same legal question is presented as to each.

[Section 50 of the Civil Rights Law](#) provides: 'A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person * * * is guilty of a misdemeanor.'

[Section 51](#) of the same law, insofar as material, reads as follows: 'Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent [[of said person] first obtained * * * may * * * sue and recover damages for any injuries sustained by reason of such use * * *.'

The gravamen of the causes of action attacked is that, in the novel and play referred to, the events and acts narrated in describing the central figure of the story purport to relate to a person fictitiously called 'Major Victor Joppolo' who is described as the senior civil affairs officer of the Allied Military Government in a town in Sicily, which is likewise fictitiously called Adano. The events and acts so narrated are alleged by plaintiff to relate, in the main, to events and acts of and concerning him, and that he was in fact the senior civil affairs officer of the Allied Military Government in the town of Licata, Sicily, during its occupation by the Allied Armies of World War II.

Plaintiff calls this narration a 'portrayal' of the plaintiff, and an exploitation of his acts, life and personality, and says that such a portrayal constitutes a violation of the statute.

Prior to the adoption of [sections 50 and 51 of the Civil Rights Law](#), it had been held in *Roberson v. Rochester Folding Box Co.* (171 N. Y. 538) that a violation of the right of privacy, as distinguished from the right to be free from libel or slander, was not actionable.

In the *Roberson* case (*supra* p. 545) the Court of Appeals, after pointing out that to assert the right of privacy as a general common-law right might open the door to a vast field of litigation, made the following suggestion for action by the Legislature *447 creating a limited right of privacy: 'The legislative body could very well interfere and arbitrarily provide that no one should be permitted for his own selfish purpose to use the picture or the name of another for advertising purposes without his consent. In such event no embarrassment would result to the general body of the law, for the rule would be applicable only to cases provided for by the statute.'

In the year following the publication of the *Roberson* decision (*supra*) [sections 50 and 51 of the Civil Rights Law](#) were enacted into law (L. 1903, ch. 132).

In holding the new sections constitutional, the Court of Appeals, in *Rhodes v. Sperry & Hutchison Co.* (193 N. Y. 223), stated that there was little doubt but that these laws were prompted by the suggestion of the court in the *Roberson* case (*supra*).

Later, [sections 50 and 51](#) were considered and construed in *Binns v. Vitagraph Co.* (210 N. Y. 51). In that case a moving picture was published based on true occurrences in the life of one John Binns, who had been a radio operator on a steamship, and had been the first to use wireless to broadcast distress signals at sea.

The picture was largely fictional in form, but the name of John Binns was used in the scenario, and in advertisements of the picture, and an actor was made up to look like and impersonate Binns.

The court held that the statute had been violated and that Binns had a cause of action under the Civil Rights Law. The court pointed out that the statute was, in part at least, penal, and should be construed accordingly. It further pointed out that not every use of the name, portrait or picture of a living person was prohibited, but only those for trade purposes. It found that in the case before it the moving picture was not that of a current event, but largely a product of the imagination, and that it was actionable.

In the course of its opinion in the *Binns* case (*supra*), the court, in discussing the effect of the use of an actor to portray Binns, said (p. 57): 'A picture within the meaning of the statute is not necessarily a photograph of the living person, but includes any representation of such person. The picture represented by the defendant to be a true picture of the plaintiff and exhibited to the public as such, was intended to be, and it was, a representation of plaintiff. The defendant is in no position to say that the picture does not represent the plaintiff or that it was an actual picture of a person made up to look like and impersonate the plaintiff.'

***448** The plaintiff in the present action relies largely on the statement found in the first sentence of the paragraph quoted to support his 'Fourth' and 'Fifth' causes of action. He says that it indicates a construction of the statute by the Court of Appeals sufficiently broad to support a cause of action based on a word portrayal of the events in the life of a living person, even where fictitious names appear and no picture or similar likeness is used. In other words, he says that 'portrait or picture' as used in the statute, has been construed to include any representation of a living person which would include one in words or substance describing events that would be recognizable as acts and events of and concerning a living person.

We do not place any such construction on the statement found in the opinion in the *Binns* case (*supra*), nor upon the statute itself. Considered in the light of the facts involved in the *Binns* case (*supra*), and the questions that were being discussed, the statement relied on was merely a holding that where the name of a living person is used in advertising for trade purposes, coupled with a picture of a person represented to be a likeness of that named person, there has been a violation of the statute, even though the person posing for the picture was not in fact the person named. But, in the present case, no living person was named, and no picture or other similar likeness of anybody was used.

Giving the language used in [section 51](#) its ordinary meaning, we find that it was not intended to give a living person a cause of action for damages based on the mere portrayal of acts and events concerning a person designated fictitiously in a novel or play merely because the actual experiences of the living person had been similar to the acts and events so narrated. To so construe the statute would broaden its scope far beyond anything warranted by the meaning that would ordinarily be ascribed to the words 'name, portrait or picture', especially when they are considered in the light of the history of the statute.

The order, so far as appealed from, should be reversed, with \$20 costs and disbursements to the defendant-appellant and the motion to dismiss the 'Fourth' and 'Fifth' causes of action granted, with leave to the defendant-appellant to answer within twenty days after service of the order with notice of entry thereof.

DORE, J. (dissenting).

The language of the statute, [section 50 of the Civil Rights Law](#), is in the disjunctive: the cause of action may be based on the use for trade purposes of (1) the name *or* (2) portrait *or* (3) picture of a person without his consent.

271 A.D. 445

Page 4

271 A.D. 445

(Cite as: 271 A.D. 445, 65 N.Y.S.2d 814)

***449** The Court of Appeals construing the meaning of this statute has expressly held that a picture is not necessarily a photograph 'but includes *any* representation of such person'. (Italics mine.) (*Binns v. Vita-graph Co.*, 210 N. Y. 51, 57.) Reason as well as authority supports the construction. A person may be pictured or portrayed through the medium of words as well as through other art media such as paintings or sculpture.

This does not mean, as suggested, that it may be a violation of the statute for a writer to base a novel or play on *events* that occurred in the life of any living person. Basing the novel or play on certain events is one thing. Reproducing or portraying in fiction for trade purposes a living person as the chief character in a play without his consent is quite another. For the purpose of this appeal we must assume as true all the facts alleged in the fourth and fifth causes of action challenged by the motion to dismiss. The pleadings allege that plaintiff was the senior civil affairs officer whose person is portrayed for trade purposes without his consent and the reference is not merely to casual or incidental events in plaintiff's life, but the portrayal of his person is the primary subject matter of both novel and play. Defendant has capitalized on plaintiff's identity in fiction for his own commercial trade purposes without plaintiff's consent.

Special Term correctly held the causes of action sufficient and denied the motion to dismiss.

Accordingly, I dissent and vote to affirm.

MARTIN, P. J., TOWNLEY and GLENNON, JJ., concur with CALLAHAN, J.; DORE, J., dissents and votes to affirm in opinion.

Order reversed, with \$20 costs and disbursements to the defendant-appellant and the motion to dismiss the fourth and fifth causes of action granted, with leave to the defendant-appellant to answer within twenty days

after service of order, with notice of entry thereof.

Copr. (c) 2014, Secretary of State, State of New York
N.Y.A.D. 1 Dept. 1946.

FRANK E. TOSCANI, Respondent, v. JOHN HERSEY et al., Defendants, and ALFRED A. KNOFF, Appellant.

271 A.D. 445, 65 N.Y.S.2d 81460271 U.S.P.Q. 281867, 65 N.Y.S.2d 81460271 U.S.P.Q. 281867

END OF DOCUMENT

**EXHIBIT G TO GAL AFFIRMATION -
E-MAIL CHAIN BETWEEN COUNSEL FOR TAKE-TWO AND COUNSEL
FOR PLAINTIFF THAT INCLUDES E-MAILS, DATED MARCH 27, 2014,
WITH ATTACHED STIPULATION [73- 76]**

From: Feigelson, Jeremy
Sent: Thursday, March 27, 2014 11:45 PM
To: 'Thomas Farinella'
Subject: RE: Extension request
Attachments: 3634_001.pdf

Tom – For your handling – please sign, date and e-file. Thank you - Jeremy

From: Thomas Farinella [mailto:tf@lawtaf.com]
Sent: Thursday, March 27, 2014 8:08 PM
To: Feigelson, Jeremy
Subject: Re: Extension request

Jeremy:

Feel free to email it to me. Thank you.

Tom

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
[147 35th Street Suite 1008](#)
[New York, NY 10001](#)
 Tel: [\(917\) 319-8579](#)
 Fax: [\(646\) 349-3209](#)

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call [\(917\) 319-8579](#). Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Mar 27, 2014, at 5:53 PM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Tom – For the good order of the record, we will prepare and send to you for signature a stipulation, which will add one day to the calendar for reply as well (a point I did not specify in my email, but I assume there is no objection). Thanks - JF

From: Thomas Farinella [mailto:tf@lawtaf.com]
Sent: Thursday, March 27, 2014 5:53 PM

To: Feigelson, Jeremy
Subject: Re: Extension request

Dear Jeremy:

Thank you for your professional courtesy. Much appreciated.

Sincerely yours,

Tom

Thomas Farinella, Esq.
 Law Office of Thomas Farinella, P.C.
[147 35th Street Suite 1008](#)
[New York, NY 10001](#)
 Tel: [\(917\) 319-8579](#)
 Fax: [\(646\) 349-3209](#)

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call [\(917\) 319-8579](#). Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

On Mar 27, 2014, at 5:46 PM, "Feigelson, Jeremy" <jfeigelson@debevoise.com> wrote:

Dear Tom –

Following up on our call a few minutes ago – you phoned me to advise that due to an unexpected personal matter, you were requesting an extension until 5 pm tomorrow to serve and file papers in opposition to the motion to dismiss in the Gravano matter.

Defendants do not object to the extension.

Sincerely yours,

Jeremy Feigelson
 Debevoise & Plimpton LLP
 919 Third Avenue
 New York, New York 10022
 Direct dial: 212-909-6230
 Direct fax: 212-521-7230
jfeigelson@debevoise.com

* * * * *

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

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

----- X		
KAREN GRAVANO,	:	
	:	
Plaintiff,	:	
	:	Index No. 151633/2014
	:	
- against -	:	Assigned to Judge Joan M. Kenney
	:	IAS Part 8
	:	
TAKE-TWO INTERACTIVE SOFTWARE, INC.,	:	STIPULATION
and ROCKSTAR GAMES,	:	
	:	
Defendants.	:	
----- X		


IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, that (1) Plaintiff shall serve any opposition papers in response to Defendants' motion to dismiss and for sanctions by 5:00 pm Eastern Daylight Time on March 28, 2014; (2) Defendants shall serve any reply papers by and including April 3, 2014; (3) the return date for Defendants' motion is extended to April 4, 2014; and (4) facsimile or electronic signatures on this document shall be deemed effective for all purposes.

Dated: New York, New York
March __, 2014

THOMAS A. FARINELLA P.C.
Thomas A. Farinella
147 West 35th Street, STE. 1008
New York, NY 10001
(917) 319-8579
tf@lawtaf.com

Attorneys for Plaintiff

Dated: New York, New York
March 27, 2014


DEBEVOISE & PLIMPTON LLP
Jeremy Feigelson
919 Third Avenue
New York, NY 10022
(212) 909-6000
jfeigelson@debevoise.com

Attorneys for Defendants

**EXHIBIT H TO GAL AFFIRMATION -
E-MAIL FROM COUNSEL FOR PLAINTIFF TO COUNSEL FOR TAKE-TWO, DATED
MARCH 28, 2014**

From: TF@LAWTAF.COM
Sent: Friday, March 28, 2014 1:19 PM
To: Feigelson, Jeremy
Subject: Return Date

Dear Jeremy:

Please be advised that I have elected to Amend the Complaint as a matter of right pursuant to the applicable provisions of the CPLR. Upon the filing of the Amended Complaint the Motion to Dismiss is moot and thus should be withdrawn. Will you consent to service of the Amended Complaint by email? If you have any questions feel free to contact me.

Thomas Farinella, Esq.
Law Office of Thomas Farinella, PC
147 35th Street Suite 1008
New York, NY 10001
Tel: (917) 319-8579
Fax: (646) 349-3209

This communication, as well as any attached documents are intended solely for the party named above and contain(s) confidential and legally privileged information which may not be disclosed under applicable law and belongs to the sender and/or the intended party. If you are not the intended party, any action that you may undertake in reliance on the contents of the information contained herein is prohibited and that any unauthorized use, dissemination or distribution of this communication and/or the attached documents and their contents, is subject to legal action. If you received this communication in error, it is requested that you delete this communication and all attached documents from your electronic storage files and notify the sender immediately at the above E-mail address, or call (917) 319-8579. Please also be advised that pursuant to United States Treasury Department Circular 230 any discussion of a federal tax issue in this communication, as well as any attached documents are not intended or written to be used, and cannot be used, by any recipient, for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

**EXHIBIT I TO GAL AFFIRMATION -
LETTER FROM COUNSEL FOR TAKE-TWO TO COUNSEL FOR PLAINTIFF, DATED
MARCH 29, 2014 [78- 79]**

DEBEVOISE & PLIMPTON LLP

919 Third Avenue
New York, NY 10022
Tel 212 909 6000
www.debevoise.com

Jeremy Feigelson
Partner
Tel 212 909 6230
Fax 212 521 7230
jfeigelson@debevoise.com

March 29, 2014

BY EMAIL AND U.S. MAIL

Law Office of Thomas A. Farinella, P.C.
147 West 35th Street, Suite 1008
New York, NY 10001
tf@lawtaf.com

Gravano v. Take-Two et al.
Index No. 151633/2014 (Supreme Court, N.Y. County)

Dear Tom:

On behalf of Defendants (together "Take-Two"), this responds to your email of yesterday afternoon. In that email, you advised for the first time that you intended to amend the complaint, rather than oppose the pending motion to dismiss and for sanctions ("Motion"). You also requested Take-Two's consent to service of the amended complaint by email.

The amendment of the complaint raises serious questions of good faith and candor. On Thursday, just hours before plaintiff's opposition to the Motion was due, you phoned to ask our consent to a 24-hour adjournment. Your stated grounds were that, due to an unspecified "personal matter," you needed the time *to complete opposition papers*. We not only agreed to the adjournment, but as a further courtesy we even prepared the stipulation memorializing the adjournment. Yet on Friday you served the amended complaint instead of opposition papers. This strongly suggests that in your call to us on Thursday you were less than forthcoming. Moreover, while we have only had the opportunity to review the amended complaint briefly, it is clearly as meritless and frivolous as the original.

Similarly, the request for consent to service by email raises questions of your understanding of court procedure. This is an e-filing case. The amended complaint that you e-filed yesterday was automatically delivered to us by email through the court's system. Our consent is a non-issue.

Take-Two reserves all rights. These include the right to seek a decision on the Motion (as to which we now regard Plaintiff as being in default) without further notice

Thomas Farinella, Esq.

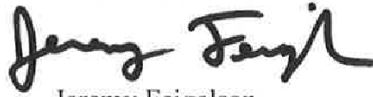
2

March 29, 2014

following the scheduled return date; the right to withhold further courtesies as to scheduling; and the right to add this week's events to the record in support of the sanctions portion of the Motion.

Please feel free to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremy Feigelson". The signature is fluid and cursive, with the first name "Jeremy" and last name "Feigelson" clearly distinguishable.

Jeremy Feigelson

cc: Gena A. Feist, Esq., Take-Two

EXHIBIT J TO GAL AFFIRMATION -
 ARTICLE ENTITLED, "GRAND THEFT AUTO IS TODAY'S GREAT EXPECTATIONS,"
 DATED SEPTEMBER 20, 2013 [80-81]

Grand Theft Auto Is Today's Great Expectations | TIME.com

Page 1 of 2



Ideas

Apps

Home | U.S. | Politics | World | Business & Tech | Health & Science | Life & Style | Arts & Entertainment | Letters | Contributors | Person of the Moment

GLENWOOD
www.GlenwoodNYC.com

NO FEE
LUXURY
APARTMENTS

1 Bedrooms from \$2595
 2 Bedrooms from \$4495
 3 Bedrooms from \$5195

POP CULTURE

Grand Theft Auto Is Today's Great Expectations

By Nick Gillespie @nickgillespie Sent 20, 2013 15 Comments

If there were any lingering questions as to whether video games are the defining popular art form of the 21st century, this week's release of *Grand Theft Auto V* should put them all to rest. The massive sales, growing popularity and – most of all – generally uninformed attacks on video games as morally suspect perfectly parallel the rise to cultural dominance of once-derided forms of creative expression such as movies and the novel.



Rockstar Games

Take a moment to consider the immense draw of *Grand Theft Auto V*, the 15th installment in a controversial series that dates back to 1997. The new iteration allows players to roam around a fictionalized California, assume a variety of different identities, and engage in sex, drugs, and violent criminal activities rendered in state-of-the-art graphics by Xbox 360 and Playstation 3 consoles (a version for PCs will be released sometime in the future). It pulled in an amazing \$800 million during its first day. That's about eight times the total box office of all movies in the U.S. last weekend and, as *Deadline Hollywood* reports, about \$170 million more than cumulative ticket sales for *Man of Steel*, the nation's third-highest-grossing movie of the year.

RELATED

► viewpoint: Girls Should Play More Video Games

► Video Games Don't Make Kids Violent

Despite modest growth over last year's receipts, Hollywood watchers fret over a "summer of flops" and the ever-dwindling number of top-tier book publishers have forever been bemoaning the dire straits of the "mid-list author" for years (as a grad student in English in the late 1980s and early '90s, I knew the "Death of the Novel" had been more firmly established than Alger Hiss's guilt ever could be).

You'll search in vain for downbeat assessments of video games' future. It's not just ultra-graphic, violent shoot-em-up series such as *Grand Theft* and *Call of Duty* that are drawing gigantic followings. Created by Swedish programmer Markus Persson, *Minecraft*, in which players of all ages create whole worlds out of simple building blocks, is nothing less than an international phenomenon. Millions of players all over the globe – often cooperating or competing via real-time shared servers – build open-ended imagined worlds for hours on devices ranging from Microsoft Xbox 360 consoles to PCs to iPads to smart phones.

(MORE: The Mystery of Minecraft)

Long stereotyped as an acne-ridden, male adolescent shut-in, the typical gamer is anything but. The Entertainment Software Association (ESA), a trade group for gaming companies, reports that 58 percent of Americans play video games, that women make up 45 percent of gamers, and that the average age of gamers is 30 years old. Since the prehistoric days of Space Invaders and Pac-Man, gaming has become ubiquitous among all age groups, says the ESA. That trend will only continue.

But are video games art? The short – and long – answer is *yes*. While it's impossible to categorize all games easily (just as it is impossible to categorize all fiction, let alone writing), there's no question that gaming is a thriving form of participatory creative expression.

Indeed, the notices for *Grand Theft Auto V* aggregated at the site *metacritic* read like the pages of *The New York Review of Books*. Apart from honoring the game's technical advances ("the pinnacle of open-world video game design and a colossal feat of technical engineering" reads a typical review), the critics rightly stress the social commentary built into the game. It is, writes the reviewer for Italy's *SpazioGames*, "a game that is able to make a

sublime parody of today's society, taking advantage of all the excesses and insanities to which the world is slowly getting used."

Such insights and distinctions are lost on plainly uninformed commentators such as Ed Schultz, who denounced *Grand Theft Auto V* on his MSNBC show by [declaring](#), "If you're a parent and you allow your son or daughter to watch this [sic] – even if they're beyond 18-years-old, you're a lousy parent." Schultz compounds his error of referring to the game as if it was a movie by then calling it "[the latest Xbox 360](#)," confusing a console with a particular title.

Ironically – and tellingly – people such as Schultz are repeating the same sorts of criticisms that dog all forms of popular culture in their early stages of developments. As novels became increasingly available to non-aristocratic readers in the late 18th and early 19th centuries, they were frequently criticized for impairing the morals of their then-mostly female readers by allowing them to imagine themselves in new and exciting worlds. Movies, comic books, and rock and roll – which like novels are often drenched in sex and violence – came in for exactly the same opprobrium. What good can come of allowing large numbers of people to imagine themselves transgressing conventional morality and playing different social roles for themselves, critics have asked for centuries.

Yet is precisely that feature that explains why certain forms become culturally dominant at different times. As Joli Jensen argues in *Is Art Good for Us?* (2002), culture needs to be understood as a staging ground by which all members of society attempt to "[understand and symbolically engage the world](#)" and their place in it. The novel, the movie, and all the rest became popular forms to the extent they let us do that.

And now it is video games' time in the sun. They are the perfect medium for a digital, networked, globalized age in which previously unimaginable social and technological developments have opened up human possibilities that are intoxicatingly invigorating and terrifyingly anxiety-inducing. Games like *Grand Theft Auto V* – which allows players to switch among three protagonists at any moment and to encounter pimps, millionaires, reality-TV stars, and every other type of person and situation you can imagine – are the platform by which we can roam freely around a world that is very similar to our own. As Keith Stuart wrote in his review for the *Guardian*, *Grand Theft Auto V* is a "dazzling but monstrous parody of modern life" whose fictional "world drags you in. It begs you to explore – and then it rewards you." If that isn't art worth celebrating, then nothing is. And as long as video games deliver on that score, they will only grow and grow in popularity and importance to the 21st Century.



Nick Gillespie@nickgillespie

Nick Gillespie is the editor in chief of Reason.com and a co-author of *The Declaration of Independents: How Libertarian Politics Can Fix What's Wrong With America*. The views expressed are solely his own.

EXHIBIT K TO GAL AFFIRMATION -
 ARTICLE ENTITLED, "GTA 5 REVIEW: A DAZZLING BUT MONSTROUS PARODY
 OF MODERN LIFE," DATED SEPTEMBER 16, 2013 [82-87]

GTA 5 review: a dazzling but monstrous parody of modern life | Technology | The Guardi... Page 1 of 6

[Sign into the Guardian using your Facebook account](#)

the guardian

Search

GTA 5 review: a dazzling but monstrous parody of modern life

Rockstar North's Grand Theft Auto update is a freewheeling, nihilistic satire on western society – as well as ridiculous fun

PS3, Xbox 360; £44.99 (\$59.99); 18+; Rockstar Games

5 / 5

Keith Stuart

The Guardian, Monday 16 September 2013 15.00 EDT

There has been a particular theory going round for the last year or so, that "box set" TV has replaced movies as the preferred form of mass, culturally meaningful entertainment. It is the likes of *Breaking Bad*, *The Wire* and *Homeland* that are telling us about modern life now, rather than Hollywood's simplified three-act confections. *Grand Theft Auto V*, however, *hints* at a future in which that role is taken by *games* – or at the very least actively sought by them. Unlike the vast swathe of wondrous entertainment the video game industry produces, this series cannot be safely pigeon-holed or ignored by non-players. For the last decade, Rockstar has wielded a sledgehammer over public perceptions of what video games are or can be; now it has struck with merciless force.

Set mostly within the glitzy superficial city of Los Santos, a warped mirror of Los Angeles, *GTA V* is a sprawling tale of criminal maniacs self-destructing on a blood-splattered career trajectory to hell. Michael is the middle-aged thug, obsessed with movies, who pulled a witness protection deal with the feds after a failed heist many years ago. When his old partner Trevor, a sociopath who bakes meth out in the desert, turns up in town, the two join forces with a young black kid, Franklin, who's set on leaving his gang-infested neighbourhood behind. The aim is a few final high-paying jobs, but there's a festering resentment between Trev and Michael that goes back a long way, a fizzing fuse that trails all the way through the carnage.

This three-character format emancipates the narrative, jettisoning the awkward requirement for one protagonist to be everywhere, witnessing everything in this vast world. Switching between the characters can be done at any time while off mission, and all three have their own little pet projects to get involved with, adding variety and a few amusing surprises: switching to Trevor usually involves some bodily function or weird violent episode, while Michael has his dysfunctional family to manage. And overlaying all this is a huge plot about warring government agencies and corrupt billionaires.

The result is a freewheeling joyride through genre cinema and literature: there are psychopathic mafia bosses, insane motorcycle gangs, xenophobically sketched triads, corrupt secret agents and cynical movie producers – their stories twist and interconnect, slithering around the lives of our protagonists. It's dizzying at times, but also daftly compelling, and the influence of multi-strand dramas such as *The Wire* is obvious.

On a mission



GTA 5: Trevor feels

the Heat

GTA veterans will still recognise how the game underneath it all works. There is a backbone of narrative missions that gamers must complete in order to progress, but beyond them is a vast range of dynamic encounters, side-quests and money-making ventures, from buying property to managing clubs and playing the stock exchange (which cleverly reacts to in-game events, allowing you to make extra cash by buying the right shares at the right time). Most story tasks are variations on one theme – drive somewhere, shoot something, drive back – but as with all video game feedback loops, the joy of the system is in the execution. And boy does GTA V execute.

To say much more would be to ruin the fun of discovery, but rest assured there are insane stunts, there is massive destruction, there is military-grade weaponry, and you will be required to jump out of planes. And helicopters. Combining the sheer scale of the environment with the excellent physics engine, these escapades throw everything at you, from rural bank-heists to jet-ski chases, to operating huge industrial machinery. The bigger heists require mini-preparatory missions (hiding getaway cars, picking novelty masks) which help build the tension, and subtly add to the feeling that what we're all doing here is acting in our own version of Michael Mann's film *Heat*. While certain ideas are repackaged and chucked straight back at you several times, you're carried along on a rush of euphoric action and shock – mostly because the world looks and behaves as though all this makes sense.

Satirical scope



GTA 5: sharp-suited

Michael

Indeed, Rockstar North has built an extraordinary universe that functions not only as an exciting, diverse setting but also as a pulverising, nihilistic satire on western society. Reality TV, celebrity magazines, social media, plastic surgery, pop psychology books – all get savaged via the often hilarious commercials on the game's many radio and TV

stations. Even games themselves get hit: an advert for Righteous Slaughter 7 promises "the realistic art of contemporary killing".

This isn't just confined to extraneous detail, it slides into the narrative. At one point we see the offices of a giant social network, Lifeinvader, a spot-on amalgam of Facebook, Apple and Google. The staff all wear cargo shorts, whine on about organic lactose-free dairy products and treat their CEO with religious deference. We also get corrupt FBI and CIA agents (called FiB and IAA in the game), trading drugs and manufacturing terrorist threats to keep their budgets topped up. Everyone is on the make, everyone is dangerous, and the game delights in thrusting us into the middle of it as a willing participant.

Gunfights, meanwhile, are furious, visceral ballets, fuelled by regular visits to the well-stocked Ammu-Nation stores. While GTA has learned a lot about organic environments from Red Dead Redemption (the rural areas of San Andreas are abuzz with wildlife), it has learned its game systems from Max Payne. The combat is ultra-smooth with a variety of decent, functional aiming options and a cover mechanic that works almost imperceptibly – the greatest compliment you can pay to this concept. Limited more by the player's imagination than by ability, most set-piece encounters are not overwhelmingly challenging, but they are spectacular – and this is the point. You have to understand that Grand Theft Auto V is not really a game about story or mechanics, even if it wants to be – it is a game about spectacle and experience.

Forgivable flaws



GTA 5: there's a lot of

driving

This is really important because it allows us to forgive the game's flaws. You have to do a *lot* of driving. There are no shortcuts, so every mission involves hitting the highways to get to the trigger point; and yes sometimes you think "Ugh, not another car ride".

Rockstar North has also developed a slightly irritating narrative trope that I'll call "the exposition expedition": there are a lot of long journeys that just seem to be there so that the lead characters can chat about back-story, or engage in meandering expletive-drenched conversations on pop culture and psychology – something we probably have Tarantino to thank for.

Furthermore, the designers don't always make the rules of the system clear. Some missions will only end successfully if you carry out the correct action after a specific prompt, while others don't provide a prompt at all and then fail you if you miss the mandatory sweet spot. The game also has the habit of simultaneously providing mission instructions via in-game dialogue and an on-screen text prompt, which at the very least means you miss plot details, but at the worst means you can be left wondering what the hell you're supposed to do next because you paid attention to the wrong thing. Or at least that was my experience; others may be better at ludological multitasking.

Women are, once again, relegated to supporting roles as unfaithful wives, hookers and weirdos. The one successful female character in the story is suspected of just wanting to screw her boss. Of course, GTA is essentially an interactive gangster movie, and the genre has a long history of investigating straight male machismo at the expense of all other perspectives, but it would have been wonderful to see Rockstar challenging that convention. It's fine to parody the idiotic misogyny of violent men, but how about doing it by providing their opposite? It seems Rockstar North's all-male writing team is too in thrall to Tarantino and Brett Easton Ellis to really consider this.

Seductive vision



GTA 5: Los Santos is

glitziy superficial

Ah but... The genius of GTA V is in the sheer seductive force of its vision. The visuals are astonishing – just astonishing. Surely pushing this ageing hardware to the limits, we get the dense downtown with its soaring skyscrapers and murky, rubbish-strewn back alleys. But then out into the country, we have rolling grasslands and desert stretches, coyotes roaming, the shadows of eagles swooping overhead.

The world drags you in. It begs you to explore – and then it rewards you. You feel every millimetre of the landscape has been thoughtfully handcrafted with the curious gamer in mind. This seems an odd compliment – surely every video game landscape is crafted in this way. But so often, open worlds are built from architectural filler – bland unending landscapes and cardboard box tenements. San Andreas is a state of contrasts and extraordinary detail, there is always some interesting new nook to chance on, some breathtaking previously unexperienced view across the hills toward the capitalist spires of downtown. Designers often talk about rewarding the player for exploration, but usually do so with facile Easter eggs, hidden away in mundane backwaters. From the raging rivers running through the mountain wilderness parks to the beautiful modernist architecture tucked away in the Vinewood hills, Grand Theft Auto V is – like Fallout and Skyrim before it – a form of virtual tourism.

The talent too is in the emergent moments the system produces. Driving to a violent heist with Don Johnson's Heartbeat playing on the radio, the freeway clear before you; flying a crop-dusting plane up the contour of Mount Chiliad, so that you reach the peak just as the red sun falls, sending rainbows of lens flare through your cockpit screen; clipping a police car during a chase, sending your own vehicle spinning off the overpass onto the roof of an liquor store. All fun, all about you the player.

Complicity and culpability



GTA 5: explosive

action

And however familiar the GTA set-up is, it still works. Blasting your way out of impossible face-offs with private armies, streaking through the city streets in a new car – some will hate the sheer amorality, the relentless seething darkness of the narrative.

[Spoiler] Many too will be horrified by an interactive torture scene that pushes the player to perform acts of cruelty on a defenceless victim **[spoiler ends]**. But GTA is all about complicity and culpability – what is the player prepared to do in this world? How much are they responsible for? During the game, Michael makes several visits to a shrink, complaining that he feels someone else is controlling him. Rockstar wants to interrogate the relationship between player and game – or at least snigger at the psychopolitics of it all.

Yes, some people will hate GTA V. Some, like me, will thoroughly enjoy it while acknowledging its complications, its shortcomings as a narrative adventure. Last of Us says more about humanity in five minutes than GTA V does in its 70-plus missions. Five stars for such a troubled proposition? That'll confuse and anger a few people, I know it. But no one constructs worlds like Rockstar and this one is worth many, many hours of exploration. It is fun, so much guilty, ridiculous fun. It is beautiful to look at, it is jammed with ideas, and when the free add-on, Grand Theft Auto Online, comes out in October, it will offer a compelling multiplayer experience, where participants combine and face off in gigantic turf wars.

And then GTA V is also a monstrous parody of modern life – our bubbling cesspit of celebrity fixation, political apathy and morose self-obsession. I half expected it to end with the Houser brothers dressed as Papa Lazarou from League of Gentlemen staring into the camera and whispering seductively, "you all live in Los Santos now". But they don't need to, of course. This misanthropic masterpiece says it all for them.

Tested on Xbox 360. Make sure you check out our video on [the making of the original Grand Theft Auto!](#)



Get the Guardian's Zip file email

For all you need to know about technology in the world this week, news, analysis and comment.

[Sign up for the Zip file email](#)

More from the guardian

[Dark Souls 2 review – a brutal, mysterious, astonishing game](#) 11 Mar 2014

[The NSA won't shut up about Snowden, but what about the spy who stole more?](#) 11 Mar 2014

More from around the web

[Bras in Space: The Incredible True Story Behind Upcoming Film Spacesuit](#) (The Credits)

[Not Having One Of These Credit Cards in 2014 May Be a Mistake](#) (NextAdvisor Daily)

[Channel 4 to broadcast footage of 9/11 New York attacks
filmed from space](#)06 Mar 2014

[Father Hires Escort Who Turns Out to Be Someone He
Knows Far Too Well](#) (Stirring Daily)

[How augmented reality builds bridge between games
and children's books](#)10 Mar 2014

[The first 10 things to do with your new iPad](#) (CNET)

[Why David Cameron's 5G internet will be so fast it's
almost pointless](#)10 Mar 2014

[The One Thing You Should Do After Meeting Anyone
New](#) (Forbes.com)

© 2014 Guardian News and Media Limited or its affiliated companies. All rights reserved.

;

EXHIBIT L TO GAL AFFIRMATION -
 ARTICLE ENTITLED, "GRAND THEFT AUTO V' CROSSES \$1B IN SALES,
 BIGGEST ENTERTAINMENT LAUNCH IN HISTORY," DATED SEPTEMBER 20, 2013
 [88- 89]

'Grand Theft Auto V' Crosses \$1B In Sales, Biggest Entertainment Launch In History - F... Page 1 of 2

Forbes



Erik Kain, Contributor:
 I write about video games, the industry and the future

GAMES | 9/20/2013 @ 3:11PM | 101,876 views

'Grand Theft Auto V' Crosses \$1B In Sales, Biggest Entertainment Launch In History



Rockstar's latest is pure gold.

Grand Theft Auto V pulled in [\\$800 million in sales in its first 24 hours](#) according to Take Two Interactive (TTWO) the parent company of developer and publisher Rockstar Games.

Now TTWO is reporting that in its first three days, the game has crossed the \$1 billion mark. This is an extraordinary success story. By comparison, Activision's *Call of Duty: Black Ops 2* hit \$500 million in day-one sales, making it the biggest entertainment launch in history at the time.

And that's not just video games. *Black Ops 2* topped all media launches, including blockbuster films. *Grand Theft Auto V* topped the previous record by \$300 million, which is no small feat.

Furthermore, *Black Ops 2* didn't cross the \$1 billion mark [until its 15th day on sale](#).

Now let's take a look at the box-office.

The Avengers was the fastest film in history to hit \$1 billion—19 days into its run.

In fact, both *Harry Potter and the Deathly Hallows Part 2* and *Avatar* hit \$1 billion in the same amount of time, but each film had a wider release than *The Avengers*.

In other words, *Grand Theft Auto V* not only hit \$1 billion in sales faster than the fastest-grossing video game, it beat the three biggest film launches of all time by 16 days.

As David Thier pointed out recently, “Demand for big, AAA games isn’t flagging, it’s just been waiting for the right products.”

Rockstar spent an estimated \$260 million on the development of *Grand Theft Auto V*, but the money, time, and care put into the game’s development is obviously paying dividends. Other publishers should take note.

“Grand Theft Auto is a cultural phenomenon and Rockstar Games continues to redefine what can be achieved in interactive entertainment,” said Strauss Zelnick, Chairman and CEO of Take-Two. “We are incredibly proud of the extraordinary critical and commercial response to Grand Theft Auto V.”

And while the game has sparked controversy for its gratuitous violence, its depiction of women, and its glorification of crime, the mere fact that it’s achieved such enormous success points to a game that has wide mainstream appeal—largely because the game offers so many choices and a tremendous number of ways to have fun.

Grand Theft Auto Online, the multiplayer portion of the game, launches this October, which may help push the game’s sales to even greater heights.

I’ll have the first part of my *Grand Theft Auto V* review series posted in the near future, so stay tuned.

Follow me on [Twitter](#) or [Facebook](#). Read my Forbes blog [here](#).

Related on Forbes:

['Grand Theft Auto V' New Screenshots](#)

This article is available online at:

<http://www.forbes.com/sites/erikkain/2013/09/20/grand-theft-auto-v-crosses-1b-in-sales-biggest-entertainment-launch-in-history/>

AFFIDAVIT OF JEFF ROSA, FOR DEFENDANTS, IN SUPPORT OF MOTION,
SWORN TO MARCH 17, 2014 [90-93]

FILED: NEW YORK COUNTY CLERK 04/17/2014
NYSCEF DOC. NO. 44

INDEX NO. 151633/2014
RECEIVED NYSCEF: 04/17/2014

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

----- X
KAREN GRAVANO, :
 :
Plaintiff, :
 :
 :
 :
- against - :
 :
 :
TAKE-TWO INTERACTIVE SOFTWARE, INC.:
and ROCKSTAR GAMES, :
 :
Defendants. :
----- X

AFFIDAVIT OF JEFF ROSA

Index No. 151633/2014

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

Jeff Rosa hereby states as follows:

1. I am Vice President, Quality Assurance of defendant Rockstar Games, Inc. ("Rockstar"), a subsidiary of defendant Take-Two Interactive Software, Inc. I submit this affidavit in support of defendants' motion to dismiss and for sanctions. The facts set forth in this affidavit are based on my personal knowledge and belief as well as the business records of defendants.
2. Attached to this affidavit as Exhibit 1 is a true and correct copy of the video game "Grand Theft Auto V," which was released by defendants on September 17, 2013. GTAV is available for the PlayStation3 and Xbox 360 video game consoles. Exhibit 1 is the Xbox 360 version of GTAV. The Xbox 360 and PlayStation3 versions of GTAV have the same content.

3. Attached to this affidavit as Exhibit 2 is a true and correct transcript of the dialogue of a sequence within GTAV called “Burial,” which includes a fictional character named “Antonia Bottino.” For the reasons described below, there are four ways that a player could experience “Burial” while playing GTAV.

4. Attached to this affidavit as Exhibit 3 is a true and correct copy, in DVD format, of video capture of GTAV gameplay depicting the four ways a player could experience “Burial.”

5. Attached to this affidavit as Exhibit 4 is a true and correct copy of a book entitled “Grand Theft Auto V Signature Series Guide,” published by DK/BradyGames, a division of Penguin Group (USA), Inc. (the “BradyGames Guide”). The BradyGames Guide provides a detailed written description of various aspects of GTAV. It is created under license from, and in cooperation with, Rockstar. The BradyGames guide accurately describes the content of GTAV, including, at page 276, the content of “Burial.”

6. As reflected in the Brady Guide, GTAV is set in a fictional U.S. state called San Andreas that evokes Southern California. The plot takes place in and around a fictional city called Los Santos that evokes Los Angeles. GTAV is an “open world” type video game. This means that players can freely explore the virtual world, choosing what they would like to experience at any time. In comparison, a “linear” type video game requires players to experience the world in small segments in a specific order.

7. In GTAV, players can follow the 50-hour main storyline which consists of approximately 80 “missions.” There are also about 100 hours of additional gameplay the

player can experience as they explore the virtual world, including over 60 “random events.”

8. “Burial” is one of the “random events” within GTAV. In “Burial,” the player comes across a woman (the “Antonia Bottino” character) tied up by the side of the road as two men prepare to bury her alive. The player can choose to engage the “random event” or ignore it. If the player engages the “random event,” the player's character must kill the two men to rescue the woman. Once this has been done, she asks the player's character to drive her to a safe place. While they are driving, the woman tells her rescuer that she is the daughter of a mobster named Sammy “Sonny” Bottino. She states that her father was once active in the “Gambetti” crime family, causing her family to go into hiding, but that he then was captured and took a plea deal. She says that the men were trying to bury her alive in retaliation. She adds that she was invited to appear on a reality show titled “Wise Bitches”, but her father would not let her. The “Burial” sequence lasts about seven minutes.

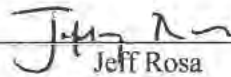
9. In the course of playing GTAV, the player may control one of three different main characters, Michael, Trevor, or Franklin. These characters have different “personalities,” skills, and experiences within the game. Michael is the old pro, Franklin is young and ambitious, and Trevor is a dangerously violent person.

10. As noted above, the player can experience “Burial” in four different ways, depending on which character the player is controlling when the “random event” occurs. The dialogue for “Antonia Bottino” is the same in all four versions but the dialogue for the player characters is slightly different, reflecting their different personalities.

11. The "Antonia Bottino" character does not appear anywhere in GTAV other than in the "Burial" random event. GTAV does not include any character named Karen Gravano, nor is that name used in the game. GTAV also does not include a picture or a portrait of Karen Gravano or the voice of Karen Gravano.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 17, 2014


Jeff Rosa

Subscribed and sworn to before
me this 17th day of March, 2014



Notary Public

NICOLE NICOLETTI
NOTARY PUBLIC
STATE OF NEW YORK
LIC. #01N18047807
COMM. EXP. 2017

**EXHIBIT 1 TO ROSA AFFIDAVIT -
NOTICE OF HARD COPY EXHIBIT FILING: PHYSICAL COPY OF GTAV
(PHYSICAL EXHIBIT TO BE SUBMITTED TO THE COURT)**

FILED: NEW YORK COUNTY CLERK 04/17/2014

NYSCEF DOC. NO. 45

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/17/2014

NOTICE OF HARD COPY EXHIBIT FILING

Index Number: 151633/2014

Pursuant to Uniform Rule § 202.5-b(d)(6), notice is hereby given that the exhibit described below:

☒ will be filed in hard copy only with the County Clerk of New York County under the above referenced Index Number

or

☐ will be retained by the party set forth below until the conclusion of this action/proceeding, including all appeals, and therefore will not appear in electronic form in the e-docket.

Filing/Retaining Party: Defendants Take-Two Interactive Software, Inc. and Rockstar Games, Inc.

Brief Description (e.g., map, videotape, etc.) "Grand Theft Auto V" Video Game

and, in either case, has been or will be served in hard copy on all parties in this action, with proof of service filed electronically

Dated: 04/17/2014

Jeremy Feigelson

Name

Debevoise & Plimpton LLP

Firm/Department

919 Third Avenue

Street Address

New York, NY 10022

City, State and Zip Code

212-909-6000

Phone

jfeigelson@debevoise.com

E-Mail Address

EXHIBIT 2 TO ROSA AFFIDAVIT -
TRANSCRIPTS OF BURIAL RANDOM EVENT [95- 128]

Franklin – “Burial” Random Event Transcript

[First Digger] [00:08]

Don't stop, keep digging.

[Second Digger] [00:12]

Hey, who's this guy?

[Antonia] [00:21]

Can you get me out of these?

[Antonia] [00:30]

Oh thank god. I thought I was dead for sure.

[Antonia] [00:33]

I don't even know where the hell we are. You couldn't give me a ride, could you?

[Franklin] [00:37]

Yeah. Sure. Shit, I ain't just going to leave you out here.

[Antonia] [00:49]

This is a nightmare. I kept telling him it wasn't safe. I gotta make a call.

[Antonia] [00:55]

Beppe, you need to come and get me.

[Antonia] [00:57]

Yes right now! I was just ten seconds away from getting whacked.

[Antonia] [01:01]

Meet me in Vinewood Hills. I gotta get out of here, anywhere.

[Antonia] [01:04]

Okay, I got a guy coming for me. Vinewood Hills.

[Antonia] [01:09]

Jesus, this is so messed up. Thank you. I don't know what would have happened if you hadn't come along.

[Franklin] [01:15]

Yeah, I don't think they was digging that hole for fun.

[Antonia] [01:19]

Those sick sons of bitches.

[Franklin] [01:22]

What was that all about?

[Antonia] [01:24]

Just my dad, as usual.

[Franklin] [01:27]

That was your dad?

[Antonia] [01:29]

What? No! I shouldn't really say, but what does it matter now... you're in the life, right?

[Antonia] [01:34]

You can't handle yourself like you did and not be in the life.

[Antonia] [01:37]

Have you heard of Sammy Bottino, most people call him Sonny?

[Franklin] [01:41]

No, why?

[Antonia] [01:44]

The Gambetti family? Don't you watch the news? He was Don Gravelli's right-hand man.

[Antonia] [01:49]

He more or less kind of ran the East Coast in the eighties and nineties.

[Antonia] [01:52]

No?! Well, that's my Dad. Father of the year.

[Antonia] [01:55]

They tried to pin a murder charge on him in 2007 and we had to go into hiding, move out west.

[Antonia] [02:00]

One day you're living the good life, the next you're moving around safehouses in rat-hole hick towns where no one comes looking.

[Franklin] [02:07]

And your friends back there?

[Antonia] [02:09]

Just the latest in a long line of people who want to get back at Sonny Bottino.

[Antonia] [02:13]

Could be something he's trying to run from the inside or someone else he squealed on.

[Antonia] [02:16]

When he got pinched in 2011, he kind of copped a plea, gave up a lot of people.

[Antonia] [02:20]

He gets to sit in his five-star cell while I'm on the outside dealing with the consequences.

[Antonia] [02:24]

My dad was many things, but I never thought he'd be a snitch.

[Franklin] [02:29]

Whereas you seem like you don't let nothin' slip.

[Antonia] [02:34]

What's there to hide anymore? It's all out there.

[Antonia] [02:36]

They even wanted me to do a reality show. 'Wise Bitches', daughters of mobsters cat-fighting in Broker.

[Antonia] [02:42]

But of course he wouldn't let me. He's so protective. I've always been a Daddy's girl.

[Franklin] [02:46]

Shit, could've fooled me.

[Antonia] [02:50]

You wait until he hears about this. He'll flip his shit, seriously.

[Antonia] [02:54]

Everyone those two hicks ever talked to's gonna get hit.

[Antonia] [03:01]

What's your name, by the way?

[Franklin] [03:02]

Franklin.

[Antonia]

Franklin what?

[Franklin] [03:04]

I ain't sure I want to answer that.

[Antonia] [03:05]

He's gonna want to know who saved my life.

[Franklin] [03:07]

Franklin Clinton.

[Antonia] [03:09]

You'll be made right for this, I promise.

[Franklin] [03:11]

Yeah, yeah. If you say so.

[Antonia] [05:48]

That's my guy. Thank you again. I won't forget this.

[Franklin] [07:07]

A, who's this?

[Antonia] [07:08]

It's Antonia Bottino. You know, the girl who nearly attended her own funeral out at Paleto Bay.

[Franklin] [07:13]

Oh, shit, how could I forget?

[Antonia] [07:15]

My dad wanted to make sure you were looked after.

[Antonia] [07:17]

Now, there's some money being wired to your account right now. Now I gotta get off the line. Thank you again.



Michael – “Burial” Random Event Transcript

[First Digger] [00:10]

Don't stop, keep digging.

[Second Digger] [00:13]

Hey, who's this guy?

[First Digger] [00:20]

We got a man down.

[Antonia] [00:22]

I can't get free.

[Antonia] [00:31]

Oh thank god. I thought I was dead for sure.

[Antonia] [00:34]

I don't even know where the hell we are. You couldn't give me a ride, could you?

[Michael] [00:38]

Yeah yeah sure come on. Get in.

[Michael] [00:40]

I'm not going just going to leave you out here.

[Antonia] [00:48]

This is a nightmare. I kept telling him it wasn't safe. I gotta make a call.

[Antonia] [00:54]

Beppe, you need to come and get me.

[Antonia] [00:56]

Yes right now! I was just ten seconds away from getting whacked.

[Antonia] [01:00]

Meet me in Vinewood Hills. I gotta get out of here, anywhere.

[Antonia] [01:04]

Okay, I got a guy coming for me. Vinewood Hills.

[Antonia] [01:08]

Jesus, this is so messed up. Thank you. I don't know what would have happened if you hadn't come along.

[Michael] [01:16]

Yeah well, call me old-fashioned but I don't like seeing girls buried alive.

[Antonia] [01:22]

Those sick sons of bitches.

[Michael] [01:25]

What the hell was that all about?

[Antonia] [01:28]

Just my dad, as usual.

[Michael] [01:31]

That was your dad?

[Antonia] [01:33]

What? No! I shouldn't really say, but what does it matter now... you're in the life, right?

[Antonia] [01:39]

You can't handle yourself like you did and not be in the life.

[Antonia] [01:41]

Have you heard of Sammy Bottino, most people call him Sonny?

[Michael] [01:46]

Should I have?

[Antonia] [01:47]

The Gambetti family? Don't you watch the news? He was Don Gravelli's right-hand man.

[Antonia] [01:52]

He more or less kind of ran the East Coast in the eighties and nineties.

[Antonia] [01:56]

No?! Well, that's my Dad. Father of the year.

[Antonia] [01:59]

They tried to pin a murder charge on him in 2007 and we had to go into hiding, move out west.

[Antonia] [02:04]

One day you're living the good life, the next you're moving around safehouses in rat-hole hick towns where no one comes looking.

[Michael] [02:10]

Yeah, I can relate, in a reverse kind of way. And your friends back there?

[Antonia] [02:16]

Just the latest in a long line of people who want get back at Sonny Bottino.

[Antonia] [02:20]

Could be something he's trying to run from the inside or someone else he squealed on.

[Antonia] [02:23]

When he got pinched in 2011, he kind of copped a plea, gave up a lot of people.

[Antonia] [02:27]

So he gets to sit in his five-star cell while I'm on the outside dealing with the consequences.

[Antonia] [02:32]

My dad was many things, but I never thought he'd be a snitch.

[Michael] [02:36]

Whereas you seem to be the soul of discretion.

[Antonia] [02:39]

What's there to hide anymore? It's all out there.

[Antonia] [02:42]

They even wanted me to do a reality show. 'Wise Bitches', daughters of mobsters cat-fighting in Broker.

[Antonia] [02:48]

But of course he wouldn't let me. He's so protective. I've always been a Daddy's girl.

[Michael] [02:52]

Could've fooled me.

[Antonia] [02:55]

You wait until he hears about this. He'll flip his shit, seriously.

[Antonia] [02:59]

Everyone those two hicks ever talked to's gonna get hit.

[Antonia] [03:05]

What's your name, by the way?

[Michael] [03:07]

Michael.

[Antonia] [03:08]

Michael what?

[Michael] [03:08]

Why? I'm not going to find a horse's head in my bed am I?

[Antonia] [03:11]

He's gonna want to know who saved my life.

[Michael] [03:13]

Ah, okay. Michael De Santa.

[Antonia] [03:16]

You'll be made right for this, I promise.

[Michael] [03:18]

If you say so.

[Antonia] [05:40]

That's my guy. Thank you again. I won't forget this.

[Michael] [07:00]

Who's this?

[Antonia] [07:01]

It's Antonia Bottino. You know, the girl who nearly attended her own funeral out at Paleto Bay.

[Michael] [07:07]

Ah, how could I forget?

[Antonia] [07:09]

My dad wanted to make sure you were looked after.

[Antonia] [07:11]

Now, there's some money being wired to your account right now. Now I gotta get off the line. Thank you again.



Trevor – “Burial” Random Event Transcript

[First Digger] [00:10]

Don't stop, keep digging

[Second Digger] [00:13]

What do you think I'm doing?

[Second Digger] [00:16]

Hey, who's this guy?

[First Digger] [00:19]

Who the hell are you?

[First Digger] [00:22]

You make me.....

[Antonia] [00:24]

Can you get me out of these?

[Antonia] [00:34]

Oh thank god. I thought I was dead for sure.

[Antonia] [00:39]

I don't even know where the hell we are. You couldn't give me a ride, could you?

[Trevor] [00:42]

No, you can walk. Only kidding! Too soon? Come on.

[Antonia] [00:48]

You get it done, don't you?

[Antonia] [00:58]

This is a nightmare. I kept telling him it wasn't safe. I gotta make a call.

[Antonia] [01:04]

Beppe, you need to come and get me.

[Antonia] [01:06]

Yes right now! I was just ten seconds away from getting whacked.

[Antonia] [01:11]

Meet me in Vinewood Hills. I gotta get out of here, anywhere.

[Antonia] [01:14]

Okay, I got a guy coming for me. Vinewood Hills.

[Antonia] [01:19]

Jesus, this is so messed up. Thank you. I don't know what would have happened if you hadn't come along.

[Trevor] [01:25]

Ah well, based on my quick read of the situation, you would have been buried alive.

[Antonia] [01:30]

Those sick sons of bitches.

[Trevor] [01:33]

What was that all about?

[Antonia] [01:37]

Just my dad, as usual.

[Trevor] [01:39]

That was your dad?

[Antonia] [01:42]

What? No! I shouldn't really say, but what does it matter now... you're in the life, right?

[Antonia] [01:46]

You can't handle yourself like you did and not be in the life.

[Antonia] [01:50]

Have you heard of Sammy Bottino, most people call him Sonny?

[Trevor] [01:54]

Mmm...can't say I have.

[Antonia] [01:58]

The Gambetti family? Don't you watch the news? He was Don Gravelli's right-hand man.

[Antonia] [02:02]

He more or less kind of ran the East Coast in the eighties and nineties.

[Antonia] [02:06]

No?! Well, that's my Dad. Father of the year.

[Antonia] [02:09]

They tried to pin a murder charge on him in 2007 and we had to go into hiding, move out west.

[Antonia] [02:14]

One day you're living the good life, the next you're moving around safehouses in rat-hole hick towns where no one comes looking.

[Trevor] [02:21]

And your friends back there?

[Antonia] [02:24]

Just the latest in a long line of people who want get back at Sonny Bottino.

[Antonia] [02:28]

Could be something he's trying to run from the inside or someone else he squealed on.

[Antonia] [02:31]

When he got pinched in 2011, he kind of copped a plea, gave up a lot of people.

[Antonia] [02:36]

He gets to sit in his five-star cell while I'm on the outside dealing with the consequences.

[Antonia] [02:40]

My dad was many things, but I never thought he'd be a snitch.

[Trevor] [02:43]

Whereas you seem to be the soul of discretion.

[Antonia] [02:47]

What's there to hide anymore? It's all out there.

[Antonia] [02:50]

They even wanted me to do a reality show. 'Wise Bitches', daughters of mobsters cat-fighting in Broker.

[Antonia] [02:56]

But of course he wouldn't let me. He's so protective. I've always been a Daddy's girl.

[Trevor] [03:00]

Could've fooled me.

[Antonia] [03:03]

You wait until he hears about this. He'll flip his shit, seriously.

[Antonia] [03:07]

Everyone those two hicks ever talked to's gonna get hit.

[Antonia] [03:14]

What's your name, by the way?

[Trevor] [03:15]

Trevor Philips.

[Trevor] [03:16]

Why, am I on his list too? That would seem on the unfair side.

[Antonia] [03:20]

No, he's gonna want to know who saved my life. You'll be made right for this, I promise.

[Trevor] [03:25]

Whatever the code dictates.

[Antonia] [05:16]

That's my guy. Thank you again. I won't forget this.

[Trevor] [06:34]

Who's this?

[Antonia] [06:35]

It's Antonia Bottino. You know, the girl who nearly attended her own funeral out at Paleto Bay.

[Trevor] [06:40]

How could I forget?

[Antonia] [06:42]

My dad wanted to make sure you were looked after.

[Antonia] [06:45]

Now, there's some money being wired to your account right now. Now I gotta get off the line. Thank you again.



Trevor – “Burial” Random Event 2 Transcript

[Antonia] [00:11]

You won't get away with this!

[Antonia] [00:17]

How dumb are you?

[Second Digger] [00:20]

Don't... Hey who's this guy?

[First Digger] [00:23]

Who the hell are you?

[Trevor] [00:25]

Did you lose a very big bet?

[Antonia] [00:29]

Untie me, please!

[Antonia] [00:39]

Oh thank god. I thought I was dead for sure.

[Antonia] [00:42]

I don't even know where the hell we are. You couldn't give me a ride, could you?

[Trevor] [00:45]

No, you can walk. Ha! Only kidding! Too soon? Come on.

[Antonia] [01:06]

This is a nightmare. I kept telling him it wasn't safe. I gotta make a call.

[Antonia] [01:12]

Beppe, you need to come and get me.

[Antonia] [01:14]

Yes right now! I was just ten seconds away from getting whacked.

[Antonia] [01:18]

Meet me in Vinewood Hills. I gotta get out of here, anywhere.

[Antonia] [01:22]

Okay, I got a guy coming for me. Vinewood Hills.

[Antonia] [01:26]

Jesus, this is so messed up. Thank you. I don't know what would have happened if you hadn't come along.

[Trevor] [01:33]

Ah well, based on my quick read of the situation, you would have been buried alive.

[Antonia] [01:39]

Those sick sons of bitches.

[Trevor] [01:42]

What was that all about?

[Antonia] [01:45]

Just my dad, as usual.

[Trevor] [01:47]

That was your dad?

[Antonia] [01:50]

What? No! I shouldn't really say, but what does it matter now... you're in the life, right?

[Antonia] [01:56]

You can't handle yourself like you did and not be in the life.

[Antonia] [01:58]

Have you heard of Sammy Bottino, most people call him Sonny?

[Trevor] [02:02]

Mmm, can't say I have.

[Antonia] [02:08]

The Gambetti family? Don't you watch the news? He was Don Gravelli's right-hand man.

[Antonia] [02:12]

He more or less kind of ran the East Coast in the eighties and nineties.

[Antonia] [02:16]

No?! Well, that's my Dad. Father of the year.

[Antonia] [02:19]

They tried to pin a murder charge on him in 2007 and we had to go into hiding, move out west.

[Antonia] [02:24]

One day you're living the good life, the next you're moving around safehouses in rat-hole hick towns where no one comes looking.

[Trevor] [02:32]

And ah, your friends back there?

[Antonia] [02:35]

Just the latest in a long line of people who want to get back at Sonny Bottino. Whoa!
...who want to get back at Sonny Bottino.

[Antonia] [02:42]

Could be something he's trying to run from the inside or someone else he squealed on.

[Antonia] [02:45]

When he got pinched in 2011, he kind of copped a plea, gave up a lot of people.

[Antonia] [02:49]

So he gets to sit in his five-star cell while I'm on the outside....

[Antonia] [02:53]

Are you sure this is the right way?

[Trevor] [02:55]

Oh yeah, I know this area like the back of my hand.

[Trevor] [03:00]

Whereas you seem to be the soul of discretion.

[Antonia] [03:03]

What's there to hide anymore? It's all out there.

[Antonia] [03:06]

They even wanted me to do a reality show. 'Wise Bitches', daughters of mobsters cat-fighting in Broker.

[Antonia] [03:12]

But of course he wouldn't let me. He's so protective. I've always been a Daddy's girl.

[Trevor] [03:16]

Could've fooled me.

[Antonia] [03:19]

You wait until he hears about this. He'll flip his shit, seriously.

[Antonia] [03:23]

Everyone those two hicks ever talked to's gonna get hit.

[Antonia] [03:29]

What's your name, by the way?

[Trevor] [03:30]

Trevor Philips.

[Trevor] [03:31]

Why, am I on his list too? That would seem on the unfair side.

[Antonia] [03:35]

No, he's gonna want to know who saved my life. You'll be made right for this, I promise.

[Trevor] [03:40]

Whatever the code dictates.

[Man at Altruist Camp] [04:00]

Hail, fellow, what have you got? What have you got?

[Trevor] [04:04]

I heard you were interested in taking care of some lost travelers... for a price...

[Man at Altruist Camp] [04:08]

And so it is... and so it is... leave the body, take the gold...

[Man at Altruist Camp] [04:14]

Come on! Move... move! Come on! Come on!

**EXHIBIT 3 TO ROSA AFFIDAVIT -
NOTICE OF HARD COPY EXHIBIT FILING: PHYSICAL COPY OF DVD OF "BURIAL"
RANDOM EVENT FROM "GRAND THEFT AUTO V"
(PHYSICAL EXHIBIT TO BE SUBMITTED TO THE COURT)**

FILED: NEW YORK COUNTY CLERK 04/17/2014

NYSCEF DOC. NO. 47

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/17/2014

NOTICE OF HARD COPY EXHIBIT FILING

Index Number: 151633/2014

Pursuant to Uniform Rule § 202.5-b(d)(6), notice is hereby given that the exhibit described below:

☒ will be filed in hard copy only with the County Clerk of New York County under the above referenced Index Number

or

☐ will be retained by the party set forth below until the conclusion of this action/proceeding, including all appeals, and therefore will not appear in electronic form in the e-docket.

Filing/Retaining Party: Defendants Take-Two Interactive Software, Inc. and Rockstar Games, Inc.

Brief Description (e.g., map, videotape, etc.) DVD of "Burial" Random Event from GTAV

and, in either case, has been or will be served in hard copy on all parties in this action, with proof of service filed electronically

Dated: 04/17/2014

Jeremy Feigelson

Name

Debevoise & Plimpton LLP

Firm/Department

919 Third Avenue

Street Address

New York, NY 10022

City, State and Zip Code

212-909-6000

Phone

jfeigelson@debevoise.com

E-Mail Address

**EXHIBIT 4 TO ROSA AFFIDAVIT -
NOTICE OF HARD COPY EXHIBIT FILING: PHYSICAL COPY OF "GRAND THEFT AUTO
V SIGNATURE SERIES GUIDE"
(PHYSICAL EXHIBIT TO BE SUBMITTED TO THE COURT)**

FILED: NEW YORK COUNTY CLERK 04/17/2014

NYSCEF DOC. NO. 48

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/17/2014

NOTICE OF HARD COPY EXHIBIT FILING

Index Number: 151633/2014

Pursuant to Uniform Rule § 202.5-b(d)(6), notice is hereby given that the exhibit described below:

☒ will be filed in hard copy only with the County Clerk of New York County under the above referenced Index Number

or

☐ will be retained by the party set forth below until the conclusion of this action/proceeding, including all appeals, and therefore will not appear in electronic form in the e-docket.

Filing/Retaining Party: Defendants Take-Two Interactive Software, Inc. and Rockstar Games, Inc.

Brief Description (e.g., map, videotape, etc.) Copy of "Grand Theft Auto V Signature Series Guide"

and, in either case, has been or will be served in hard copy on all parties in this action, with proof of service filed electronically

Dated: 04/17/2014

Jeremy Feigelson

Name

Debevoise & Plimpton LLP

Firm/Department

919 Third Avenue

Street Address

New York, NY 10022

City, State and Zip Code

212-909-6000

Phone

jfeigelson@debevoise.com

E-Mail Address

**AFFIDAVIT OF KAREN GRAVANO, PLAINTIFF, IN OPPOSITION TO MOTION,
SWORN TO APRIL 29, 2014 [131- 138]**

FILED: NEW YORK COUNTY CLERK 04/29/2014

NYSCEF DOC. NO. 50

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/29/2014

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

=====X

KAREN GRAVANO,

Index No.151633/2014

Plaintiff,

AFFIDAVIT IN SUPPORT

-against-

TAKE-TWO INTERACTIVE SOFTWARE, INC.
AND ROCKSTAR GAMES,

Defendants.

=====X

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

KAREN GRAVANO, being duly sworn, deposes and says:

1. I am the Plaintiff, KARAN GRAVANO ("Plaintiff"), and as such, I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in opposition to the Defendant's motion to dismiss and for sanctions.

INTRODUCTION

3. The Defendant(s) have created a video game in which a character embodies my portrait, voice and likeness in conjunction with the story line being my life story in the Grand Theft Auto V video game. They have failed to compensate me for using my portrait, voice, likeness and life story. I have been deprived of the compensation for such use which has been harmful to me.

4. I never gave my consent to the Defendants, to use either my portrait, voice, likeness or personal life story in their video game, which is sold in the United States and internationally. Accordingly, I filed this action because the Defendant's unauthorized use of my portrait voice, likeness, personality and personal life story is causing damage to me.

**THE INSTANT ACTION IS NECESSARY TO
NECESSARY TO PROTECT MY RIGHTS**

5. On or about September 27, 2013, I learned that my portrait, voice, likeness and life story was being used when I received a tweet saying, "Hey Karen I just saved you from being whacked on Grand Theft Auto!" I did not understand the reference. Later I found out from friends and family that there was a character who they thought was me. Please see annexed hereto as "EXHIBIT A" is a picture of the character and myself, taken from my book.
6. In October 2013, I received a Tweet on my Twitter account that said, "Did u know that one of the characters on grand theft auto five is based on u. It's funny Antonia botino lol Ud laugh." Please see annexed hereto a copy of the Tweet as EXHIBIT "B."
7. Another Tweet came from Richard Allen, "I'm not a gamer but when somebody calls me & tells me that @KarenGravanoVH1 is portrayed on gta5..i get fucking happy." Please see annexed hereto a copy of the Tweet as Exhibit "C."
8. On October 4, 2013, R3@£Phil @phillyphil3y wrote, "Lol they made a #mobwives reference n #GTA @KarenGravanoVH1 it's basically bout you n ya pops shit crazy."

Please see annexed hereto a copy of the Tweet on October 4, 2013, annexed hereto as Exhibit "D."

9. The character Antonia Bottino, embodies my portrait, voice, likeness and the character tells my personal life story, which is derived from my personal life experiences.
10. The character is introduced during a mission in the video game Grand Theft Auto V. The player rescues the Antonia Bottino character from being killed. She was to be buried alive.
11. After Franklin kills the people trying to bury Antonia Bottino alive she gets into his car and she tells her story which mirrors my exact life story.
12. The character starts off by saying she was kidnapped because of her father.
13. She then uses a phrase that has become a catch phrase of mine, "Your in "the life" right? You can't handle yourself like you did and not be in "the life." I have used this phrase in my book. Please see annexed hereto a copy of two excerpts of my book as EXHIBIT "E".
14. There is an online article I did an interview for with the headline "Karen Gravano on "the life..." on the cover and most important I continually used the phrase on my television show Mobwives. Please see annexed hereto a copy of the online article headline annexed hereto as EXHIBIT "F."
15. The GTA V character goes on to ask if Franklin has heard of, "Sammy Bottino, most people call him Sonny. The Gambetti family? Do you watch the news? He was Don Gravelli's right hand man. He more or less kind of ran the east coast in the 80's

and 90's? Well that's my dad." My father's real name is Salvatore however he was identified by most people as "Sammy."

16. Sammy, my father, was the underboss for the Gambino crime family in 1986 until his arrest in December 1990 when he was charged with murder. He was John Gotti's right hand man.
17. The GTA V character goes on to say, "We had to go into hiding. Move out west. One day you're living the good life the next you're moving around safe-houses in rat hole hick towns where no one comes looking." This directly mirrors my life, as detailed in my book where I stated "That was my greatest fear, that not only would I be ripped out of my former life but I'd be sent to Nebraska to become a bow herder". Please see annexed hereto an excerpt from page 143 of my book as Exhibit, "G."
18. The character further explains her father was being hunted because he turned states evidence and cooperated with the government, "just a latest in a long line of people that want to get back at Sonny Bottino. Could be something he is trying to run from the inside or someone else he has squealed on. When he got pinched in 2011 he kind of copped a plea when he gave up a lot of people." My father Sammy Gravano cooperated with the Federal Government and became witness for them. This is another fact in my life story that GTA V used.
19. In addition, Peter Gotti, Edward Garafola and several other men were convicted of plotting a hit on my father and traveling to Arizona to find me and my family. This matches the reference the character Antonia Bottino makes when she says a long line of people trying to get back at Sonny Bottino.

20. Antonia Bottino continues, “so he gets to sit in a five star cell while I’m on the outside dealing with the consequences. My dad was many things but I never thought he would be a snitch.” I specifically refer this exact circumstance in my book, “MOB DAUGHTER.” I refer to my father being in his jail cell while I had to deal with the repercussions of him cooperating, “At least he had bars to protect him. I was out there, a moving target in a hostile world”. I then discuss my lack of desire to go into the witness protection program on the next page. Please see annexed hereto the excerpts p. 142 of my book as EXHIBIT "H."
21. The character ends her story by saying, “what’s there to hide anymore its all out there, they even wanted me to do a reality show, Wise Bitches, daughters of mobsters cat- fighting and broker but of course he wouldn’t let. He’s so protective. I’ve always been a daddy’s girl.” I was on the reality show Mobwives. My father has publicly decried my doing the VH1 reality show Mobwives. I also state this in my book. This is yet another fact of my life story that is used by GTA V without my consent. Please see annexed hereto a copy of an excerpt from my book as EXHIBIT “I.”
22. The character then receives \$60,000.00 for completing the mission. The \$60,000.00 seems to be more intentional than coincidental. My father bribed a juror for the exact same amount of money. Please see annexed hereto as “EXHIBIT J” is a NY Times article about the case.
23. What the Defendants have done is use my intellectual property, without my consent, for their own profitable purpose. Furthermore, the Defendants have used

my story and likeness to create the character in the video game which suggests I have endorsed the use of the character. I have not endorsed the use of the character.

24. I am informed by my counsel, that even as a television personality, I have a legitimate property interest in my public persona. The Defendants' use of my name, likeness, and personal life without my consent, is a violation of my own proprietary right.

25. Annexed as EXHIBIT "K" is a copy of my amended complaint in this action, which details my causes of action and the damages sought. I am confident that my grounds for relief are fully supported by the facts not known at bar, and that my action will be successful.

26. The Amended Complaint was a last minute decision. Up until late in the evening on March 27, 2014, my attorney, his law clerk and I intended to finalize the response to the motion to dismiss with regard to the filed complaint. On March 27, 2014, my attorney, his law clerk, Samantha Welborne, and I made a strategic decision to change strategy in good faith.

27. In light of the foregoing I am requesting Defendant's motion to dismiss and application for sanctions be denied.

28. I respectfully refer the Court to the Affirmation of my attorney Thomas A. Farinella and the memorandum of law, for a full discussion of the relevant law.

WHEREFORE, it is respectfully requested, that the relief sought herein be granted in its entirety.


KAREN GRAVANO

Sworn to before me this
29th day of April 2014


Notary Public

THOMAS A. FARINELLA
Notary Public, State of New York
No. 02FA6072305
Qualified in New York County
Commission Expires: April 1, 2014

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

_____/s/Thomas A. Farinella
THOMAS FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

**EXHIBIT A TO GRAVANO AFFIDAVIT -
IMAGES OF KAREN GRAVANO AND "ANTONIA BOTTINO" CHARACTER
(REPRODUCED HEREIN AT P. 26)**

EXHIBIT B TO GRAVANO AFFIDAVIT -
TWEETS ON TWITTER, DATED OCTOBER 2013

From: [REDACTED]
Date: [REDACTED]
To: [REDACTED]

1 Attachment, 186 KB

●●●○○ AT&T

4:49 AM



COMMENTS



jajabell3307

7w

*are



lf_empowerment

7w

Ur gorgeous



jillybeans09

7w

Did u know that one of the characters
on grand theft auto five is based on u.
It's funny Antonia batino lol Ud laugh
@karengravano



karengravano

7w

@jillybeans09 ves a lot of people tell me

EXHIBIT C TO GRAVANO AFFIDAVIT -
TWEETS ON TWITTER [141-142]

doing it. ... Anyway, the bodies and the cars were gone. Nobody came after me...

[permalink](#)

[-] rikashiku 1 point 2 months ago

There's also a matrix reference in the mission for Daivd, at an agency morgue. The head agent there is Mr. Andy Smith.

[permalink](#)

[-] stumblebreak 1 point 2 months ago

It's a mess, ain't it, sheriff? If it ain't, it'll do till the mess gets here

[permalink](#)

[-] jondeezie 1 point 2 months ago

<http://www.youtube.com/watch?v=IvVIX7EtYeo>

[permalink](#)

[-] cmdrhlm 1 point 2 months ago

I wish they would've hidden this spot a little better way out in the desert somewhere instead of right next to the freaking highway. Way too easy to find.

[permalink](#)

[-] Easily_Impressed 1 point 2 months ago

Im getting GTA tomorrow, are the graphics this bad or is it just the potato quality of the camera?

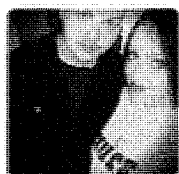
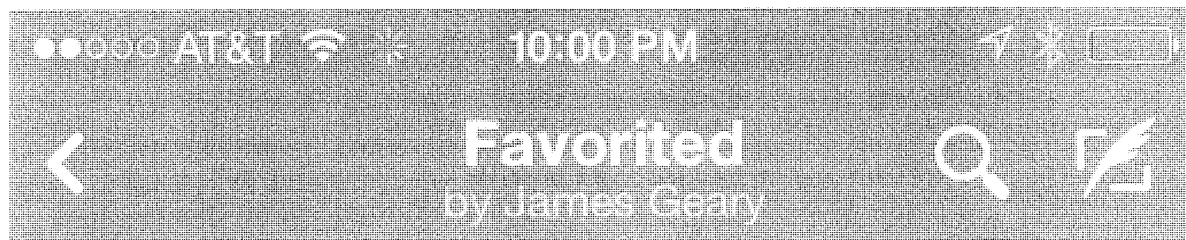
[permalink](#)

[-] EastClintwood89 1 point 2 months ago

I've come across this yesterday as well. But When I took the money, nothing happened afterwards. will somebody chase you?

[permalink](#)

[-] GroundhogExpert 1 point 2 months ago

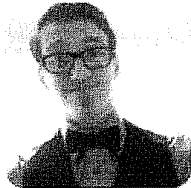


Richard Allen @LongLiveTheBOSS 4m

I'm not a gamer but when somebody calls me & tells me that

@KarenGravanoVH1 is portrayed on

gta5 ..i get fucking happy Imfao



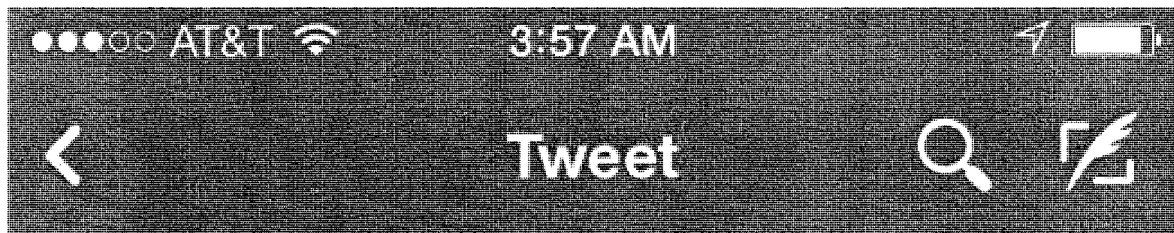
James Geary

@MrJamesGeary



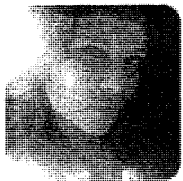
YouTube Personality with 120,000+
Subscribers bringing you daily #GTA5
videos! Business:
MrJamesGeary@Gmail.com



EXHIBIT D TO GRAVANO AFFIDAVIT -
TWEETS ON TWITTER, DATED OCTOBER 4, 2013 [143-144]**R3@£Phil** @phillyphil3y

10/4/13

Lol they made a #mobwives reference
n #GTAV @KarenGravanoVH1 it's
basically bout you n ya pops shit
crazy

**Karen Gravano** ✓

@KarenGravanoVH1

@phillyphil3y people keep telling
me that I guess I am gonna have

to check it out... Like what does it say???

10/4/13, 7:41 PM



R3@£Phil @phillyphil3y

10/4/13

@KarenGravanoVH1 she bout to b killed n the character franklin saves her then she start tlking bout who her pops is ppl want her to do a sho



Karen Gravano @KarenGrav... 10/4/13

@phillyphil3y oh crazy I have to check it out

Reply to Karen Gravano

EXHIBIT E TO GRAVANO AFFIDAVIT -
EXCERPTS FROM KAREN GRAVANO'S BOOK [145- 146]

MOB DAUGHTER

car, he said, "You know you're not allowed to say anything to anyone. None of your friends, nobody. If you do, you might get killed to keep your father from talking. Your brother might get killed, too." He probably didn't believe it, but was just trying to scare me. I could tell he was scared, too. He thought *he* was going to get killed. Right before he pulled away, he gave me one last hard look and said, "Karen, do you understand?" I understood all too well.

Uncle Eddie was a good-looking man with silvery-gray hair, and like John Gotti, he was always dressed to the nines: nice suits, nice ties, nice shoes. He was quiet, and not particularly tough or charismatic, especially when compared to Dad. My father was the kind of guy who was always joking around, throwing fake right hooks and left jabs at people. Uncle Eddie, on the other hand, was a bit more sophisticated and reserved, and never a whole lot of fun.

Dad liked him as a brother-in-law, and he respected him for his knowledge in the construction business. But when it came to the mob, Dad wasn't one hundred percent sold on him. When my father brought him into the life, he was looking at it as an opportunity to help Eddie provide for his sister. But there were other parts of the mob he didn't think Eddie was cut out for. Some of the guys in Dad's crew who were very loyal to Sammy didn't trust Eddie, and they had warned my father about him on more than one occasion. But Dad went against his better judgment and their advice and kept Eddie around. No matter what he felt about him, my father's loyalty lay with his sister. He honored his loyalty to his family more than he didn't trust Eddie, so he didn't want to chase him off.

It was actually Uncle Eddie who first talked with my father about cooperating. He had heard from a lawyer that John was

MOB DAUGHTER

My father was on the witness stand for nine grueling days. Although my mother did not agree to sit in the courtroom to intimidate Dad, Joey D'Angelo, the son of Dad's best friend Stymie, had agreed to be in the front row of the gallery the day my father took the stand. Dad was steamed at John Gotti for bringing the kid to the trial. My father had always been torn about bringing Joey into the life. This wasn't the path that most of the men wanted for their children, but after Stymie died, Joey was stuck to my father like glue and looked up to Dad like a father figure. Dad worried that if he chased him away, Joey would find another way to get into the life, so he had taken him under his wing, Dad's way of keeping him close.

Dad knew that Gotti had asked Joey to come to court to stare him down. John was doing everything he could to break my father. At one point during Dad's nine days on the stand, a woman came into the courtroom screaming that Sammy had killed her sons. Dad didn't even know who she was; he'd never seen her before. All of a sudden court deputies were racing to tackle the woman.

But Dad was unflappable, and remained stoic throughout the trial. Every time John tried to break him, it only made him stronger.

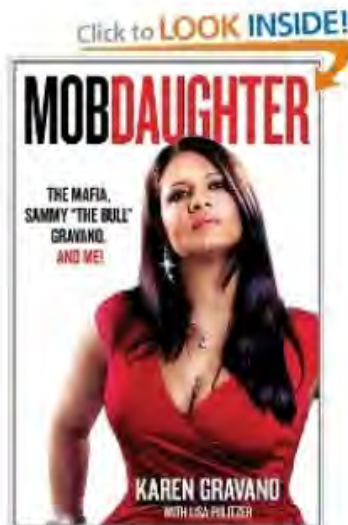
On April 2, 1992, after fourteen hours of deliberations, the jury found John Gotti guilty on thirteen counts of murder and various other crimes. Frank Locascio was found guilty of conspiracy to murder and of money laundering, among other things. The judge who presided over the cases, Leo Glasser, called my father's testimony "the bravest thing" he had ever seen. Both John and Frank were sentenced to life in prison without the possibility of parole. Gotti was flown to the United States Penitentiary at Marion, Illinois, where he spent most of

EXHIBIT F TO GRAVANO AFFIDAVIT -
ARTICLE ABOUT KAREN GRAVANO

Karen Gravano on "the life", "Mob Wives" and her Father, "Sammy the Bull"



See also '[Mob Wives](#)' / [Mob](#) / [Mafia](#)



March 10, 2012  0

Karen Gravano knows about a lot of things. She can speak on a variety of subjects such as, cosmetology and skin care, raising a daughter as, basically, a single Mom and what it's like to grow up in New York. But, there's one subject that she can, literally, write a book about and "**Mob Daughter**" is that book.

EXHIBIT G TO GRAVANO AFFIDAVIT -
EXCERPTS FROM KAREN GRAVANO'S BOOK

MOB DAUGHTER

"You have to be kidding me," I said in a sarcastic tone, as the agents led me onto the five-seater airplane. I was fuming mad and needed to let it out.

"Karen, please don't do this," my mother pleaded.

Gerard, as usual, remained passive, going along with everything. At fifteen, he didn't understand how complex and earth-shattering everything that was about to happen really was. He just wanted to see our father.

"I hope this plane crashes and we all die!" I said during the ninety-minute flight to our destination.

Dad was waiting for us in a hotel room close to the FBI headquarters. He looked good. He was in shape and in strong spirits. I was surprised to see how confident he was.

"How are you doing?" he asked when he saw us, as if nothing at all had changed.

At that moment, I just wanted to be his little girl again. I wanted to throw myself into his arms where I would be safe and protected. I wanted to tell him something new I had learned that day. But I was far too angry for that feeling to last, and I threw myself down in a chair across the table from him.

"I'm not going into witness protection!" I objected.

* That was my greatest fear, that not only would I be ripped *
out of my former life but I'd be sent to Nebraska to become a
cow herder.

"No one's asking you to go into witness protection," my father assured me.

"I'd rather get shot in the head than go into witness protection," I wailed.

"You're not going to get shot in the head," said Dad, discounting that fear as well.

"How do you know?" I demanded. I wanted my father to stop


EXHIBIT H TO GRAVANO AFFIDAVIT -
EXCERPTS FROM KAREN GRAVANO'S BOOK

KAREN GRAVANO

I had seen on television taking my father, John, and Frankie into custody at the Ravenite.

Dad really wanted to speak to us. He wanted to explain his side. And he wanted to make sure we were okay. He wanted to see us one last time.

I couldn't believe it was really happening. My father was going to betray the Godfather. In my heart, Dad had betrayed me, as well. He had broken his word. Here was my father, who'd given me a certain code of honor, albeit a twisted one. But it was all I knew, and he had violated that code. I was fit to be tied. In a few short hours, I would become known to the world as the rat's daughter. At least he had bars to protect him.

 I was out there, a moving target in a hostile world.

I looked at my mother and defiantly declared, "I am not going."

"Yes, you are," she replied. "If you never want to see your father again after this, you don't have to. Just go this one time, for me."

I don't know why my mother agreed to the meeting. I know she still loved my father and wanted to hear what he had to say. She didn't agree with what he was doing, but she was also confused, scared, and looking to him for answers. In her heart, she knew that my father loved his family more than anything and that no matter what decision he made, he would always guide us in the right way. Mom had never had to make decisions without him before. I wondered if part of her believed that by going to the prison, she could convince him to change his mind. Or maybe she hoped that he would direct her as to how to carry forward when the story hit the news.

The next thing I knew, we were on our way to the airport to catch a chartered plane heading for Quantico.

EXHIBIT I TO GRAVANO AFFIDAVIT -
EXCERPTS FROM KAREN GRAVANO'S BOOK

MOB DAUGHTER

in Arizona with my mother. I am so thankful for my mother. She has always co-parented Karina with me, and she continues to do so today. My daughter is also spending time with her father and I think it is really good. She and Dave are rebuilding their relationship, and that is important.

I have a lot going on in New York. I am in the process of getting back into the spa business, and have decided to go back to developing my skin care line. That has been something I have always wanted to do, and when I decide to do something, I feel like I need to accomplish it.

My mother and brother are in Arizona. Gerard was released from prison on January 19, 2009, and he has been working as a chef. He is actually in the process of creating his own line of sauces from recipes that he gathered growing up. The name of the company is The Gravanos, and Gerard is selling the products through our family website, thegravanos.com.

My father is still in prison, serving the remainder of his nineteen-year sentence on the Arizona drug charges. His agreeing to accept a plea deal in that case was very hard for me to deal with, so I decided to revisit that case, and I have uncovered new information that I believe proves that my father had minimal involvement in the Ecstasy ring, and that his only crime was loaning my brother and Mike Papa money. I don't know where my investigation is going to lead, but with an attorney on board, I feel that this is something I need to shed light on. From what I have uncovered so far, I believe that it is going to be explosive.

* My father and I speak regularly. He is not a hundred percent on board with the content of *Mob Wives*, but he understands why I am doing the show and he supports me in my decision. I have talked with him about the book and, like everyone else,

**EXHIBIT J TO GRAVANO AFFIDAVIT -
THE NEW YORK TIMES ARTICLE ENTITLED, "JURY-FIXING CASE DROPPED
AFTER ARREST OF GRAVANO," DATED MAY 3, 2000 [151- 152]**

Jury-Fixing Case Dropped After Arrest of Gravano - THE NEW YORK TIMES

Page 1 of 2

The New York Times

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers, please click [here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytimes.com for samples and additional information. Order a reprint of this article now. »



May 3, 2000

Jury-Fixing Case Dropped After Arrest of Gravano

By ALAN FEUER

Bosko Radonjich has slipped out of plenty of tight corners during his days as an alleged associate of the New York mob and, by his account, as a Serbian freedom fighter with ties to Radovan Karadzic, the former Bosnian Serb leader accused of war crimes.

But Mr. Radonjich avoided what was probably his closest call yet yesterday when the federal government decided not to prosecute him on charges of fixing a 1987 racketeering trial. The prosecutors decided that because an important witness against Mr. Radonjich, Salvatore Gravano, was arrested on drug charges earlier this year, his testimony would not be credible.

In papers filed in Federal District Court in Brooklyn, the government insisted that Mr. Radonjich was guilty of tampering with a juror in an effort to throw the first federal trial of John J. Gotti, the former Gambino family crime boss. Mr. Gotti was acquitted in 1987 and convicted in 1992 on racketeering and murder charges.

But the prosecutors conceded that their ability to try Mr. Radonjich had been "adversely affected by several factors," including the arrest of Mr. Gravano, sometimes known as Sammy the Bull, a killer for the Gambino family who turned federal informer.

The case against Mr. Radonjich, a Yugoslav immigrant and onetime Manhattan parking lot owner, had been scheduled to open with jury selection on April 3 when Mr. Gravano was arrested in Arizona on Feb. 24. He was charged by local officials with helping to mastermind a multimillion-dollar drug ring in Phoenix and its suburbs with members of a white-supremacist youth gang.

The prosecution had wanted Mr. Gravano as a witness in the Radonjich case because, at another Gotti trial in 1992, he had testified that he gave Mr. Radonjich \$60,000 with which to bribe a juror, George Pape, in Mr. Gotti's 1987 trial. In 1987, the authorities said, Mr. Radonjich headed the Westies, a Hell's Kitchen gang that often carried out the Gambino family's demands.

Mr. Pape, a longtime friend of Mr. Radonjich's, was later convicted in the case and was sentenced to three years in prison. Mr. Radonjich fled the country and remained a fugitive for nearly eight years.

But on New Year's Day, he was arrested at the Miami airport when inspectors of the United States Customs Service happened across the old jury-tampering warrant.

Lawrence Hochheiser, Mr. Radonjich's lawyer, said he was somewhat disappointed that the case had been dropped, adding that his client would have been exonerated had it gone to trial.

"The government looked in Serbia, they looked all over the United States and they couldn't find one person to say anything about him except for Sammy Gravano," Mr. Hochheiser said. "The government would like you to think that Sammy Gravano is unavailable, but he's not. He's undesirable. He's damaged goods."

Mr. Radonjich is still in custody and faces federal charges of giving a false address to the customs inspectors.

According to law enforcement officials, when Mr. Radonjich was arrested, he was carrying pictures of military and diplomatic installations. They said he had pleaded guilty to conspiracy charges in 1978 in connection with the bombing of the Yugoslav consul's home in a suburb of Chicago.

**EXHIBIT K TO GRAVANO AFFIDAVIT -
AMENDED VERIFIED COMPLAINT, DATED MARCH 27, 2014
(REPRODUCED HEREIN AT PP. 15-25)**

**UNSIGNED AFFIDAVIT OF ISYS SHAH, FOR PLAINTIFF, IN OPPOSITION TO MOTION,
FILED APRIL 29, 2014 [154- 156]**

FILED: NEW YORK COUNTY CLERK 04/29/2014

NYSCEF DOC. NO. 62

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/29/2014

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

=====X

KAREN GRAVANO,

Index No. 151633/2014

Plaintiff,

**AFFIDAVIT OF
ISYS SHAH**

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.

=====X

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

ISYS SHAH, being duly sworn, deposes and says:

1. I am writing on behalf of the Plaintiff, KARAN GRAVANO ("Plaintiff"). I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in support of Plaintiff's motion.
3. Shortly after the game was released, I was with my boyfriend, at his house watching him play the video game "Grand Theft Auto V" ("GTA V").
4. While playing the game he arrived at a mission where he had to save the character Antonia from getting "whacked." He instantly said "Oh my God, look, I can't believe Karen is in this game!"

5. As I watched him play the mission I knew that it was Karen in the game because of the character's voice, story, and portrait. The character looked like Karen, with the same color hair and facial features, and even spoke like Karen does.
6. We listened to the character explain her story, which sounded like Karen, and is akin to Karen's life story. The part about the "Wise Bitches" television show is particularly associated with Karen and "Mob Wives" the show she appeared on.
7. I assumed Karen was aware of the scene seeing how it included her portrait, voice and her life story.
8. In light of the above, I submit this Affidavit in support of Plaintiff's motion.

WHEREFORE, it is respectfully requested, that the relief sought herein be granted in its entirety, together with such other and further relief as this court may deem just and proper.

ISYS SHAH

Sworn to before me this

_____ day of _____, 2014.

Notary Public

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

____/s/Thomas A.Farinella_____
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

**UNSIGNED AFFIDAVIT OF EDWIN SULLIVAN, FOR PLAINTIFF, IN OPPOSITION TO
MOTION,
FILED APRIL 29, 2014 [157- 160]**

FILED: NEW YORK COUNTY CLERK 04/29/2014

NYSCEF DOC. NO. 63

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/29/2014

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

=====X

KAREN GRAVANO,

Index No. 151633/2014

Plaintiff,

**AFFIDAVIT OF
EDWIN SULLIVAN**

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.

=====X

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

EDWIN SULLIVAN being duly sworn, deposes and says:

1. I am writing on behalf of the Plaintiff, KARAN GRAVANO ("Plaintiff"). I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in support of Plaintiff's opposition to the motion to dismiss.
3. On or about November 11, 2013, I was playing the video game "Grand Theft Auto V" ("GTAV").
4. While playing the game I arrived at a mission called "burial" where I had to save the character named Antonia Bottino from getting buried alive. After I saved the character she gets into a car and begins to explain her life story.

5. As I listened to the character talk I believed it was Karen Gravano telling her life story. I was perplexed, unaware that Karen was in the game, so I played the mission over with my wife present.
6. My wife and I listened to the character's story and she immediately said, "I didn't know Karen was in this game!" She also thought it was Karen Gravano.
7. We researched the character on the internet and to our surprise it looked just like a thinner version of Karen Gravano with the same hair color, eye color, and facial structure. As my wife and I were laughing she said that she thought it would be "cool" to be in such a popular game.
8. After realizing Karen was in the game, I called Karen's boyfriend, who I am good friends with, and jokingly told him "Yo, I just saved your wifey!" He did not know what I was talking about, not having played the game, and told me that "My wifey isn't in the game."
9. I went on to explain to Karen's boyfriend that she is in the game and told him the storyline and sent him a link to a YouTube video so he could view the scene.
10. In light of the above, it was my belief that Karen Gravano and her life story are used in GTAV.

WHEREFORE, it is respectfully requested, that the relief sought herein be granted in its entirety, together with such other and further relief as this court may deem just and proper.

EDWIN SULLIVAN

Sworn to before me this

_____ day of _____, 2014.

Notary Public

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

____/s/Thomas A.Farinella_____
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

**UNSIGNED AFFIDAVIT OF SAMANTHA WELBORNE, FOR PLAINTIFF, IN OPPOSITION
TO MOTION, FILED APRIL 29, 2014 [161- 163]**

FILED: NEW YORK COUNTY CLERK 04/29/2014

INDEX NO. 151633/2014

NYSCEF DOC. NO. 64

RECEIVED NYSCEF: 04/29/2014

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

=====X

KAREN GRAVANO,

Index No. 151633/2014

Plaintiff,

**AFFIDAVIT OF
SAMANTHA WEBORNE**

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.

=====X

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

SAMANTHA WELBORNE, being duly sworn, deposes and says:

1. I am writing on behalf of the Plaintiff, KARAN GRAVANO ("Plaintiff"). I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in support of Plaintiff's motion.
3. I work for the Law Office of Thomas Farinella P.C., as his law clerk.
4. On March 17 we received Defendants' motion to dismiss and I began preparing a response to that motion. That included researching applicable law and preparing Affidavits.
5. I assisted in the drafting of a brief in opposition to the Defendants motion dismiss.
6. On March 27, I met with Thomas Farinella and we consulted with our client, Karen Gravano, and made a last minute decision to change strategy.

7. Up until late in the evening on March 27, after an extension was granted by Mr. Fiegelson, we intended on submitting an opposition to Defendants motion. Mr. Farinella did not request the extension on any grounds of bad faith.

SAMANTHA WELBORNE

Sworn to before me this

_____ day of _____, 2014.

Notary Public

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

____/s/Thomas A.Farinella_____
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

**AFFIDAVIT OF SAMANTHA WELBORNE, FOR PLAINTIFF, IN OPPOSITION TO MOTION,
SWORN TO APRIL 29, 2014 [164- 166]**

FILED: NEW YORK COUNTY CLERK 04/29/2014

INDEX NO. 151633/2014

NYSCEF DOC. NO. 65

RECEIVED NYSCEF: 04/29/2014

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

=====X
KAREN GRAVANO,

Index No. 151633/2014

Plaintiff,

**AFFIDAVIT OF
SAMANTHA WEBORNE**

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.
=====X

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

SAMANTHA WELBORNE, being duly sworn, deposes and says:

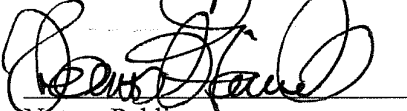
1. I am writing on behalf of the Plaintiff, KARAN GRAVANO ("Plaintiff"). I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in support of Plaintiff's motion.
3. I work for the Law Office of Thomas Farinella P.C., as his law clerk.
4. On March 17 we received Defendants' motion to dismiss and I began preparing a response to that motion. That included researching applicable law and preparing Affidavits.
5. I assisted in the drafting of a brief in opposition to the Defendants motion dismiss.
6. On March 27, I met with Thomas Farinella and we consulted with our client, Karen Gravano, and made a last minute decision to change strategy.

7. Up until late in the evening on March 27, after an extension was granted by Mr. Fiegelson, we intended on submitting an opposition to Defendants motion. Mr. Farinella did not request the extension on any grounds of bad faith.


SAMANTHA WELBORNE

Sworn to before me this

27th day of April, 2014.


Notary Public

THOMAS A. FARINELLA
Notary Public, State of New York
No. 02FA6072305
Qualified in New York County
Commission Expires: April 1, 2018

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

_____/s/Thomas A. Farinella
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

**AFFIRMATION OF THOMAS A. FARINELLA, FOR PLAINTIFF, IN OPPOSITION TO
MOTION, DATED APRIL 29, 2014 [167- 169]**

FILED: NEW YORK COUNTY CLERK 04/29/2014

NYSCEF DOC. NO. 67

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/29/2014

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

=====X
KAREN GRAVANO,

Index No.151633/2014

Plaintiff,

AFFIRMATION

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.

=====X

THOMAS A. FARINELLA, an attorney duly licensed to practice law in the Courts of the State of New York, being mindful of the penalties of perjury and pursuant to the CPLR duly affirms the following to be true.

1. I am a member of the firm of Thomas A. Farinella, P.C., attorney for The Plaintiff, KAREN GRAVANO ("Plaintiff"), and as such, I am fully familiar with the facts contained herein.

2. I make this affirmation in opposition to Defendant's motion to dismiss and for sanctions.

3. The facts are contained in the affidavit of the Plaintiff KAREN GRAVANO.

4. I have filed the Plaintiff's claims in good faith and reasonable basis in the law.

5. On March 27, 2014, I was prepared to submit a response to Defendants' motion to dismiss and called opposing counsel to ask for an extension.

6. It was late in the evening on March 27, that myself, along with Plaintiff and my law clerk, decided to pursue an alternate strategy and amend the original Complaint.

7. Defendants' opposing counsel has repeatedly threatened my client and I with sanctions and their arguments for such are unworthy. From the outset of this case I reached out to Defendants counsel to have a good faith discussion about my clients claims and they refused to do so.

DAMAGE TO MS. GRAVANO'S NAME AND LIKENESS

8. Civil Rights Code §51 entitles an individual, whose name is about to be used for trade or advertising purposes, without his "written" consent an absolute right to have such use enjoined regardless of the detriment to the defendants the equities of the situation or the loss inflicted upon defendant.¹ The damage at bar is imminent; it has already occurred and is continuing to occur. The damage to Ms. Gravano's name and likeness is ongoing. Ms. Gravano's personal life story is being used without her consent by Rockstar Games and Take-Two Interactive to sell video games. Thus, the defendant is profiting from the use of Ms. Gravano's name and likeness. For these reasons, Ms. Gravano's is suffering damage to her name and likeness and thus needs an order preventing the defendant from the further violation of her rights.

CONCLUSION

9. This motion has been made necessary solely as a result of defendant's violation of Civil Rights Code §50 and 51 and the resulting damage caused to the plaintiff. Ms. Gravano is currently suffering damage and will continue to suffer irreparable damage, should this motion be denied.

WHEREFORE, it is respectfully requested that the instant motion be granted and for such other and further relief as to this Court may seem just and proper under the circumstances.

Dated: New York, New York
April 29, 2014

_____/s/Thomas A. Farinella
THOMAS FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

CNN ARTICLE ENTITLED, "POLICE: 8 YEAR-OLD SHOOTS, KILLS ELDERLY CAREGIVER AFTER PLAYING VIDEO GAME," DATED AUGUST 26, 2013 [170-171]

FILED: NEW YORK COUNTY CLERK 04/29/2014

INDEX NO. 151633/2014

Police: 8-year-old shoots, kills elderly caregiver after playing video game

FILED: 04/29/2014

By Lauren Russell, CNN

updated 8:01 AM EDT, Mon August 26, 2013

CNN.com

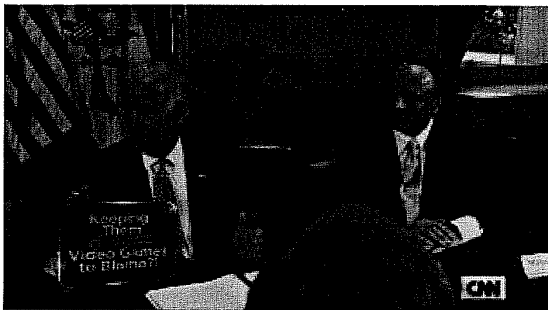
(CNN) -- An 8-year-old Louisiana boy intentionally shot and killed his elderly caregiver after playing a violent video game, authorities say.

Marie Smothers was pronounced dead at the scene with a gunshot wound to the head in a mobile home park in Slaughter, Louisiana, the East Feliciana Parish Sheriff's Department said in a prepared statement. Slaughter is about 20 miles north of Baton Rouge.

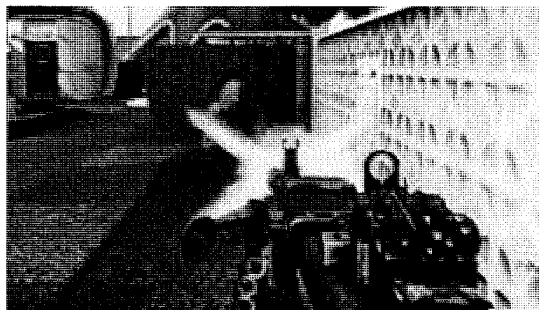
Authorities identified the woman as the boy's "caregiver," without stating whether she is a relative. But CNN affiliate WBRZ reported that the woman was the boy's grandmother.

Smothers was 87, public records show.

"By accounts of relatives of the victim, as well as friends of the family, the victim and the juvenile had a normal, loving, relationship and even shared the same bedroom," the sheriff's department said.



Studies on video games and violence



Ex-profiler: Video games erode empathy

The gun belonged to Smothers, WBRZ reported. CNN affiliate WAFB reported that a man identifying himself as the boy's father also said the gun belongs to

Smothers.

Although the boy initially told investigators that he accidentally shot the woman Thursday while playing with a firearm, the probe led authorities to believe he "intentionally shot Mrs. Smothers in the back of the head as she sat in her living room watching television," the sheriff's department statement said.

The boy won't face charges. Under Louisiana law, a child younger than 10 is exempt from criminal responsibility.

"We have a child who does not know the impact of the consequences of the act he committed," Sclynski Legier, a lawyer, told CNN affiliate WAFB. "He truly doesn't understand that."

The boy is now with his parents.

Neighbors say the mobile home park is generally a quiet and safe place, and they wonder why precautions hadn't been taken.

"Where did she have the gun? Where was it placed? Was it in his eyesight? That's what kind of thoughts are going through my head," Johnnie Scott told WBRZ.

Violence in video games

While the motive is unclear, the sheriff's department implied the child's activities in a violent virtual world may have led to the killing.

"Although a motive for the shooting is unknown at this time investigators have learned that the juvenile suspect was playing a video game on the Play Station III 'Grand Theft Auto IV,' a realistic game that has been associated with encouraging violence and awards points to players for killing people, just minutes before the homicide occurred."

The game's maker, Take Two Interactive, rejected the link.

"Ascribing a connection to entertainment -- a theory that has been disproven repeatedly by multiple independent studies -- both minimizes this moment and sidesteps the real issues at hand," the company said in a statement.

Studies by reputable academic and medical sources have come to a variety of conclusions. The Obama administration has called for more research.

Critics of video game violence and industry supporters have long debated whether virtual violence leads to actual violence. The argument has become more heated since 26 people died in a December shooting rampage at Sandy Hook Elementary School in Newtown, Connecticut.

The shooter, Adam Lanza, was reportedly obsessed with violent video games.

Is media violence damaging to kids?

Speaking soon after the shootings at Sandy Hook, Colorado Gov. John Hickenlooper, who led his state through grieving after a mass shooting at a movie theater in Aurora, Colorado, speculated about a connection.

"There might well be some direct connection between people who have some mental instability and when they go over the edge -- they transport themselves, they become part of one of those video games," he said on CNN's "State of the Union." "Perhaps that's why all these assault weapons are used."

A month after the Sandy Hook shooting, John Riccitiello, president and CEO of the video game maker Electronic Arts, said in a conference call with bank analysts there wasn't a connection, but the industry faces a "perception issue," the BBC reported.

Opinion: Video games didn't cause Newtown shooting

Vice President Joe Biden, who is heading an inquiry into the causes of gun violence, has floated the idea of taxing violent games and sending proceeds to help victims and their families, Forbes.com reported.

CNN's Josh Levs and Mike Pearson contributed to this report.

© 2014 Cable News Network. Turner Broadcasting System, Inc. All Rights Reserved.

**AFFIDAVIT OF EDWIN SULLIVAN, FOR PLAINTIFF, IN OPPOSITION TO MOTION,
SWORN TO APRIL 29, 2014 [172- 175]**

FILED: NEW YORK COUNTY CLERK 04/30/2014

NYSCEF DOC. NO. 70

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/30/2014

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

KAREN GRAVANO, X

Index No. 151633/2014

Plaintiff,

**AFFIDAVIT OF
EDWIN SULLIVAN**

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.
_____X

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

EDWIN SULLIVAN being duly sworn, deposes and says:

1. I am writing on behalf of the Plaintiff, KARAN GRAVANO ("Plaintiff"). I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in support of Plaintiff's opposition to the motion to dismiss.
3. On or about November 11, 2013, I was playing the video game "Grand Theft Auto V" ("GTAV").
4. While playing the game I arrived at a mission called "burial" where I had to save the character named Antonia Bottino from getting buried alive. After I saved the character she gets into a car and begins to explain her life story.

5. As I listened to the character talk I believed it was Karen Gravano telling her life story. I was perplexed, unaware that Karen was in the game, so I played the mission over with my wife present.
6. My wife and I listened to the character's story and she immediately said, "I didn't know Karen was in this game!" She also thought it was Karen Gravano.
7. We researched the character on the internet and to our surprise it looked just like a thinner version of Karen Gravano with the same hair color, eye color, and facial structure. As my wife and I were laughing she said that she thought it would be "cool" to be in such a popular game.
8. After realizing Karen was in the game, I called Karen's boyfriend, who I am good friends with, and jokingly told him "Yo, I just saved your wifey!" He did not know what I was talking about, not having played the game, and told me that "My wifey isn't in the game."
9. I went on to explain to Karen's boyfriend that she is in the game and told him the storyline and sent him a link to a YouTube video so he could view the scene.
10. In light of the above, it was my belief that Karen Gravano and her life story are used in GTAV.

WHEREFORE, it is respectfully requested, that the relief sought herein be granted in its entirety, together with such other and further relief as this court may deem just and proper.


EDWIN SULLIVAN

Sworn to before me this

29th day of April, 2014.


Notary Public

GUS MICHAEL FARINELLA
Notary Public, State of New York
No. 02FA8151760
Qualified in New York County
Commission Expires Dec. 23, 2014

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

_____/s/Thomas A.Farinella_____
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

**AFFIDAVIT OF ISYS SHAH, FOR PLAINTIFF, IN OPPOSITION TO MOTION,
SWORN TO APRIL 29, 2014 [176- 178]**

FILED: NEW YORK COUNTY CLERK 04/30/2014

NYSCEF DOC. NO. 71

INDEX NO. 151633/2014

RECEIVED NYSCEF: 04/30/2014

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

=====X
KAREN GRAVANO,

Index No. 151633/2014

Plaintiff,

**AFFIDAVIT OF
ISYS SHAH**

-against-

TAKE-TWO INTERACTIVE, INC. AND
ROCKSTAR GAMES,

Defendants.

=====X

STATE OF NEW YORK)

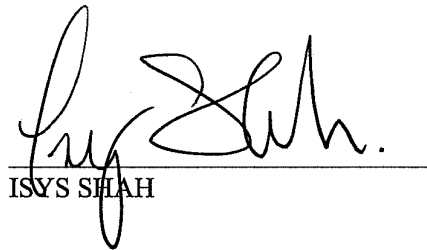
COUNTY OF NEW YORK) ss:

ISYS SHAH, being duly sworn, deposes and says:

1. I am writing on behalf of the Plaintiff, KARAN GRAVANO ("Plaintiff"). I am fully familiar with all of the facts and circumstances surrounding the instant motion.
2. I submit this affidavit in support of Plaintiff's motion.
3. Shortly after the game was released, I was with my boyfriend, at his house watching him play the video game "Grand Theft Auto V" ("GTA V").
4. While playing the game he arrived at a mission where he had to save the character Antonia from getting "whacked." He instantly said "Oh my God, look, I can't believe Karen is in this game!"

5. As I watched him play the mission I knew that it was Karen in the game because of the character's voice, story, and portrait. The character looked like Karen, with the same color hair and facial features, and even spoke like Karen does.
6. We listened to the character explain her story, which sounded like Karen, and is akin to Karen's life story. The part about the "Wise Bitches" television show is particularly associated with Karen and "Mob Wives" the show she appeared on.
7. I assumed Karen was aware of the scene seeing how it included her portrait, voice and her life story.
8. In light of the above, I submit this Affidavit in support of Plaintiff's motion.

WHEREFORE, it is respectfully requested, that the relief sought herein be granted in its entirety, together with such other and further relief as this court may deem just and proper.


 ISSY'S SHAH

Sworn to before me this

29th day of April, 2014.


 Notary Public

GUS MICHAEL FARMELLA
 Notary Public, State of New York
 No. 02FA6151750
 Qualified in New York County
 Commission Expires Dec. 23, 2017

ATTORNEY CERTIFICATION

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed Affidavit and the contentions contained therein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: New York, New York
April 29, 2014

_____/s/Thomas A. Farinella
THOMAS A. FARINELLA, P.C.
By: THOMAS A. FARINELLA
Attorney for the Plaintiff
147 West 35th Street, Suite 1008
New York, NY 10001
(917) 319-8579

CERTIFICATION PURSUANT TO CPLR § 2105

I, Jared I. Kagan, an attorney associated with the firm of Debevoise & Plimpton LLP, attorneys for the Defendants-Appellants, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the Clerk of the County of New York.

Dated: March 21, 2016

Attorney for Defendants-Appellants

STATEMENT PURSUANT TO CPLR 5531

STATEMENT PURSUANT TO CPLR 5531

**SUPREME COURT OF THE STATE OF NEW YORK
COURT OF APPEALS, STATE OF NEW YORK**

Karen Gravano,

Plaintiff-Appellant

—against—

**APL No.
2017-00027**

Take-Two Interactive Software, Inc. and Rockstar Games,
Defendants-Respondents.

1. The index number of the case is 151633/14
2. The full names of the original parties are as set forth above. There has been no change in the parties.
3. The action was commenced in Supreme Court, New York County.
4. A Verified Complaint was filed on February 15, 2014 and served with a summons on or about February 25, 2014. An Amended Verified Complaint was filed and served on March 28, 2014. No answer has been served.
5. Plaintiff Karen Gravano seeks damages and injunctive relief for alleged violations of her right to publicity and privacy under Sections 50 and 51 of the New York Civil Rights Law.
6. This appeal is from an order of the Appellate Division, First Department, entered on September 1, 2016, which deemed it unnecessary to address defendants' remaining grounds for dismissal.
7. The appeal is on a full reproduced record.

ORDER GRANTING LEAVE TO APPEAL TO THE COURT OF APPEALS,
DATED FEBRUARY 16, 2017

State of New York
Court of Appeals

*Decided and Entered on the
sixteenth day of February, 2017*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2016-1016

Karen Gravano,

Appellant,

v.

Take-Two Interactive Software, Inc.

et al.,

Respondents.

Appellant having moved for leave to appeal to the
Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is
ORDERED, that the motion is granted.



John P. Asiello
Clerk of the Court

**APPELLATE DIVISION, FIRST DEPARTMENT ORDER APPEALED FROM,
DATED SEPTEMBER 1, 2016, WITH NOTICE OF ENTRY [182-187]**

FILED: NEW YORK COUNTY CLERK 09/01/2016 04:31 PM

NYSCEF DOC. NO. 95

INDEX NO. 151633/2014

RECEIVED NYSCEF: 09/01/2016

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

-----	X
KAREN GRAVANO,	:
	:
Plaintiff,	:
	: Index No. 151633/2014
	:
- against -	: Assigned to Judge Joan M. Kenney
	: IAS Part 8
	:
TAKE-TWO INTERACTIVE SOFTWARE, INC.:	NOTICE OF ENTRY
and ROCKSTAR GAMES,	:
	:
Defendants.	:
-----	X

PLEASE TAKE NOTICE THAT annexed hereto as Exhibit A is a true and correct copy
of the September 1, 2016 decision and order of the Supreme Court, Appellate Division, First
Department in this action, duly entered on September 1, 2016.

Dated: September 1, 2016
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jared I. Kagan

Jeremy Feigelson (jfeigels@debevoise.com)
Jared I. Kagan (jikagan@debevoise.com)
919 Third Avenue
New York, New York 10022
(212) 909-6000

Counsel for Defendants

Tom, J.P., Friedman, Richter, Kapnick, Gesmer, JJ.

1552-		Index 151633/14
1553	Karen Gravano, Plaintiff-Respondent,	156443/14

-against-

Take-Two Interactive Software, Inc., et al.,
Defendants-Appellants.

- - - - -

Lindsay Lohan,
Plaintiff-Respondent,

-against-

Take-Two Interactive Software, Inc., et al.,
Defendants-Appellants.

Debevoise & Plimpton LLP, New York (Jeremy Feigelson of counsel),
for appellants.

Law Office of Thomas A. Farinella, P.C., New York (Thomas A.
Farinella of counsel), for Karen Gravano, respondent.

The Pritchard Law Firm, New York (Robert O. Pritchard of
counsel), for Lindsay Lohan, respondent.

Order, Supreme Court, New York County (Joan M. Kenney, J.),
entered March 14, 2016, which, to the extent appealed from,
denied defendants' motion to dismiss the first cause of action in
the Gravano complaint and for sanctions, unanimously modified, on
the law, to grant the part of the motion seeking to dismiss, and
otherwise affirmed, without costs. Order, same court and
Justice, entered March 14, 2016, which denied defendants' motion

to dismiss the Lohan complaint and for sanctions, unanimously modified, on the law, to grant the part of the motion seeking to dismiss, and otherwise affirmed, without costs. The Clerk is directed to enter judgment in each action dismissing the complaint.

In these appeals, each plaintiff alleges that defendants violated her right to privacy under New York Civil Rights Law § 51 by misappropriating her likeness for use in the video game "Grand Theft Auto V." This video game takes place in the fictional city "Los Santos," which itself is in a fictional American state of "San Andreas." Players control one of several main characters at various points in the game, engaging in approximately 80 main story missions as well as many optional random events. Plaintiffs allege that during certain optional random events, the player encounters characters that are depictions of plaintiffs.

Gravano alleges that in one of the optional random events in the video game, the character Andrea Bottino is introduced, and that her image, portrait, voice, and likeness are incorporated in this character. Specifically, Gravano argues that the character uses the same phrases she uses; that the character's father mirrors Gravano's own father; that the character's story about

moving out west to safe houses mirrors Gravano's fear of being ripped out of her former life and being sent to Nebraska; that the character's story about dealing with the character's father cooperating with the state government is the same as Gravano dealing with the repercussions of her father's cooperation; and that the character's father not letting the character do a reality show is the same as Gravano's father publicly decrying her doing a reality show.

Lohan alleges that defendants used a look-alike model to evoke Lohan's persona and image. Further, Lohan argues that defendants purposefully used Lohan's bikini, shoulder-length blonde hair, jewelry, cell phone, and "signature 'peace sign' pose" in one image, and used Lohan's likeness in another image by appropriating facial features, body type, physical appearance, hair, hat, sunglasses, jean shorts, and loose white top. Finally, Lohan argues that defendants used her portraits and voice impersonation in a character that is introduced to the player in a "side mission."

Both Gravano's and Lohan's respective causes of action under Civil Rights Law § 51 "must fail because defendants did not use [plaintiffs'] 'name, portrait, or picture'" (see *Costanza v Seinfeld*, 279 AD2d 255, 255 [1st Dept 2001], citing *Wojtowicz v*

Delacorte Press, 43 NY2d 858, 860 [1978])). Despite Gravano's contention that the video game depicts her, defendants never referred to Gravano by name or used her actual name in the video game, never used Gravano herself as an actor for the video game, and never used a photograph of her (*see Costanza* at 255; *see generally Wojtowicz* at 860). As to Lohan's claim that an avatar in the video game is she and that her image is used in various images, defendants also never referred to Lohan by name or used her actual name in the video game, never used Lohan herself as an actor for the video game, and never used a photograph of Lohan (*see Costanza* at 255).

Even if we accept plaintiffs' contentions that the video game depictions are close enough to be considered representations of the respective plaintiffs, plaintiffs' claims should be dismissed because this video game does not fall under the statutory definitions of "advertising" or "trade" (*see Costanza* at 255, citing *Hampton v Guare*, 195 AD2d 366, 366 [1st Dept 1993], *lv denied* 82 NY2d 659 [1993] [stating that "works of fiction and satire do not fall within the narrow scope of the statutory phrases 'advertising' and 'trade'"]; *see generally Brown v Entertainment Merchants Assn.*, 564 US 786, 790 [2011] ["(l)ike the protected books, plays, and movies that preceded

them, video games communicate ideas . . ." and deserve First Amendment protection])). This video game's unique story, characters, dialogue, and environment, combined with the player's ability to choose how to proceed in the game, render it a work of fiction and satire.

Further, Lohan's claim that her image was used in advertising materials for the video game should also be dismissed. The images are not of Lohan herself, but merely the avatar in the game that Lohan claims is a depiction of her (see *Costanza* at 255 [the "use of the character in advertising was incidental or ancillary to the permitted use[,]" and therefore was not commercial])).

In view of the foregoing, it is unnecessary to address defendants' remaining grounds for dismissal.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: SEPTEMBER 1, 2016



DEPUTY CLERK

CERTIFICATION PURSUANT TO CPLR § 2105

CERTIFICATION PURSUANT TO CPLR § 2105

I, Thomas A. Farinella, a member of the firm of The Law Office of Thomas A. Farinella, attorneys for Plaintiff-Appellant, hereby certify pursuant to § 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the clerk of the Supreme Court, County of New York.

Dated: April 13, 2017

The Law Office of Thomas A. Farinella

By:

A handwritten signature in black ink, appearing to read 'Thomas A. Farinella', written over a horizontal line.

Thomas A. Farinella

Attorneys for Plaintiff-Appellant