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Attorneys for Plaintiff DENNIS JAMES

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LOS ANGELES SUPERIOR COURT

DEC 12 2007

JOHN A. CLARKE, CLERK
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BY D.M. SWAIN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DENNIS JAMES, an individual,

Plaintiff,

v.

NBC UNIVERSAL, INC., a Delaware
Corporation; and DOES 1 through 35

Defendants.

CASE NO: BC382256

COMPLAINT FOR:

1. MISAPPROPRIATION OF IMAGE AND LIKENESS (Civil Code §3344)
2. INVASION OF COMMON LAW RIGHT OF PRIVACY (Misappropriation of Right of Publicity)
3. UNJUST ENRICHMENT
4. QUANTUM MERUIT

Plaintiff DENNIS JAMES ("Plaintiff") hereby allege as follows:

FACTS COMMON TO ALL CLAIMS

1. Plaintiff is a widely recognized celebrity body builder who has created a lucrative business based upon his image and likeness. Attached hereto as Exhibit "1" are photographs of Plaintiff printed from his website. In 1997, Plaintiff won the NPC Border States Classic as a heavyweight. In 1998, he won the NPC USA Championships as a super heavyweight. In 2000, he finished 4th in the IFBB Arnold Classic, 3rd in the IFBB Grand Prix Hungary, 3rd in the IFBB

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P.L.C.
BEVERLY HILLS, CALIFORNIA 90212
310-623-1676
Case assigned to Judge William Hightower

1 Grand Prix England, and 4th at the IFBB Pro World Championships. In 2001, Plaintiff won the
2 IFBB European Pro Championships, finished 2nd at the IFBB Australian Pro Grand Prix, finished
3 3rd at the IFBB Arnold Classic, and finished 3rd at the IFBB Grand Prix England. Since 2001, he
4 has always finished in the top ten at the IFBB Mr. Olympia competition, finishing as high as 4th in
5 2003. Plaintiff has appeared on the cover of Flex magazine, and is sponsored by such popular
6 fitness and body building brands as Muscle & Fitness, Weider, Flex, O₂ Oxygen, and SAN.
7 Currently a resident of Glendale, Arizona, Plaintiff appears and speaks at body building seminars
8 all over the world.

9
10 2. Plaintiff is informed and believes, and based thereupon alleges, that Defendant
11 NBC UNIVERSAL, INC ("NBC") is, and at all times mentioned herein was, a Delaware
12 Corporation organized and existing under the laws of the State of Delaware with its principal
13 place of business in the County of Los Angeles, State of California.

14 3. Plaintiff does not know the true names of defendants Does 1 through 35, inclusive,
15 and, therefore, sues these defendants, and each of them, by such fictitious names. Plaintiff will
16 amend this complaint to allege the true names and capacities of such defendants, and each of
17 them, when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of
18 these fictitious named defendants, and each of them, is negligently and intentionally responsible
19 in some manner for the occurrences herein alleged and that Plaintiff's losses as herein alleged
20 were proximately caused by such negligence and intent.

21
22 4. NBC and Does 1 to 35, and each of them (hereinafter referred to as "Defendants"),
23 are, and at all relevant times herein were, the principals, agents, employers, employees, general
24 partners, partners, joint venturers, representatives, or some combination thereof of their co-
25 Defendants, and each of them; engaged in the conduct alleged in this complaint during the course

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1 and scope of such agency and employment; and ratified, approved and authorized the conduct of
2 their co-Defendants, and each of them.

3 5. On or about December 22, 2005, on the *Late Night with Conan O'Brien* television
4 show, Defendants, and each of them, used Plaintiff's image without his consent. More
5 specifically, the host of the show, Conan O'Brien ("hereinafter O'Brien") showed a Christmas
6 Card which featured the face of 2003 American Idol runner-up, Clay Aiken, smiling on the right
7 side of the card, and the phrase "All I want this year is a **White Christmas**" on a fold out flap on
8 the left side of the card. O'Brien then opened the left side of the card to reveal the punch line,
9 "...And a **Black Body Builder**," above which was a photograph of Plaintiff posing at the 2004
10 IFBB Mr. Olympia Competition. Attached hereto as Exhibit "2" is a photograph of O'Brien
11 during the show on the night in question. Attached hereto as Exhibit "3" is a copy of the
12 Christmas card with the flap on the left side closed. Attached hereto as Exhibit "4" is a copy of
13 the Christmas card with the flap on the left side open.
14

15 JURISDICTION AND VENUE

16 6. This Court is the proper court for this action. The commercial activities of
17 Defendants, and each of them, impact the County of Los Angeles in a substantial, continuous and
18 systematic way. Defendants, and each of them, have purposefully availed themselves of the
19 protections and benefits of the County of Los Angeles, State of California. Among other things,
20 Defendants, and each of them, (i) operate NBC Studios in Burbank, California; (ii) broadcast the
21 *Late Night with Conan O'Brien* television show to Los Angeles County residents; and
22 (iii) maintain an interactive website on which Los Angeles County residents can watch the *Late*
23 *Night with Conan O'Brien* television show and shop for products related to the show. The
24 connection of Defendants, and each of them, to Los Angeles County is so pervasive that
25 Defendants, and each of them, reasonably anticipate being haled into a Los Angeles County court.

FIRST CAUSE OF ACTION

(VIOLATION OF CALIFORNIA CIVIL CODE § 3344 AGAINST ALL DEFENDANTS)

7. Plaintiff realleges, repleads, and incorporates as though fully set forth herein each and every allegation contained in Paragraphs 1 through 6 of this Complaint.

8. On or about December 22, 2005, Defendants, and each of them, knowingly displayed Plaintiff's photograph on a Christmas card during the *Late Night with Conan O'Brien* television show.

9. Plaintiff is readily identifiable to the naked eye as the body-builder pictured on the Christmas card.

10. The photograph of Plaintiff was essential to the commercial motive Defendants, and each of them, had to promote, advertise, market and sell the show to a worldwide audience.

11. The use by Defendants, and each of them, of Plaintiff's photograph was not connected with any news, public affairs, sports broadcast or account, or any political campaign.

12. Defendants, and each of them, used Plaintiff's image or likeness without Plaintiff's prior consent.

13. Defendants, and each of them, did not pay Plaintiff anything for the use of Plaintiff's image or likeness.

14. As a proximate result of the widespread, unauthorized, commercial use of Plaintiff's image and likeness by Defendants, and each of them, Plaintiff has suffered damage. Plaintiff is entitled to damages in an amount equal to the greater of seven hundred fifty dollars (\$750) for each unauthorized use, or the actual damages suffered by Plaintiff as a result of the unauthorized use of Plaintiff's image or likeness. Plaintiff's actual damages, include, but are not limited to, the devaluation of Plaintiff's image and likeness in the marketplace.

////

1 19. On or about December 22, 2005, Defendants, and each of them, knowingly
2 displayed Plaintiff's photograph on a Christmas card during the *Late Night with Conan O'Brien*
3 television show.

4 20. Plaintiff is readily identifiable to the naked eye as the body-builder pictured on the
5 Christmas card.

6 21. Defendants, and each of them, misappropriated Plaintiff's image and likeness for
7 their commercial advantage to promote, advertise, market and sell their business interests,
8 including, but not limited to, the *Late Night with Conan O'Brien* television show.

9 22. The use by Defendants, and each of them, of Plaintiff's image or likeness was
10 without Plaintiff's prior consent.

11 23. Defendants, and each of them, did not pay Plaintiff anything for the use of
12 Plaintiff's image or likeness.

13 24. As a proximate result of the widespread, unauthorized, commercial use of
14 Plaintiff's image and likeness by Defendants, and each of them, Plaintiff has suffered damage.
15 Plaintiff's actual damages, include, but are not limited to, the devaluation of Plaintiff's image and
16 likeness in the marketplace, and emotional distress.

17 25. As a proximate result of the widespread, unauthorized, commercial use of
18 Plaintiff's image and likeness by Defendants, and each of them, Plaintiff is further entitled to
19 punitive damages. At the time it made commercial use of Plaintiff's image and likeness,
20 Defendants, and each of them, knew the photograph depicted Plaintiff, and knew that Plaintiff
21 had not authorized or consented to the use by Defendants, or each of them, of his image or
22 likeness after the expiration date for any purpose. Despite that knowledge, Defendants, and each
23 of them, intentionally misappropriated Plaintiff's image for their own financial gain in conscious
24 disregard of Plaintiff's rights and of the damages Plaintiff would suffer as a result of the
25

1 misappropriation. The acts of Defendants, and each of them, were committed intentionally,
2 maliciously and oppressively, such that Plaintiff is entitled to punitive damages pursuant to
3 California Civil Code § 3294.

4 **THIRD CAUSE OF ACTION**

5 **(UNJUST ENRICHMENT AGAINST ALL DEFENDANTS)**

6 26. Plaintiff realleges, repleads, and incorporates as though fully set forth herein each
7 and every allegation contained in Paragraphs 1 through 6, 8 through 13, and 19 through 23 of this
8 Complaint.

9 27. Defendants, and each of them, appropriated and used Plaintiff's image and likeness
10 for the purpose of promoting, marketing, advertising and selling the *Late Night with Conan*
11 *O'Brien* television show.

12 28. Defendants, and each of them, did not pay Plaintiff to use his image or likeness.

13 29. Plaintiff regularly receives payment for the commercial use of his image and
14 likeness.

15 30. Had Plaintiff known that his image was to be used by Defendants, and each of
16 them, for their commercial gain, Plaintiff would have expected to be paid for such use.
17 Moreover, Plaintiff had no idea Defendants, or each of them, would use his image or likeness
18 without Plaintiff's prior consent.

19 31. Plaintiff is entitled to restitution of the reasonable value of the benefit derived by
20 Defendants, and each of them, for their unauthorized use of Plaintiff's image and likeness. The
21 value of said benefit is an amount which exceeds the jurisdictional limit of this Court, and which
22 will be determined according to proof at trial.

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FOURTH CAUSE OF ACTION

(QUANTUM MERUIT AGAINST ALL DEFENDANTS)

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3 32. Plaintiff realleges, replays, and incorporates as though fully set forth herein each
4 and every allegation contained in Paragraphs 1 through 7, 9 through 14, 20 through 21, and 28
5 through 31 of this Complaint.

6 33. Defendants, and each of them, appropriated and used Plaintiff's image and likeness
7 for the purpose of promoting, marketing, advertising and selling the *Late Night with Conan*
8 *O'Brien* television show.

9 34. Defendants, and each of them, did not pay Plaintiff to use his image or likeness.

10 35. Plaintiff regularly receives payment for the commercial use of his image and
11 likeness.

12 36. Had Plaintiff known that his image was to be used by Defendants, and each of
13 them, for their commercial gain, Plaintiff would have expected to be paid for such use.
14 Moreover, Plaintiff had no idea Defendants, or each of them, would use his image or likeness
15 without Plaintiff's prior consent.

16 37. Plaintiff is entitled to the reasonable value of the use Defendants, and each of them,
17 made of Plaintiff's image and likeness. The value of said benefit is an amount which exceeds the
18 jurisdictional limit of this Court, and which will be determined according to proof at trial.

19 WHEREFORE, Plaintiff prays for judgment against all Defendants, and each of them, as
20 follows:
21

22 ON THE FIRST CAUSE OF ACTION

- 23
- 24 1. For general damages according to proof;
 - 25 2. For special damages according to proof;
 3. For the greater of seven hundred fifty dollars (\$750) for each unauthorized use of Plaintiff's

- 1 image or likeness, or the actual damages suffered by Plaintiff as a result of the unauthorized
- 2 use of Plaintiff's image or likeness, pursuant to Civil Code Section 3344;
- 3 4. For any profits Defendants, and each of them, made from the unauthorized use of Plaintiff's
- 4 image or likeness that are attributable to the use and are not taken into account in computing
- 5 the actual damages, pursuant to Civil Code Section 3344;
- 6 5. For the profit attributable to Defendants' use of Plaintiff's image and likeness;
- 7 6. For punitive damages in an amount to be proven at trial;
- 8 7. For attorneys fees as authorized by California Civil Code Section 3344;
- 9 8. For costs of suit herein incurred; and
- 10 9. For such other and further relief as the court may deem just and proper.

11 **ON THE SECOND CAUSE OF ACTION**

- 12 1. For general damages according to proof;
- 13 2. For special damages according to proof;
- 14 3. For punitive damages in an amount to be proven at trial;
- 15 4. For an injunction prohibiting Defendants from making any further commercial use of
- 16 Plaintiff's image and likeness;
- 17 5. For costs of suit herein incurred; and
- 18 6. For such other and further relief as the court may deem just and proper.

19 **ON THE THIRD CAUSE OF ACTION**

- 20 21 1. For restitution of the reasonable value of the benefit derived by Defendants, and each of them,
- 22 for the unauthorized use they made of Plaintiff's image;
- 23 2. For interest as allowed by law;
- 24 3. For costs of suit herein incurred; and
- 25 4. For such other and further relief as the court may deem just and proper.


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ON THE FOURTH CAUSE OF ACTION

1. For the reasonable value of the use Defendants, and each of them, made of Plaintiff's image and likeness;
2. For compensatory damages according to the proof;
3. For interest as allowed by law;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court may deem just and proper.

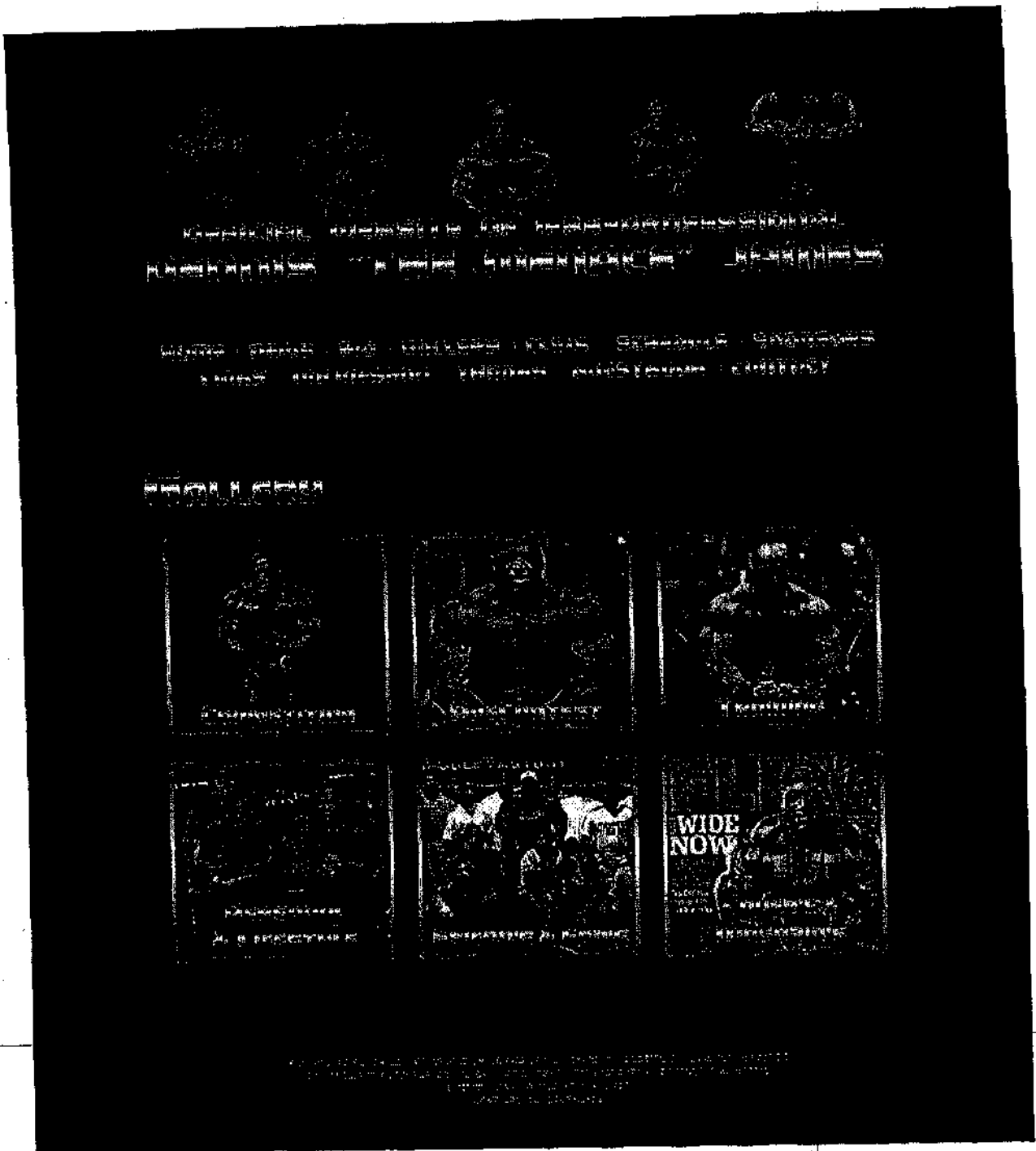
Dated: December 13, 2007

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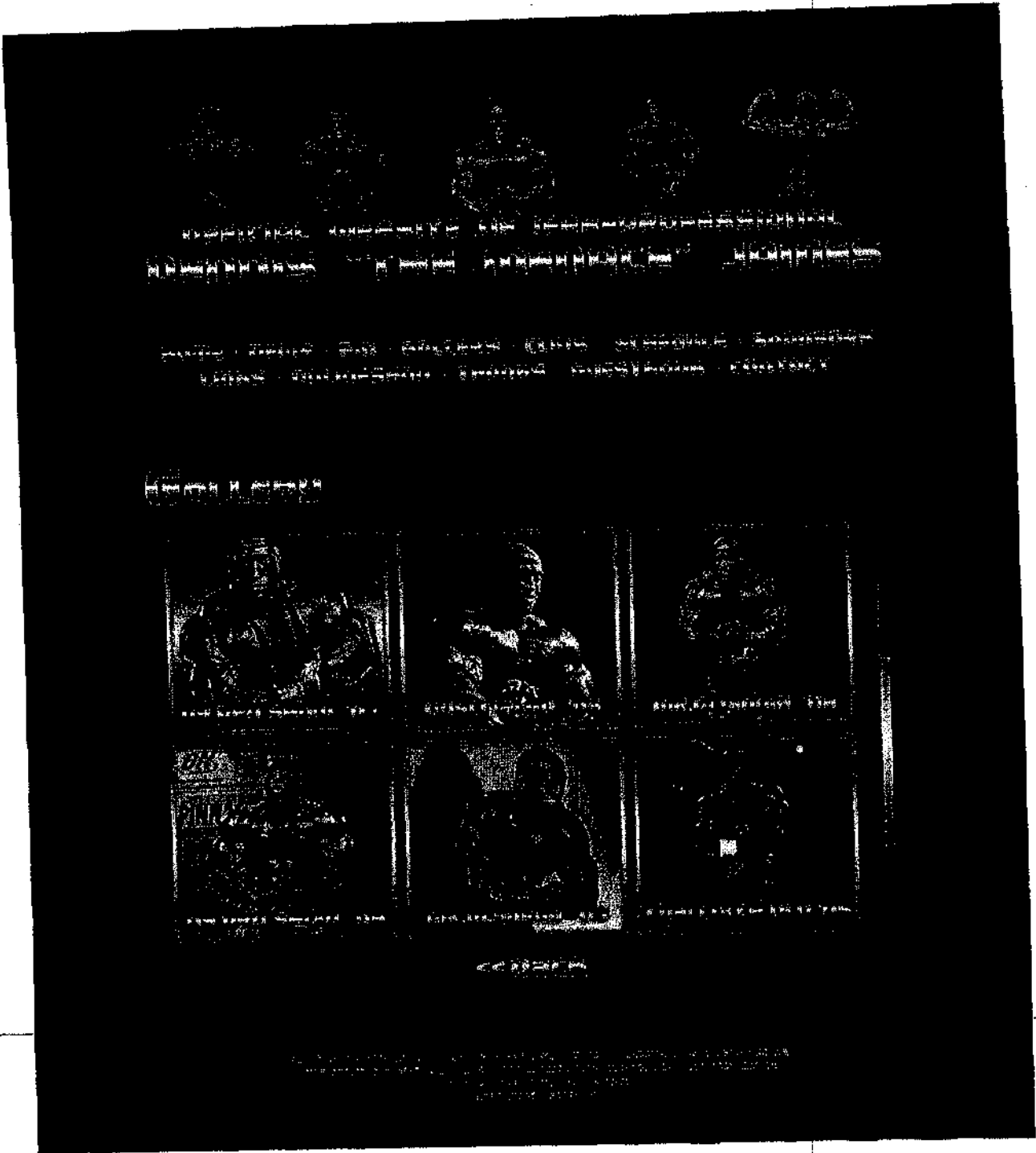
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Cyrus John Nownejak
Steven M. Sokoloff
Attorneys for Plaintiff DENNIS JAMES



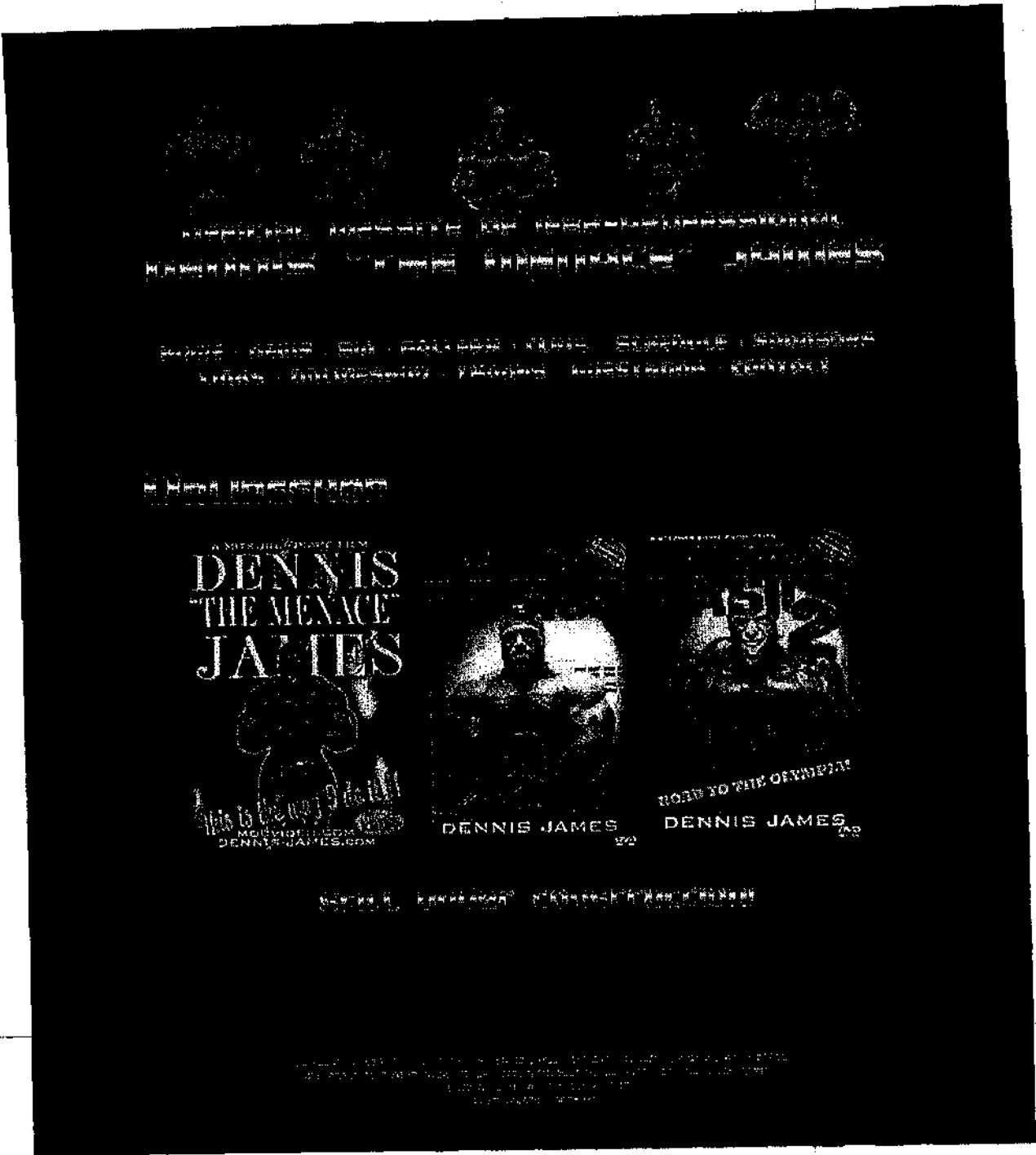
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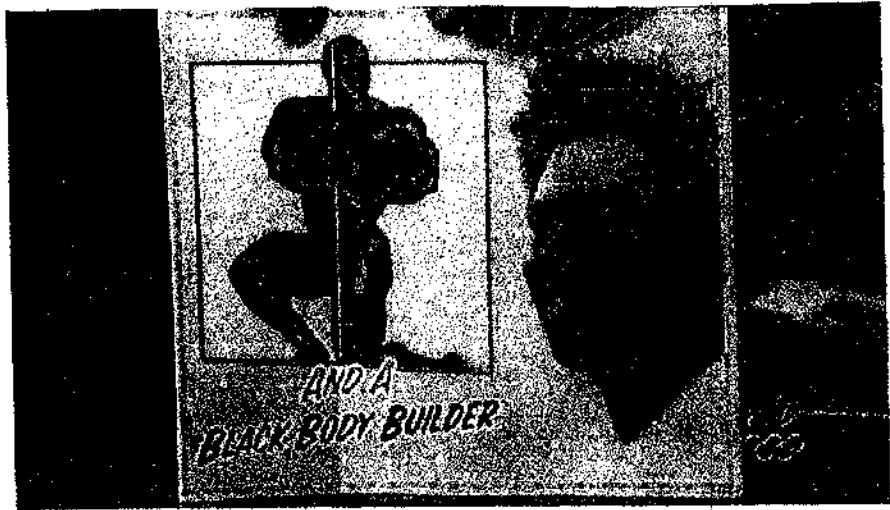




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