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 7 Regan Media, Inc. and Judith Regan

8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF ARIZONA

10 JENNA MASSOLI p/k/a JENNA )  
 11 JAMESON, )  
 12 ) Plaintiff, )  
 13 vs. )  
 14 "REGAN MEDIA," and JUDITH )  
 15 REGAN, an individual, )  
 16 ) Defendants. )

No. CV 05-0854 PHX EHC

**SECOND AMENDED  
COUNTERCLAIM**

(Assigned to the Honorable  
Earl H. Carroll)

17 REGAN MEDIA, INC., a New York )  
 18 corporation, and JUDITH REGAN, an )  
 19 individual, )  
 20 ) Defendants/Counterclaimants, )  
 21 vs. )  
 22 JENNA MASSOLI p/k/a JENNA )  
 23 JAMESON, an individual, )  
 24 ) Plaintiff/Counterdefendant, )  
 25 and )  
 26 JAY GRDINA, an individual, and )  
 DOLCE AMORE, INC., a Colorado )  
 corporation, )  
 Counterdefendants. )

1 Defendants/Counterclaimants Regan Media, Inc. and Judith Regan (collectively,  
2 “Counterclaimants”), for their Second Amended Counterclaim against Plaintiff/  
3 Counterdefendant Jenna Massoli p/k/a Jenna Jameson, Counterdefendant Jay Grdina and  
4 Counterdefendant Dolce Amore, Inc., allege as follows:

5 1. Defendant/Counterclaimant Regan Media, Inc. (“Regan Media”) is a New  
6 York corporation with its principal place of business in New York, New York.

7 2. Defendant/Counterclaimant Judith Regan (“Regan”) is an individual residing  
8 in the state of New York.

9 3. Plaintiff/Counterdefendant Jenna Massoli p/k/a Jenna Jameson (“Massoli”)  
10 is an individual residing in Maricopa County, Arizona. On information and belief,  
11 Massoli’s acts and omissions were performed for the benefit of the marital community  
12 between Massoli and Jay Grdina.

13 4. Counterdefendant Jay Grdina (“Grdina”) is an individual residing in  
14 Maricopa County, Arizona and is the husband of Massoli. Grdina’s acts and omissions  
15 were performed for the benefit of the marital community between Grdina and Massoli. On  
16 information and belief, Grdina is, and at all material times was, president of Dolce Amore,  
17 Inc.

18 5. Counterdefendant Dolce Amore, Inc. (“Dolce Amore”) is a Colorado  
19 corporation that caused events to occur in Arizona related to this dispute. Specifically,  
20 Dolce Amore entered into a contract that is the subject of this litigation relating to the  
21 production and filming of a reality-based television series in Arizona. In addition, Dolce  
22 Amore has a permanent presence in Arizona because its president resides in Maricopa  
23 County and it acts on behalf of Massoli, another Arizona resident.

24 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332  
25 because there is complete diversity of citizenship as to all parties, and the amount in  
26

1 controversy exceeds \$75,000, exclusive of interest and costs. The action was properly  
2 removed to this Court pursuant to 28 U.S.C. § 1441(a).

3 7. Venue is proper pursuant to 28 U.S.C.A. § 1391.

## 4 **FACTS**

### 5 **The April 1, 2004 Agreement**

6 8. Regan and Regan Media have been involved in the promotion of business  
7 opportunities arising out of Massoli's memoir, *How to Make Love Like a Porn Star*,  
8 published by Regan Media, an imprint of HarperCollins.

9 9. Massoli and Regan Media entered into a contract dated as of April 1, 2004  
10 relating to "the possible development, production, distribution and exploitation" of  
11 potential projects including television programs featuring Massoli (the "Agreement"). All  
12 provisions of the Agreement are incorporated herein by reference, and a true and correct  
13 copy is attached as Exhibit 1.

14 10. The Agreement covers "any Projects," a term defined to include two  
15 possible categories of television programs featuring Massoli, or "any similar projects."  
16 The first potential Project relates to a one-hour special based on Massoli's memoir, which  
17 would include interviews with Massoli and her friends and family, as well as video clips  
18 and photographs from Massoli's personal and professional life. The second Project is  
19 described as a potential "reality based television program about the various aspects of  
20 Jenna Jameson's life."

21 11. The Agreement states that the consideration underlying the Agreement  
22 includes "each party's efforts to obtain financing for and/or set up the projects for  
23 development, production, distribution and exploitation."

24 12. The Agreement provides Regan Media with the exclusive right to negotiate  
25 with financiers including television networks relating to either of the two Projects or "any  
26 similar projects." Specifically, Paragraph 1 of the Agreement provides:

1           ReganMedia shall have the exclusive right to pitch, submit and  
2           represent each Project to television networks, motion picture studios  
3           or other potential financiers (collectively, “Financiers”) for the  
4           purpose of obtaining financing and/or other commitments from such  
5           Financiers for the development, production, distribution and  
6           exploitation of each such Project and/or soliciting interest from such  
7           Financiers in optioning, purchasing or otherwise acquiring rights in  
8           and to each such Project.

9           13.    The Agreement further provides for certain rights and production credits for  
10           Regan and Regan Media in the event such a Project is pursued, regardless of which party  
11           locates the financier or television network, including credits for Regan as executive  
12           producer and the project as a “ReganMedia production.” Specifically, for example,  
13           Paragraph 2 of the Agreement provides:

14                     If a financier desires to finance the development, production,  
15                     distribution and/or other exploitation of any Projects and/or license,  
16                     option, purchase or otherwise acquire any rights in any Projects, then  
17                     each such project shall be a ReganMedia production and Judith Regan  
18                     (“Regan”) shall be an executive producer. . . . Jameson and Regan  
19                     shall negotiate their executive producer deals with any Financiers  
20                     together and in good faith, including, without limitation, with respect  
21                     to the fees and other compensation related to their executive producer  
22                     services in connection with any Project. . .

23           14.    Paragraph 4 requires mutual approval of both parties on “all business and  
24           creative decisions with respect to each Project.” Paragraph 6 of the Agreement further  
25           provides:

26                     Neither party hereto shall proceed with the further development,  
                      production, distribution and/or other exploitation of any Project, or  
                      option, license, sell or otherwise dispose of or encumber any rights in  
                      and to any Project, unless and until both parties have agreed to all the  
                      terms and conditions of their agreements with the applicable  
                      Financier of such project.



1           21.     Although Massoli and Grdina understood the terms of Massoli’s Agreement  
2 with Regan Media, they failed to include or consult Regan and Regan Media in their  
3 discussions and negotiations with A&E.

4           22.     In or about January 2005, Massoli agreed to participate in a reality television  
5 series based on Massoli’s life to be financed and produced by A&E (the “A&E Project”).

6           23.     In or about January 2005, Massoli and Grdina caused Dolce Amore, a  
7 corporation owned and controlled by Massoli and Grdina, to execute a contract with A&E  
8 (the “A&E Contract”) relating to Massoli’s participation in the reality-based television  
9 series. Grdina signed the A&E Contract as the president of Dolce Amore. Massoli signed  
10 an “Artist’s Letter of Inducement” as an integral part of the A&E Contract. A copy of the  
11 A&E Contract is attached as Exhibit 2.

12           24.     Grdina and Massoli caused Dolce Amore to execute the A&E Contract in an  
13 attempt to avoid Massoli’s obligations under the Agreement with Regan Media.

14           25.     The A&E Project is a reality-based series that is encompassed within the  
15 definition of the term “Project” as used in the April 1, 2004 Agreement.

16           26.     The A&E Contract recites that Dolce Amore “has entered into an Exclusive  
17 Acting Services Agreement with Jenna Jameson [Massoli] to provide on-camera/on-air  
18 acting services in connection with the production of a reality-based television series. . . .”

19           27.     The parties to the A&E Contract agreed that Massoli’s participation in the  
20 project was of the essence:

21                   The parties acknowledge that the participation of Artist [Massoli] as  
22 the principal on-camera subject of the Pilot and, if applicable, the  
23 Series and in promotion of the Pilot and, if applicable, the Series . . .  
24 is of the essence of this Agreement. Company warrants and  
25 represents that the terms of its contract with Artist expressly provides  
26 that Artist shall fully perform the services required by AETN as  
provided herein to the best of her professional ability . . .

28.     The A&E Contract further provides:

1           Company has the contractual right and authority to enter into this  
2 Agreement and to bind Artist to the terms, provisions, covenants and  
3 restrictions contained herein, including without limitation the  
4 exclusivity and copyright provisions hereof.

5           29.    The A&E Contract provides for on-screen “Executive Producer” credits for  
6 Grdina, but not for Regan. Neither Regan nor Regan Media is mentioned anywhere in the  
7 A&E Contract.

8           30.    Although Dolce Amore executed the A&E Contract, Massoli personally  
9 signed an “Artist’s Letter of Inducement,” which is attached as an exhibit to the A&E  
10 Contract. The “Artist’s Letter of Inducement” provides:

11                   In order to induce the A&E TELEVISION NETWORKS (“AETN”)  
12 to enter into the foregoing Agreement with DOLCE AMORE, INC.  
13 (the “Company”), and for other good and valuable consideration,  
14 receipt of which is hereby acknowledged, the undersigned [Massoli]  
15 hereby consents and agrees to the execution and delivery of said  
16 Agreement by Company and hereby agrees to render all the services  
17 therein provided to be rendered by the undersigned, to grant all the  
18 rights granted therein, and to be bound by and duly to perform and  
19 observe each and all of the terms and conditions of said Agreement  
20 regarding performance or compliance on the undersigned’s part, and  
21 hereby joins in all warranties, representations, obligations,  
22 agreements and indemnities made by Company, and further confirms  
23 the rights granted to AETN under said Agreement . . .

24           31.    By signing the “Artist’s Letter of Inducement,” Massoli directly and  
25 personally agreed to participate in the A&E Project.

26           32.    By signing the “Artist’s Letter of Inducement,” Massoli personally assumed  
Dolce Amore’s contractual obligations under the A&E Contract.

          33.    On information and belief, Massoli also entered into a contract with Dolce  
Amore to participate in the A&E Project as an employee of Dolce Amore.







1           50.    Massoli committed material violations of the Agreement by negotiating with  
2 A&E without involving and consulting Regan Media.

3           51.    Massoli committed material violations of the Agreement by agreeing to  
4 participate in the A&E project without involving and consulting Regan and Regan Media.

5           52.    Massoli committed material violations of the Agreement by signing the  
6 “Artist’s Letter of Inducement” in connection with the A&E Agreement without involving  
7 and consulting Regan and Regan Media.

8           53.    Massoli committed material violations of the Agreement by using Dolce  
9 Amore to execute the A&E Contract without involving or consulting Regan and Regan  
10 Media.

11          54.    Massoli committed material violations of the Agreement by entering into an  
12 agreement with Dolce Amore to participate in the A&E reality series without involving or  
13 consulting Regan and Regan Media.

14          55.    Regan is an intended third-party beneficiary of the Agreement and has  
15 standing to enforce the Agreement against Massoli.

16          56.    Massoli’s breach of the Agreement has caused and continues to cause Regan  
17 damages.

18          WHEREFORE, Defendant/Counterclaimant Judith Regan respectfully demands  
19 judgment against Plaintiff/Counterdefendant Jenna Massoli as follows:

20               a.    an award of damages in an amount to be determined at trial, plus  
21 interest thereon at the statutory rate from the earliest date allowed by law until paid; and

22               b.    such other and further relief as this Court deems proper.  
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1                   **COUNT THREE (Breach of Covenant of Good Faith and Fair Dealing)**  
2                   **Regan and Regan Media v. Massoli**

3           57. Defendants/Counterclaimants Regan Media, Inc. and Judith Regan  
4 incorporate the allegations of Paragraphs 1 through 56 above as though incorporated  
5 herein.

6           58. An implied covenant of good faith and fair dealing is read into the  
7 Agreement between Regan Media and Massoli. Regan has standing as a third-party  
8 beneficiary to enforce the Agreement as well as any covenants implied in the Agreement.

9           59. Massoli took steps to circumvent the Agreement and deny Regan and Regan  
10 Media the benefits to which they were entitled under the Agreement.

11           60. Massoli used Dolce Amore to execute the A&E Contract in an effort to  
12 avoid her obligations to Regan and Regan Media under the Agreement.

13           61. By so doing, Massoli breached the implied covenant of good faith and fair  
14 dealing she owed Regan and Regan Media under the Agreement.

15           62. Massoli's breach of the implied covenant of good faith and fair dealing has  
16 caused and continues to cause Regan and Regan Media damages.

17           WHEREFORE, Defendants/Counterclaimants Regan Media, Inc. and Judith Regan  
18 respectfully demand judgment against Plaintiff/Counterdefendant Jenna Massoli as  
19 follows:

20           a. an award of damages in an amount to be determined at trial, plus  
21 interest thereon at the statutory rate from the earliest date allowed by law until paid; and

22           b. such other and further relief as this Court deems proper.

23                   **COUNT FOUR (Declaratory Judgment)**  
24                   **Regan and Regan Media v. Massoli**

25           63. Defendants/Counterclaimants Regan Media, Inc. and Judith Regan  
26 incorporate the allegations of Paragraphs 1 through 62 above as though incorporated  
herein.



1           68. In or about January 2005, Dolce Amore entered into a contract with A&E  
2 relating to the production of a reality television series featuring Massoli.

3           69. On information and belief, Dolce Amore entered into the A&E Contract for  
4 the purpose of avoiding Massoli's obligations under the Agreement and excluding Regan  
5 and Regan Media from participation in the A&E Project. By so doing, Dolce Amore  
6 facilitated Massoli's breach of the Agreement with Regan Media.

7           70. The execution of the A&E Contract resulted in the breach of Massoli's  
8 Agreement with Regan Media.

9           71. Dolce Amore intentionally and tortiously interfered with the Agreement  
10 between Regan Media and Massoli by encouraging and facilitating Massoli's participation  
11 in a reality series without involving or consulting Regan Media and/or Regan.

12           72. Upon information and belief, Dolce Amore received payment from A&E  
13 under the A&E Contract relating to the filming of a pilot for the reality series and/or for  
14 Massoli's participation in the A&E reality series.

15           73. Regan and Regan Media have suffered damages as a direct result of Dolce  
16 Amore's tortious and intentional interference with the Agreement between Regan Media  
17 and Massoli.

18           WHEREFORE, Defendants/Counterclaimants Regan Media, Inc. and Judith Regan  
19 respectfully demand judgment against Counterdefendant Dolce Amore, Inc. as follows:

20           a. an award of damages in an amount to be determined at trial, plus  
21 interest thereon at the statutory rate from the earliest date allowed by law until paid; and

22           b. such other and further relief as this Court deems proper.

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**COUNT SIX (Intentional Interference with Contract)**  
**Regan and Regan Media v. Grdina**

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2           74. Defendants/Counterclaimants Regan Media, Inc. and Judith Regan  
3 incorporate the allegations of Paragraphs 1 through 73 above as though incorporated  
4 herein.

5           75. Upon information and belief, Grdina knew or should have known of the  
6 April 1, 2004 Agreement between Massoli and Regan Media in 2004. Grdina had access  
7 to the Agreement at all relevant times.

8           76. Upon information and belief, Grdina understood Massoli's obligations to  
9 Regan and Regan Media under the Agreement.

10           77. In or about January 2005, Grdina caused Dolce Amore to enter into a  
11 contract with A&E relating to the production of a reality television series featuring  
12 Massoli.

13           78. On information and belief, Grdina caused Dolce Amore to enter into the  
14 A&E Contract for the purpose of avoiding Massoli's obligations under the Agreement and  
15 excluding Regan and Regan Media from participation in the A&E Project. By so doing,  
16 Grdina facilitated Massoli's breach of the Agreement with Regan Media.

17           79. The execution of the A&E Contract resulted in the breach of Massoli's  
18 Agreement with Regan Media.

19           80. Grdina intentionally and tortiously interfered with the Agreement between  
20 Regan Media and Massoli by encouraging and facilitating Massoli's participation in a  
21 reality series without involving or consulting Regan Media and/or Regan.

22           81. On information and belief, Grdina received compensation from Dolce  
23 Amore and/or A&E for services as "Executive Producer" under the A&E Contract.

24           82. Regan and Regan Media have suffered damages as a direct result of Grdina's  
25 tortious and intentional interference with the Agreement between Regan Media and  
26 Massoli.







1 a. entering an order piercing the corporate veil of Dolce Amore an  
2 treating its assets as belonging to Massoli and Grdina;

3 b. an award of damages in an amount to be determined at trial, plus  
4 interest thereon at the statutory rate from the earliest date allowed by law until paid; and

5 c. such other and further relief as this Court deems proper.

6  
7 RESPECTFULLY SUBMITTED this 4th day of October, 2005.

8 STEPTOE & JOHNSON LLP

9  
10 By /s/ David J. Bodney

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2005, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electric Filing to the following CM/ECF Registrants:

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I hereby certify that on the 4th day of October, 2005, I served the attached document by mail on the following, who are not registered participants of the CM/ECF System:

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