

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

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VIGLIANO ASSOCIATES, LTD.,

Plaintiff,

- against -

JOANNA GAINES, CHIP GAINES, C & J GAINES  
LIMITED CO., MAGNOLIA BRANDS, LLC, and UNITED  
TALENT AGENCY, LLC,

Defendants.  
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Index No. \_\_\_\_\_

**SUMMONS**

Plaintiff designates New York  
County as the place of trial.

The basis of venue is the parties  
contract which provides New York  
County.

To the above-named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on 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: New York, New York  
December 7, 2022

DAVIDOFF HUTCHER & CITRON LLP

By: \_\_\_\_\_



Larry Hutcher  
Joshua Krakowsky  
Steven I. Appelbaum

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New York, New York 10158  
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TO:

C & J GAINES LIMITED CO.  
7503 Bosque Boulevard, Suite 201  
Waco, Texas 76712

MAGNOLIA BRANDS, LLC  
7503 Bosque Boulevard, Suite 201

Waco, Texas 76712

UNITED TALENT AGENCY, LLC  
c/o CT Corporation System  
28 Liberty Street  
New York, NY 10005

Ms. Joanna Gaines  
7503 Bosque Boulevard, Suite 201  
Waco, Texas 76712

Mr. Chip Gaines  
7503 Bosque Boulevard, Suite 201  
Waco, Texas 76712

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

-----X  
VIGLIANO ASSOCIATES, LTD.,

Plaintiff,

Index No.:

- against -

**COMPLAINT**

JOANNA GAINES, CHIP GAINES, C & J GAINES  
LIMITED CO., MAGNOLIA BRANDS, LLC, and UNITED  
TALENT AGENCY, LLC,

Defendants.  
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Plaintiff, VIGLIANO ASSOCIATES, LTD. (“Agent,” or “Plaintiff”), by and through its attorneys, Davidoff Hatcher & Citron LLP, by way of a Complaint against defendants JOANNA GAINES (“Joanna”), CHIP GAINES (“Chip” and together with Joanna, the “Gaines”), C & J GAINES LIMITED CO. (“Original Proprietor” or “C&J Gaines”), MAGNOLIA BRANDS, LLC (“New Proprietor” or “Magnolia”), and UNITED TALENT AGENCY, LLC (“UTA”) (collectively, the “Defendants”), alleges and states as follows:

**NATURE OF THE ACTION**

1. The Plaintiff, headed by David Vigliano, is the preeminent boutique literary agency in the publishing business. Its client list includes Oscar winners, politicians, athletes, star musicians, and even a Pope.

2. This action seeks to recover multi-millions in monetary damages arising out of Defendants’ outrageous and arrogant breach of a publishing agreement dated September 13, 2017 (the “Agreement”). While Joanna and Chip Gaines brand themselves as moral Christians who purportedly operate in an ethical manner insofar as they treated Plaintiff, nothing could be further from the truth.

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3. In September 2017, Plaintiff negotiated a five-book deal on behalf of Joanna's entity, whereby Joanna agreed to create five non-fiction books in consecutive years with HarperCollins Publishers LLC ("HarperCollins") as publisher. Plaintiff would receive 7.5% of the total advances, bonuses and royalties that Joanna's entity received associated with each book.

4. After abiding by the terms of the Agreement for the first two books, Joanna, acting upon information and belief pursuant to the instructions of her new agent UTA, terminated her existing management company, Westport Entertainment, and concocted a scheme with Chip Gaines to enrich themselves to Plaintiff's detriment.

5. They did this by purporting to enter into an "amendment" to the Agreement with HarperCollins which eliminated Plaintiff's compensation for one of the five books entirely, and allowed one of the five books to be authored by Chip Gaines instead of Joanna. That "amendment" was not agreed to by Plaintiff even though the Agreement is specifically intended to benefit Plaintiff.

6. Essentially, the purported amendment decreased the number of books authored by Joanna to which Plaintiff is entitled to compensation from five to three.

7. Adding insult to injury, the deleted book that Joanna should have created and delivered pursuant to the Agreement became part of a separate agreement between Joanna, HarperCollins, and UTA. By deleting this book from the Agreement, Defendants now claim that Plaintiff is not entitled to any portion of that book's advance or ongoing commissions on sales.

8. As a result of Defendants' wrongful actions, Plaintiff has lost its bargained for consideration and has suffered, and will continue to suffer, significant money damages.

9. Through this action, Plaintiff seeks an order compelling Defendants to comply with the terms of the Agreement and pay Plaintiff its rightful percentage of the advances and

commissions owed on the five published works authored by Joanna in perpetuity. Further, a full and complete accounting is necessary to ascertain the entire amount Plaintiff is owed, but it is no less than \$1 million.

### THE PARTIES

10. Plaintiff is a domestic business corporation with an address at 575 Madison Avenue, Suite 1006, New York, NY.

11. Defendant C&J Gaines is a Texas limited liability company with an address at 7503 Bosque Boulevard, Suite 201, Waco, Texas.

12. Defendant Magnolia is a Texas limited liability company with an address at 7503 Bosque Boulevard, Suite 201, Waco, Texas. Magnolia is the successor in interest to C&J Gaines with the same taxpayer ID number.

13. Joanna is an individual who resides in Texas.

14. Chip is an individual who resides in Texas.

15. UTA is, upon information and belief, a Delaware limited liability company that is authorized to do business in New York.

### JURISDICTION

16. This Court has jurisdiction over this matter and the Defendants pursuant to the forum selection clause in section 10(g) of the Agreement whereby the parties agreed to litigate any disputes arising thereunder in the Southern District of New York or Supreme Court New York County.

17. This Court also has jurisdiction over the Defendants pursuant to CPLR 302 because Defendants transact business in New York.

## FACTUAL ALLEGATIONS

### Chip And Joanna Gaines' Rise To Stardom

18. Joanna and Chip Gaines are internationally known reality television stars who gained vast fame and recognition for their show *Fixer Upper* on the HGTV network, which aired from 2013-2018. The show launched Joanna and Chip's careers into superstardom.

19. That has led to continued success for the Gaines, including spin-off TV show for Joanna, a new lifestyle magazine called "Magnolia Journal," a collection of bedding and lifestyle products, a media company with a cable network, and countless public appearances and ventures.

20. Though both Chip and Joanna rose to fame, Joanna has found more success and lucrative opportunities. Joanna alone teamed with Target and Anthropologie to create lines of bedding, rugs, and pillows.

21. Joanna and Chip retained Plaintiff in 2015 for a book deal for two books, which was then amended to include a third book. This book deal was between HarperCollins, C&J Gaines, Joanna and Chip. All three books were published and viewed as highly successful publications.

22. Because of the success with the initial deal, HarperCollins sought to enter into a new five book deal. However, since it was apparent that Joanna was the driving force behind the Gaines' success, HarperCollins was only interested in entering into a new book deal with Joanna individually, not Chip.

23. Ultimately, through Plaintiff, Joanna entered into the Agreement, which provided for a five book deal with HarperCollins that contained a royalty advance payment of \$12,500,000.00.

### The Agreement With HarperCollins

24. On September 13, 2017, the parties entered into the Agreement.

25. The Agreement entitled both Plaintiff as Agent and Joanna's then manager, Westport Entertainment Associates, LLC ("Manager")<sup>1</sup>, to percentages of the advances and royalties for Joanna's next five non-fiction books. Two of the books would be cookbooks, and the remaining three would be non-fiction on a mutually agreed upon topic.

26. Each of the five books were to be authored by Joanna and published in consecutive years.

27. Joanna would receive a \$2.8 million advance for each of the two cookbooks, and a \$2.25 million advance for the three non-fiction works, for a total of \$12.5 million.

28. Joanna would receive an additional \$250,000 bonus per book depending on sales, and ongoing royalties.

29. The Agreement also provides that HarperCollins is entitled to a right of first refusal option for Joanna's next book beyond the five books in the Agreement prior to Joanna's ability to market the new (sixth) work to other publishers.

30. The Agreement also contains a non-compete clause precluding Joanna from publishing books that are substantially similar to the books published under the Agreement.

31. Most importantly, the Agreement designates Plaintiff as Joanna's sole and exclusive agent with respect to the Agreement and explicitly mandates that 7.5% of all payments made to Joanna under the Agreement be paid to Plaintiff in perpetuity.

32. Specifically, the Agreement provides that

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<sup>1</sup> Defendants Joanna, Chip, and Magnolia are currently engaged in arbitration with the Manager for claims of overpayment.

[Joanna] hereby irrevocably and in perpetuity appoints [Plaintiff] Vigliano Associates, Ltd. . . . as [Joanna]'s sole and exclusive agent with respect to the Work . . . and authorizes and directs [HarperCollins] to make all payments due and/or to become due to [Joanna] to be divided and paid eighty percent (80%) to and in the name of C&J Gaines . . . and . . . seven and one-half percent (7.5%) to [Plaintiff].<sup>2</sup>

Agreement § 4(k)

### **The Improper Amendment to the Agreement**

33. Joanna authored two of the five contracted books, titled “Magnolia Table: A collection of Recipes for Gathering” and “Magnolia Table, Volume 2: A collection of Recipes for Gathering.” Plaintiff has been paid in full to date for those.

34. Upon information and belief, in 2018, Joanna, Chip, and C&J Gaines ended their relationship with their then Manager (who is entitled to 12.5% of payments under the Agreement).

35. Joanna and Chip then retained United Talent Agency (“UTA”) as their new manager and talent agency.

36. In connection with that change, Chip and Joanna wound down C&J Gaines and created Magnolia Brands, LLC, which became the successor in interest to C&J Gaines under the Agreement.

37. In an effort to restrict further payments going to their former Manager, and to provide UTA with the ability to earn a commission, Defendants executed a purported amendment to the Agreement with HarperCollins, dated July 7, 2020 (the “Amendment”).

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<sup>2</sup> The balance of 12.5% were to be paid to the “Co-Agent” Manager (Agreement § 4(k)), which is not a subject of this action.



38. The Amendment materially altered the structure of the Agreement and adversely affected Plaintiff's interests therein.

39. First, the Amendment reduced Joanna's obligation from authoring five books to four.

40. Next, the Amendment adds Chip as an "author", and provides that one of the remaining four books from the Agreement would be authored by Chip, not Joanna.

41. As a result of these purported changes, Plaintiff's right and expectation to commissions from five published works by Joanna decreased to only three published works and one by Chip, whose popularity and fame does not match Joanna's.

42. Chip was not a party to the Agreement and cannot be added as a party without Plaintiff's approval. HarperCollins intentionally entered the Agreement solely with Joanna, not Chip. Joanna's books are best sellers and her brand encompasses all areas of food and lifestyle. Chip has not found the same success individually. HarperCollins knew this and excluded Chip from the Agreement, despite previously entering into a book deal with both Joanna and Chip.

43. Not only that, but Joanna, through Magnolia and her new manager UTA, entered into a new agreement with HarperCollins' affiliate to publish an additional book, entitled "The Stories We Tell." The advance for this book is in excess of \$7,000,000, with more expected to be earned in royalties. "The Stories We Tell" was delivered and published before any of the remaining three books in the Agreement.

44. That book should be the third of the five books under the Agreement, entitling Plaintiff to 7.5% of the advance and royalties on "The Stories We Tell".

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(BREACH OF THE AGREEMENT – THIRD PARTY BENEFICIARY)**  
**(Asserted against C&J Gains, Magnolia, and Joanna)**

45. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs hereof as if set forth in full herein.

46. The Agreement is a valid and enforceable contract by and between C&J Gains, now known as Magnolia, as represented by Plaintiff (and Manager) on the one hand, and HarperCollins on the other hand.

47. Magnolia is the successor in interest to C&J Gains under the Agreement.

48. Joanna executed the Agreement in in her individual capacity as the author for the Agreement.

49. The Agreement was intended for the benefit of Plaintiff.

50. Specifically, the Agreement mandated that Plaintiff is entitled to receive 7.5% of the advances, bonuses and royalty payments associated with five non-fiction books authored by Joanna and published by HarperCollins.

51. The benefit to Plaintiff as prescribed in the Agreement was immediate, rather than incidental, as Plaintiff is specifically named and its rights to compensation specifically identified.

52. Plaintiff stood to gain or lose from how valuable the books would be.

53. No other person is entitled to the 7.5% of the advances, bonuses, and royalties that Plaintiff is entitled to under the Agreement.

54. By specifically identifying Plaintiff and the compensation it is entitled to, on its face, the Agreement demonstrates an intent to permit enforcement by Plaintiff, and an assumption that the parties to the Agreement will compensate Plaintiff if its benefit is lost.

55. Therefore, Plaintiff is a third-party beneficiary of the Agreement, making C&J Gaines and Joanna liable to Plaintiff for its breach.

56. C&J Gaines, Magnolia (as successor in interest), and Joanna breached the Agreement by, among other things: (a) deleting Joanna's requirement to publish two additional works; and (b) removing all commissions and royalties associated with Joanna's new work, "The Stories We Tell."

57. As a direct and proximate result of C&J Gaines', Magnolia's, and Joanna's breach of the Agreement, Plaintiff has suffered damages in an amount to be determined at trial, but in no event less than \$1 million, in addition to interest accrued and accruing.

**AS AND FOR A SECOND CAUSE OF ACTION  
(TORTIOUS INTERFERENCE WITH THE AGREEMENT)  
(Asserted Against Joanna Gaines, Chip Gaines and UTA)**

58. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs hereof as if set forth in full herein.

59. The Agreement is a valid and enforceable contract.

60. As set forth herein, in an attempt to cut out their former Manager and Plaintiff, Joanna and Chip engineered an Amendment whereby Joanna would publish her new work "The Stories We Tell," under a new agreement with a HarperCollins' affiliate, utilizing its new manager and agent, UTA, ensuring that Plaintiff would not be entitled to any payments or commissions received from this publication.

61. Moreover, as set forth herein, by deleting one published work from the Agreement and replacing Joanna with Chip as an author, Joanna and Chip intentionally and materially altered the terms of the Agreement to decrease Plaintiff's bargained-for royalty payments.

62. Joanna and Chip were aware of Plaintiff's rights under the Agreement and intentionally entered the Amendment which vitiated Plaintiff's rights without consideration or approval.

63. Indeed, Defendants' election to enter into a side agreement for Joanna's newest publication is an intentional breach of the Defendants' obligations under the Agreement.

64. UTA was also aware of Plaintiff's rights under the Agreement since, upon information and belief, prior to agreeing to become Joanna and Chip's new agent, UTA received and reviewed a copy of the Agreement, since abiding by its terms would necessarily adversely affect the amount of money it would receive from publishing Joanna's books.

65. UTA intentionally procured a breach of the Agreement by, upon information and belief, working together with Joanna, Chip and HarperCollins to concoct the "amendment" to the Agreement purporting to reduce Plaintiff's right to receive compensation from five books authored by Joanna to three. The reason UTA acted in such a manner was to usurp the money Plaintiff was entitled to.

66. In fact, the only conceivable reason to enter into the Amendment is to benefit UTA to the detriment of Plaintiff, inasmuch as all of the other parties to the Amendment and the side agreement for "The Stories We Tell" remain the same. Otherwise, HarperCollins could have published "The Stories We Tell" as one of the five works as contemplated in the Agreement, while entering into a new agreement with Chip for his works if they were so inclined.

67. The Agreement would not have been breached but for the intentional conduct and efforts by Joanna, Chip and UTA to concoct the "amendment" to the Agreement.

68. As a direct and proximate result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial, but in no event less than \$1 million, in addition to interest accrued and accruing.

**AS AND FOR A THIRD CAUSE OF ACTION  
(EQUITABLE ACCOUNTING)**

69. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs hereof as if set forth in full herein.

70. Upon information and belief, Gaines, C&J Gaines, Magnolia and UTA have already received payments that Plaintiff is rightfully entitled to under the Agreement.

71. Since Gaines, C&J Gaines, Magnolia and UTA are in possession of money that Plaintiff is entitled to, Gaines, C&J Gaines, Magnolia and UTA have a fiduciary obligation towards Plaintiff with respect to the money or property they are holding on Plaintiff's behalf.

72. Plaintiff is thus entitled to an equitable accounting of the books and records of Gaines, C&J Gaines, Magnolia and UTA to determine the full extent of Plaintiff's losses and damages.

**WHEREFORE**, Plaintiff VIGLIANO ASSOCIATES, LTD. demands judgment against the Defendants as follows:

(a) on the first cause of action for breach of the Agreement for an amount to be determined at trial, but in no event less than \$1 million, in addition to interest accrued and accruing;

(b) on the second cause of action for tortious interference with the Agreement for damages in an amount to be determined at trial, but in no event less than \$1 million, in addition to interest accrued and accruing;

(c) on the third cause of action for an equitable accounting against Defendants, for an order that Defendants be ordered to permit Plaintiff to conduct a forensic financial examination of all books and records concerning all sales and payments made regarding “The Stories We Tell” to determine the extent of damages caused by Defendants various breaches of the parties’ agreements and to accurately determine the amount of royalties owed to Plaintiff under the Agreement; and

(d) the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 7, 2022

DAVIDOFF HUTCHER & CITRON LLP

By: 

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