

1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
7 ztremayne@howarth-smith.com  
8 523 West Sixth Street, Suite 728  
9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual, )

17 Plaintiff, )

18 vs. )

19 FX NETWORKS, LLC, a California limited )  
20 liability company; PACIFIC 2.1 )  
21 ENTERTAINMENT GROUP, INC., a California )  
22 corporation; and DOES 3 through 100, inclusive, )

23 Defendants. )

CASE NO. BC667011

[Complaint Filed June 30, 2017]

Assigned for all purposes to: Hon. Holly E. Kendig

**PLAINTIFF’S OPPOSITION TO  
DEFENDANTS’ MOTION TO STRIKE  
PLAINTIFF’S THIRD AMENDED  
COMPLAINT PURUSANT TO  
CALIFORNIA’S ANTI-SLAPP STATUTE,  
CAL. CIV. PROC. CODE § 425.16**

Hearing Date: September 29, 2017

Time: 8:30 am

Location: Department 42

Reservation ID: 170727238249

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County of Los Angeles

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By: *M. Soto*, Deputy  
Moses Soto

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

I.	INTRODUCTION AND SUMMARY OF DEFENDANTS’ POSITION .....	1
II.	DE HAVILLAND’S CLAIMS CANNOT BE DEFEATED BY DEFENDANTS’ MOTION .....	1
A.	Reasonable Probability Legal Standard Defined .....	1
B.	Plaintiff Has a Probability of Success on Her Right to Publicity Claims.....	2
1.	All Elements for Right to Publicity Common Law and Statutory Actions Are Conceded or Proved .....	2
2.	Plaintiff’s Right to Publicity Claims Are Not Barred by Any Affirmative Defenses .....	4
i.	The First Amendment Does Not Grant Absolute Immunity .....	4
ii.	Defendants Cannot Meet Their Burden on the Public Affairs or Public Interest Affirmative Defenses .....	5
iii.	Defendants Cannot Meet their Burden of Proof that the Use of Plaintiff’s Identity Was Transformative .....	8
3.	The Public Interest and Public Affairs Affirmative Defense Doctrines Do Not Preclude Suits Where Plaintiff Offers Proof of Intentional or Reckless Disregard of the Truth .....	10
C.	Plaintiff Has a Probability of Success on Her False Light Claim .....	12
1.	Elements for False Light.....	12
2.	Evidence in Support of False Light Comes from Defendants and Plaintiff .....	13
III.	CONCLUSION .....	15

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<i>Beroiz v. Wahl</i> , 84 Cal. App. 4th 485 (2000) .....	12
<i>Browne v. McCain</i> , 611 F. Supp. 2d 1062 (C.D. Cal. 2009) .....	4, 5, 6, 7, 11
<i>Burnett v. Nat'l Enquirer, Inc.</i> , 144 Cal. App. 3d 991 (1983) .....	12
<i>Carver v. Bonds</i> , 135 Cal. App. 4th 328 (2005) .....	14
<i>Comedy III Productions, Inc. v. Gary Saderup, Inc.</i> , 25 Cal. 4th 387 (2001) .....	4, 8, 9, 11
<i>Daly v. Viacom, Inc.</i> , 238 F. Supp. 2d 1118 (N.D. Cal. 2002) .....	5
<i>Davis v. Costa-Gravias</i> , 654 F. Supp. 653 (S.D.N.Y. 2015) .....	11
<i>Davis v. Electronic Arts Inc.</i> , 775 F.3d 1172 (9th Cir. 2015) .....	2, 8
<i>Dora v. Frontline Video</i> , 15 Cal. App. 4th 536 (1993) .....	8
<i>Eastwood v. National Enquirer, Inc.</i> , 123 F.3d 1249 (9th Cir. 1997) .....	6, 7, 10, 11, 12
<i>Eastwood v. Superior Court</i> , 149 Cal. App. 3d 409 (1983) .....	2, 4, 6, 7
<i>Gilbert v. Sykes</i> , 147 Cal. App. 4th 13 (2007) .....	14
<i>Gionfriddo v. Major League Baseball</i> , 94 Cal. App. 4th 400 (2001) .....	8

1	<i>Guglielmi v. Spelling-Goldberg Productions,</i>	
2	25 Cal. 3d 860 (1979).....	4, 5
3	<i>Hawran v. Hixson,</i>	
4	209 Cal. App. 4th 256 (2012).....	12
5	<i>Hilton v. Hallmark Cards,</i>	
6	599 F.3d 894 (9th Cir. 2010).....	2
7	<i>HMS Capital, Inc. v. Lawyers Title Co.,</i>	
8	118 Cal. App. 4th 204 (2004).....	2
9	<i>In re Reno,</i>	
10	55 Cal. 4th 428 (2012).....	6
11	<i>Jackson v. Mayweather,</i>	
12	10 Cal. App. 5th 1240 (2017).....	13, 14
13	<i>Jacobson v. Schwarzenegger,</i>	
14	357 F. Supp. 2d 1198 (C.D. Cal. 2004).....	12
15	<i>Kanarek v. Bugliosi,</i>	
16	108 Cal. App. 3d 327 (1980).....	12
17	<i>Linder v. Thrifty Oil Co.,</i>	
18	23 Cal. 4th 429 (2000).....	1
19	<i>Melvin v. Reid,</i>	
20	112 Cal. App. 285 (1931).....	4
21	<i>Michaels v. Internet Entm't Grp., Inc.,</i>	
22	5 F. Supp. 2d 823 (C.D. Cal. 1998).....	8
23	<i>Mindys Cosmetics, Inc. v. Dakar,</i>	
24	611 F.3d 590 (9th Cir. 2010).....	1
25	<i>Montana v. San Jose Mercury News, Inc.,</i>	
26	34 Cal. App. 4th 790 (1995).....	8
27	<i>Navellier v. Sletten,</i>	
28	29 Cal. 4th 82 (2002).....	2

1 | *Nguyen-Lam v. Cao*,  
2 | 171 Cal. App. 4th 858 (2009) .....2, 10  
3 | *No Doubt v. Activision Publg., Inc.*,  
4 | 192 Cal. App. 4th 1018 (2011) .....1, 8, 9, 10  
5 | *Overstock.com, Inc. v. Gradient Analytics, Inc.*,  
6 | 151 Cal. App. 4th 688 (2007) .....2, 5  
7 | *Partington v. Bugliosi*,  
8 | 56 F.3d 1147 (9th Cir. 1995) ..... 15  
9 | *Paulus v. Bob Lynch Ford, Inc.*,  
10 | 139 Cal. App. 4th 659 (2006) .....10  
11 | *Peregrine Funding, Inc. v. Sheppard Mullin*,  
12 | 133 Cal. App. 4th 658 (2005) .....2  
13 | *Polydoros v. Twentieth Cent. Fox Film Corp.*,  
14 | 67 Cal. App. 4th 318 (1997) .....5  
15 | *Polygram Records, Inc. v. Superior Court*,  
16 | 170 Cal. App. 3d 543 (1985) .....12  
17 | *Seale v. Gramercy Pictures*,  
18 | 964 F. Supp. 918 (E.D. Penn. 1997) .....12  
19 | *Solano v. Playgirl*,  
20 | 292 F.3d 1078 (9th Cir. 2002) .....7, 12  
21 | *Winter v. DC Comics*,  
22 | 30 Cal. 4th 881 (2003) .....8, 9  
23 | *Yu v. Signet Bank/Virginia*,  
24 | 103 Cal. App. 4th 298 (2002) 118 Cal. App. 4th 204 (2004) .....2  
25 | *Zacchini v Scripps-Howard Broadcasting*,  
26 | 433 U.S. 562 (1977) .....4  
27 | *ZL Techs., Inc. v. Does 1-7*,  
28 | 13 Cal. App. 5th 603 (2017) .....12

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATUTES**

Cal. Civ. Code § 3344 .....5, 6, 7, 8

**OTHER AUTHORITIES**

Merriam Webster,  
<https://www.merriam-webster.com/> .....13

1       **I.       INTRODUCTION AND SUMMARY OF DEFENDANTS’ POSITION**

2               “[N]ot all expression with respect to celebrities is insulated by the First Amendment.” *No*  
3       *Doubt v. Activision Publg., Inc.*, 192 Cal. App. 4th 1018, 1029 (2011). Defendants FX Networks,  
4       LLC and Pacific 2.1 Entertainment Group, Inc. (“Defendants”) made an eight-part highly successful  
5       television series, “Feud: Bette and Joan” (“Feud”), which starred Catherine Zeta-Jones (“Zeta-  
6       Jones”) as Olivia de Havilland (“Plaintiff” or “de Havilland”) and aired in March of 2017. Motion  
7       to Strike (“Motion”) at 4; Exs. 55-57 to Decl. of James Berkley (“Berkley Decl.”). Defendants do  
8       not deny that de Havilland is the only living principal character in “Feud,” that they did not obtain  
9       consent, nor that they intentionally broadcast a fake interview of de Havilland speaking from a  
10       personal insider perspective about the alleged “feud” between Bette Davis (“Davis”) and Joan  
11       Crawford (“Crawford”), which is structured to be an endorsement of “Feud” by Plaintiff. Motion at  
12       2 (“Plaintiff’s consent was not needed.”); Decl. of Timothy Minear (“Minear Decl.”) ¶¶ 7, 15 (“As a  
13       device to tell the story . . . [we] created imagined interviews conducted at the 1978 Academy  
14       Awards. In these interviews . . . de Havilland . . . discuss[es] Crawford and Davis . . .”); Decl. of  
15       Michael Zam (“Zam Decl.”) ¶¶ 9-11. They also portray Plaintiff making negative, vulgar  
16       statements, which are false and were never made, about her sister, Joan Fontaine (“Fontaine”), and  
17       Frank Sinatra (“Sinatra”), among others.

18               Despite these uncontested facts, Defendants claim that their conduct was in “furtherance of  
19       [their] right to free speech . . . or in connection with a public issue.” Motion at 1. They also claim  
20       that de Havilland cannot demonstrate that her causes of action meets the minimal showing of merit  
21       standard. *Id.* at 3. Defendants are wrong under the controlling law and facts here, and de  
22       Havilland’s complaint may not be properly stricken under anti-SLAPP.

23       **II.       DE HAVILLAND’S CLAIMS CANNOT BE DEFEATED BY DEFENDANTS’**  
24       **MOTION**

25       **A.       Reasonable Probability Legal Standard Defined**

26               Establishing a “reasonable probability” in the anti-SLAPP statute . . . requires only a  
27       ‘minimum level of legal sufficiency and triability.’” *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d  
28       590, 598 (9th Cir. 2010) (quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 438 n.5 (2000); *see also*

1 *Davis v. Electronic Arts Inc.*, 775 F.3d 1172, 1177 (9th Cir. 2015) (denying anti-SLAPP motion to  
2 strike §3344 claims for unauthorized use of professional football players’ likenesses in video game).  
3 “[P]laintiff’s burden of establishing a [reasonable] probability of prevailing is not high . . . .”  
4 *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 699 (2007).

5 California’s anti-SLAPP statute “poses no obstacle to suits that possess minimal merit.”  
6 *Navellier v. Sletten*, 29 Cal. 4th 82, 93 (2002). “The court’s responsibility is to accept as true the  
7 evidence favorable to the plaintiff and evaluate the defendant’s evidence only to determine if it has  
8 defeated that submitted by the plaintiff as a matter of law.” *HMS Capital, Inc. v. Lawyers Title Co.*,  
9 118 Cal. App. 4th 204, 212 (2004) (internal citation omitted).<sup>1</sup> “Thus, plaintiff’s burden as to the  
10 second prong of the anti-SLAPP test is akin to that of a party opposing a motion for summary  
11 judgment.” *Yu v. Signet Bank/Virginia*, 103 Cal. App. 4th 298, 317 (2002).

12 An anti-SLAPP defendant advancing affirmative defenses, including those based on the  
13 First Amendment, transformative use, public interest and public affairs “bears the burden of proof  
14 on the defense . . . .” *Peregrine Funding, Inc. v. Sheppard Mullin*, 133 Cal. App. 4th 658, 676  
15 (2005). This burden is a heavy one. “Only if [defendant] is entitled to the defense *as a matter of*  
16 *law* can it prevail on its motion to strike.” *Hilton v. Hallmark Cards*, 599 F.3d 894, 910 (9th Cir.  
17 2010) (emphasis added).

18 **B. Plaintiff Has a Probability of Success on Her Right to Publicity Claims**

19 **1. All Elements for Right to Publicity Common Law and Statutory Actions**  
20 **Are Conceded or Proved**

21 The elements to a claim for misappropriation of the right of publicity under the common law  
22 and Section 3344 are: “(1) the defendant’s use of the plaintiff’s identity; (2) the appropriation of  
23 plaintiff’s name or likeness to defendant’s advantage . . . ; (3) lack of consent; and (4) resulting  
24 injury.” *Hilton*, 599 F.3d at 909; *Eastwood v. Superior Court*, 149 Cal. App. 3d 409, 417 (1983);  
25

26 <sup>1</sup> If the Court should find any shortcomings with the TAC due to a lack of detail on the claim  
27 elements of the claims, Plaintiff seeks leave to amend based on the evidence presented herein.  
28 *Nguyen-Lam v. Cao*, 171 Cal. App. 4th 858, 873 (2009) (where “plaintiff demonstrated a  
probability of prevailing at trial if she could amend her complaint [to cure a pleading deficiency], [it  
should be allowed] . . . .”).



1 Motion at 12 n.10. Defendants do not deny Plaintiff can establish all the elements of the right to  
2 publicity prima facie case. Defendants, as they admit, clearly and knowingly used Plaintiff’s name,  
3 identity, image and likeness (collectively “Identity”) in “Feud,” a commercial production. Minear  
4 Decl. ¶¶ 7-15 (“de Havilland . . . appears in six of the eight episodes . . . .”); Zam Decl. ¶¶ 11-14;  
5 Murphy Decl. ¶¶ 7, 14-20; Gibbons Decl. Exs. 4-9; Berkley Decl. Ex. 54. Defendants do not claim  
6 they obtained Plaintiff’s consent or compensated her to use her Identity, and they did not. Decl. of  
7 Olivia de Havilland (“ODH Decl.”) ¶ 4. Plaintiff, as a result of Defendants’ unauthorized use of her  
8 Identity, has been injured and Defendants have been unjustly enriched. Roesler Decl. ¶¶ 21-25;  
9 Smith Decl. ¶¶ 4-5; Casady Decl. ¶¶ 11-13.

10 The appropriation of Plaintiff’s Identity was to Defendants’ advantage, and she played a key  
11 role, which Defendants’ themselves admit. Murphy Decl. ¶ 15 (“The de Havilland character served  
12 as a counterbalance to the more volatile Davis and Crawford and also as an objective, authoritative  
13 bridge to the viewer. Put differently, it was important that viewers trust the de Havilland character .  
14 . . . .”); Minear Decl. ¶ 15 (“[W]e believed that the de Havilland character was perfect for introducing  
15 the theme of the show . . . .”); Gibbons Decl. ¶ 10 (“six video advertisements . . . included . . . de  
16 Havilland . . . .” which Defendants chose to “mimic the show itself, in which the de Havilland  
17 character introduces some of the themes of ‘Feud’ through an imagined interview at the 1978  
18 Oscars . . . .”); Zam Decl. ¶¶ 10-11; Minear Decl. ¶¶ 7, 13. The use of Plaintiff’s Identity was  
19 intended to increase the appeal and success of “Feud,” as well as to create the impression that  
20 Plaintiff, who the audience would trust, endorsed “Feud,” Defendants, and their entertainment  
21 services. Casady Decl. ¶¶ 11, 13 (“the construction of ‘Feud’s’ storyline is designed to appear to  
22 the viewer as if the still-living Miss de Havilland endorsed the production and its content . . . .”);  
23 Ladd Decl. ¶ 17 (“‘Feud was constructed as if Miss de Havilland . . . endorsed ‘Feud.’”); Murphy  
24 Decl. ¶ 15.<sup>2</sup>

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28 <sup>2</sup> Defendants filed thousands of pages of exhibits, most are irrelevant to the issues here.

1                   2.     **Plaintiff’s Right to Publicity Claims Are Not Barred by Any Affirmative**  
2                                   **Defenses**

3                   i.     **The First Amendment Does Not Grant Absolute Immunity**

4                   Defendants bear the burden of showing that their First Amendment based affirmative  
5 defenses eliminate virtually any chance of plaintiff prevailing on her common law and statutory  
6 right to publicity causes of action. *See* Section (II)(A) *supra*. Here, Defendants claim that a movie  
7 or television show enjoys virtually unlimited protection under the First Amendment. Motion at 13.  
8 This is wrong on the nature and scope of the law. Television and movie broadcasts may come  
9 under Constitutional protection, but, even if they do, it is not unlimited. *Browne v. McCain*, 611 F.  
10 Supp. 2d 1062 (C.D. Cal. 2009); *Melvin v. Reid*, 112 Cal. App. 285 (1931) (right of privacy  
11 common law action allowed for unauthorized use of plaintiff’s Identity in semi-historical movie  
12 “The Red Kimono,” notwithstanding public interest defense).

13                   In the only United States Supreme Court case to consider the constitutionality of a right to  
14 publicity statute, *Zacchini v Scripps-Howard Broadcasting*, 433 U.S. 562 (1977), the Court reversed  
15 the Ohio Supreme Court, which held the statute violated the First and Fourteenth Amendments to  
16 the Constitution. *Zacchini* involved a television broadcast of the 15 second act of Zacchini, the  
17 human cannon ball, at the county fair. Zacchini sued the local station for violation of his right to  
18 publicity. The Court stated:

19                                   “The rationale [for protecting the right to publicity] is the straight-forward  
20                                   one of preventing unjust enrichment by the theft of goodwill. No social  
21                                   purpose is served by having the defendant get free some aspect of the  
22                                   plaintiff that would have market value and for which he would normally  
23                                   pay.”

24                   *Id.* at 576.

25                   Defendants cite Chief Justice Bird’s concurrence in *Guglielmi v. Spelling-Goldberg*  
26 *Productions*, 25 Cal. 3d 860, 862 (1979), which of course is not controlling. In so far as it suggests  
27 that nothing in a television broadcast or even a newspaper account can be a basis for a right to  
28 publicity claim, it has been rejected by later controlling Supreme Court and Second District  
authority. *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, 25 Cal. 4th 387 (2001); *Eastwood*,  
149 Cal. App. 3d at 422.

1           *Guglielmi* only holds that, at the time of the action, Rudolph Valentino’s heirs had no right  
2 to publicity causes of action because it was personal to the actor. *Guglielmi*, 25 Cal. 3d at 861  
3 (statute later amended). Defendants also cite *Polydoros v. Twentieth Cent. Fox Film Corp.*, 67 Cal.  
4 App. 4th 318 (1997). *Polydoros* turned on whether plaintiff’s identity had been used at all. The  
5 Court states that movies have just as much right to First Amendment protection as news reporting,  
6 but does not state they have a right to more protection. *Id.* at 323 (“No person seeing this film could  
7 confuse the two [plaintiff and the purely fictional character].”) Finally, Defendants cite *Daly v.*  
8 *Viacom, Inc.*, 238 F. Supp. 2d 1118 (N.D. Cal. 2002). In *Daly*, plaintiff signed a contract and  
9 agreed to be filmed in connection with a television show. There was no claim that defendants  
10 falsified information in the broadcast in which plaintiff willingly participated. *Daly* does not stand  
11 for the proposition that the First Amendment protects all speech or pictures simply because they are  
12 in a film. *Id.*<sup>3</sup> Further, the reasoning of *Daly* has been criticized and limited to its facts by other  
13 courts, in right to publicity cases involving false statements and endorsements. *Browne*, 611 F.  
14 Supp. 2d at 1072 (“RNC’s reliance on *Daly v. Viacom* is similarly unpersuasive. This Court is not  
15 bound by the district court’s decision in that case, which the Court finds factually distinguishable  
16 from the current case.”).

17                           **ii. Defendants Cannot Meet Their Burden on the Public Affairs or**  
18                           **Public Interest Affirmative Defenses**

19           When analyzing a defendant’s affirmative defenses on an anti-SLAPP motion, in order to  
20 prevail, the defendant must show that its evidence bars the plaintiff’s claim as a matter of  
21 law. *Overstock.com, Inc.*, 151 Cal. App. 4th at 699-700. There are exceptions to right to publicity  
22 claims which include news, sports and public affairs and public interest broadcasts. Cal. Civ. Code  
23 § 3344(d); *Browne*, 611 F. Supp. 2d at 1071-1072.

24           ///

25           ///

26           <sup>3</sup> In footnote 12, page 13 of their Motion, Defendants string cite a number of out-of-state, mostly  
27 federal district court and court of appeals cases, which deal with the law of other states, including  
28 statutes which differ significantly from California law. To the extent that any of these foreign cases  
contradict controlling California law, they are not authoritative; to the extent that they deal with  
different statutory language, they are irrelevant.

1           However, the District Court in *Browne* discussed the fact that the defense is limited: “a mere  
2 finding of ‘public interest’ alone does not automatically exempt a defendant from liability on a right  
3 of publicity claim.” *Id.* at 1071 (quotation omitted) (denying motion and discussing inapplicability  
4 of privilege to use of a plaintiff’s identity in a knowingly false manner). None of the defenses  
5 preclude either cause of action where the broadcast includes false statements, particularly fake  
6 interviews with a celebrity and false endorsements. *Id.*; *see also Eastwood v. National Enquirer,*  
7 *Inc.*, 123 F.3d 1249 (9th Cir. 1997).

8           The Second District Court of Appeal discussed the limits on public interest in the demurrer  
9 context in *Eastwood*, 149 Cal. App. 3d at 409.<sup>4</sup> Actor Clint Eastwood brought an action against a  
10 newspaper for false light and infringement of his right to publicity, the latter under both common  
11 law and the previous version of § 3344, when it published an unauthorized, false article about a love  
12 triangle between Eastwood, his real life partner, and another celebrity.<sup>5</sup> The Court of Appeal  
13 granted Eastwood’s writ of mandamus, reversing the trial court’s order based on “public interest”  
14 protection of news under the First Amendment. *Eastwood*, 149 Cal. App. 3d at 413. The Court of  
15 Appeal held that celebrities, as a consequence of their fame, relinquish some, but not all, of their  
16 rights to privacy and publicity:

17           [A]bsolute protection of the press in the case at bench requires a total  
18 sacrifice of the competing interest of Eastwood in controlling the commercial  
19 exploitation of his personality. Often considerable money, time and energy  
20 are needed to develop the ability in a person’s name or likeness to attract  
21 attention and evoke a desired response in a particular consumer market.  
22 Thus, a proper accommodation between these competing concerns must be  
23 defined, since “the rights guaranteed by the First Amendment do not require  
24 total abrogation of the right to privacy”, and in the case at bench, *the right of*  
25 *publicity.*

26           As noted earlier, all fiction is literally false, but enjoys constitutional  
27 protection. However, the deliberate fictionalization of Eastwood’s  
28 personality constitutes commercial exploitation, and becomes actionable  
[under the common law and section 3344] when it is presented to the reader  
as if true with the requisite scienter.

26 <sup>4</sup> The *Eastwood* case was not cited by Defendants. “Attorneys are officers of the court and have an  
27 ethical obligation to advise the court of legal authority that is directly contrary to a claim being  
28 pressed . . . .” *In re Reno*, 55 Cal. 4th 428, 510 (2012).

<sup>2</sup> Cal. Civ. Code § 3344 was amended in 1984, shortly after the writ of mandamus was issued in  
*Eastwood*. However, the changes in the law do not change the analysis here.

1 *Id.* at 422, 425-26 (emphasis added) (internal citations omitted).

2 Similarly, in a federal case involving Senator John McCain’s bid for president, the District  
3 Court denied the RNC’s anti-SLAPP motion when defending against the right to publicity cause of  
4 action brought by celebrity singer Jackson Browne. *Browne*, 611 F. Supp. 2d at 1062. The Court  
5 held that public interest did not preclude a cause of action based on the misuse of Browne’s identity  
6 and a song he wrote, in a political broadcast, and that Browne demonstrated his identity was used,  
7 without consent, for the commercial benefit of the campaign. *Id.* at 1071. Additionally, defendants,  
8 simply by using Browne singing his song, falsely suggested that Browne, a lifelong Democrat,  
9 endorsed McCain and the RNC, causing him injury, which is not protected by the public interest or  
10 First Amendment defenses. *Id.* at 1065; *Eastwood*, 123 F.3d at 1249 (sustaining jury verdict on  
11 right to publicity claim based on magazine’s publication of fake interview).

12 Defendants created a fake interview which put false words into the mouth of Plaintiff for  
13 their own commercial benefit without her consent. They did so knowingly or with reckless  
14 disregard for the standards of practice in the entertainment industry. Casady Decl. ¶¶ 11, 13; Ladd  
15 Decl. ¶¶ 15-17. They also intentionally or recklessly set up the portrayal of de Havilland as if she  
16 were endorsing “Feud” and Defendants, which characterization is false. *Id.*; Supp Decl. of Olivia  
17 de Havilland (“ODH Supp. Decl.”) ¶ 2. Thus, Defendants’ use of Plaintiff’s identity is actionable.  
18 *Eastwood*, 123 F.3d at 1249; *Browne*, 611 F. Supp. 2d at 1062. There is no case, and Defendants  
19 cite none, holding that having some truthful statements in a published medium allows commercial  
20 exploitation of a celebrity through unconsented knowing or recklessly false representations. In fact,  
21 both *Eastwood* cases, where there was truthful information salted among the falsehoods, are to the  
22 contrary. *Id.*; *Solano v. Playgirl*, 292 F.3d 1078, 1089 (9th Cir. 2002) (“First Amendment does not  
23 protect knowingly false speech . . . . [W]e do not believe that the Legislature intended to provide an  
24 exemption from liability for a knowing or reckless falsehood under the canopy of ‘news.’ . . .  
25 section 3344 . . . (d), as it pertains to news, does not provide an exemption for a knowing or reckless

26 ///

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1 falsehood.”); *No Doubt*, 192 Cal. App. 4th at 1030 (same holding for public interest and affairs  
2 exemptions).<sup>6</sup>

3 Defendants cite *Dora v. Frontline Video*, 15 Cal. App. 4th 536 (1993), which is inapposite.  
4 *Dora* was a true documentary, involving filming of actual surfing on a public beach. There was no  
5 falsity issue in *Dora*, simply the broadcast in a documentary of an actual historical, public event.  
6 *Id.* at 546. Similarly, *Gionfriddo v. Major League Baseball*, 94 Cal. App. 4th 400 (2001) and  
7 *Montana v. San Jose Mercury News, Inc.*, 34 Cal. App. 4th 790 (1995) cited by Defendants are not  
8 instructive, as they do not deal with cases where there were false representations made about the  
9 celebrities or false endorsement claims. *Davis*, 775 F.3d at 1172 (denying anti-SLAPP claiming  
10 First Amendment and public affairs defenses, where football players’ identities were literally  
11 recreated in a video game playing football as in real life).

12 **iii. Defendants Cannot Meet their Burden of Proof that the Use of**  
13 **Plaintiff’s Identity Was Transformative**

14 Defendants claim that their motion should be granted because “Feud” is a docudrama which  
15 transformed the character of de Havilland, including by “depicting her falsely.” Motion at 14.  
16 Defendants cite *Comedy III*, 25 Cal. 4th at 387 and *Winter v. DC Comics*, 30 Cal. 4th 881 (2003),  
17 claiming de Havilland’s Identity was only “raw material” the value of which did “not derive from  
18 [her] celebrity fame . . . .” Motion at 14. Again, Defendants miss the mark.

19 In fact, in *Comedy III*, the California Supreme Court rejected a claim that hand drawings of  
20 the recognizable “Three Stooges,” on T-shirts were transformative art, and therefore not actionable,  
21 and held instead that the heirs did have a right to publicity claim for use of their images. The Court  
22 explained the transformative test:

23 Depictions of celebrities amounting to little more than the appropriation of  
24 the celebrity’s economic value are not protected expression under the First  
25 Amendment . . . . When artistic expression takes the form of a literal  
26 depiction or imitation of a celebrity for commercial gain, directly trespassing  
on the right of publicity without adding significant expression beyond that  
trespass, the state law interest in protecting the fruits of artistic labor

27 <sup>6</sup> Section 3344 was amended in 1984 to include public affairs among the exemptions. Cal. Civ.  
28 Code § 3344. The reasoning of *No Doubt*, *Eastwood*, *Browne* and *Solano* applies equally to public  
affairs as to news. *Michaels v. Internet Entm’t Grp., Inc.*, 5 F. Supp. 2d 823 (C.D. Cal. 1998).

1                   outweighs the expressive interests of the imitative artist. The right-of-  
2                   publicity holder [may still] enforce the right to monopolize the production of  
3                   conventional, more or less fungible, images of the celebrity.

4                   *Comedy III*, 25 Cal. 4th at 400, 405. The Supreme Court went on to find that the drawings of the  
5                   Three Stooges were not protected transformations:

6                   We can discern no significant transformative or creative contribution [in use  
7                   of the images of the Three Stooges]. [The artist's] undeniable skill is  
8                   manifestly subordinated to the overall goal of creating literal, conventional  
9                   depictions of The Three Stooges so as to exploit their fame. Indeed, were we  
10                  to decide that [the artist's] depictions were protected by the First  
11                  Amendment, we cannot perceive how the right of publicity would remain a  
12                  viable right other than in cases of falsified celebrity endorsements.  
13                  Moreover, the marketability and economic value of [the artist's] work derives  
14                  primarily from the fame of the celebrities depicted.

15                  *Id.* at 409.<sup>7</sup>

16                  In *No Doubt*, 192 Cal. App. 4th at 1018, the rock band, No Doubt, licensed the use of the  
17                  images of its members for use in a video game, where avatars sing some of their hit songs. No  
18                  Doubt sued Activision under the right to publicity laws, claiming that Activision used their  
19                  identities outside the scope of the license, singing songs they did not authorize and found  
20                  objectionable.<sup>8</sup> The Second District affirmed the denial of Defendants' anti-SLAPP Motion,  
21                  rejecting the claim that the work was transformative:

22                  The avatars [likenesses of plaintiffs, band members] perform those songs as  
23                  literal recreations of the band members. That the avatars can be manipulated  
24                  to perform at fanciful venues including outer space or to sing songs the real  
25                  band would object to singing, or that the avatars appear in the context of a  
26                  video game that contains many other creative elements, does not transform  
27                  the avatars into anything other than exact depictions of No Doubt's members  
28                  doing exactly what they do as celebrities.

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29                  <sup>7</sup> In *Winter*, the Supreme Court used the *Comedy III* transformative test in evaluating half-human,  
30                  half-worm creatures in outer space which resembled two country singers. 30 Cal. 4th at 881.  
31                  "[The] books do not depict plaintiffs literally . . . . [D]efendants essentially sold . . . DC Comics  
32                  depicting fanciful, creative characters, not pictures of the Winter brothers. This makes all the  
33                  difference." *Id.* at 890, 892. The claim of false endorsement was not dismissed but remanded to the  
34                  Court of Appeal. *Id.* at 886-887. *Winter* confirms that where the identity of the celebrity is a literal  
35                  imitation using the fame of the celebrity for commercial gain, the First Amendment does not protect  
36                  it or false statements or false endorsements.

37                  <sup>8</sup> "[V]ideo games are expressive works entitled to as much First Amendment protection as the most  
38                  profound literature. However, Activision's First Amendment right of free expression is in tension  
39                  with the rights of No Doubt to control the commercial exploitation of its members' likenesses." *No*  
40                  *Doubt*, 192 Cal. App. 4th at 1029 (internal citation omitted).

1 *Id.* at 1034. Defendants admit that they wanted to make the de Havilland character in “Feud” as  
2 much like the real celebrity as possible in order to give the docudrama authenticity. Murphy Decl.  
3 ¶¶ 14-15. They use de Havilland’s Identity, doing what she does in her real professional life,  
4 capitalizing on her fame. The fact that the words attributed to her and the purported endorsement  
5 are false does not transform the character into anything other than an exact depiction of de  
6 Havilland. *No Doubt* 192 Cal. App. 4th at 1034; Casady Decl. ¶ 11. This depiction of de Havilland  
7 was not transformative as a matter of law. *Id.*

8 **3. The Public Interest and Public Affairs Affirmative Defense Doctrines Do**  
9 **Not Preclude Suits Where Plaintiff Offers Proof of Intentional or**  
10 **Reckless Disregard of the Truth**

11 “As we have yet to see a defendant who admits to entertaining serious subjective doubt  
12 about the authenticity of an article it published, we must be guided by circumstantial evidence.”  
13 *Eastwood*, 123 F.3d at 1253 (affirming jury verdict, holding actual malice satisfied by  
14 circumstantial evidence that magazine did not properly investigate authenticity; defendants’ claims  
15 that they thought the article portrayed Eastwood sympathetically did not defeat malice); *Paulus v.*  
16 *Bob Lynch Ford, Inc.*, 139 Cal. App. 4th 659, 675 (2006) (“[S]ince it is rare that there will be a  
17 ‘smoking gun’ admission of improper motive – malice is established ‘by circumstantial evidence  
18 and inferences drawn from the evidence.’”) (citations omitted).

19 Plaintiff has presented legally sufficient evidence showing Defendants’ knowing or reckless  
20 disregard for the falsity of their depiction of Plaintiff in “Feud.”<sup>9</sup> Not only does she deny the  
21 statements made in “Feud,” but her reputation is based in large part on not engaging in such gossip.  
22 Casady Decl. ¶ 11; Ladd Decl. ¶ 17; ODH Decl. ¶¶ 4-5; ODH Supp. Decl. ¶¶ 3-7. Further, it is a  
23 standard protocol in the film industry to obtain consent from a living celebrity before using her  
24 Identity in a way to suggest she was endorsing the film. Casady Decl. ¶¶ 11, 13; Ladd Decl. ¶¶ 15-  
25

26 <sup>9</sup> “[F]alse statements uttered with actual malice serve no public interest, and where the strike  
27 opponent has demonstrated the requisite probability of success in showing such malice, as here, her  
28 complaint falls outside the purpose of the anti-SLAPP statute – indeed, it is not a SLAPP suit at  
all.” *Nguyen-Lam*, 171 Cal. App. 4th at 873. Based on the facts here, Defendants cannot meet their  
burden of showing that the first prong of the anti-SLAPP statute is satisfied.



1 16. Defendants, while touting “extensive” research, which they claim was “consistent with the  
2 historical record,” and portrayed Plaintiff in a “complementary” way, never obtained consent or  
3 talked to Plaintiff to verify any statements. Minear Decl. ¶¶ 11, 15; Murphy Decl. ¶¶ 14-15; ODH  
4 Decl. ¶ 4; Motion at 2; Zam Decl. ¶¶ 9-11. However, Defendants did ask one living celebrity, Don  
5 Bachardy, who was used in a minor way, for his consent. Decl. of Don Bachardy ¶ 5. Defendants  
6 also requested the consent of Joan Crawford’s heirs. Smith Decl. Ex. 7. Defendants admit there  
7 was no interview of de Havilland at the 1978 Academy Awards about the private relationship of  
8 Davis and Crawford, and that they made this up. *Id.*; *see also* Section (C)(2) *infra*. Further, they do  
9 not deny that Plaintiff did not comment on the drinking habits of Sinatra, that they did not contact  
10 Plaintiff, and that she did not endorse “Feud.”<sup>10</sup> *Id.*; ODH Supp. Decl. ¶ 2-4; Decl. of Gisele  
11 Galante (“Galante Decl.”) ¶ 4. Defendants clearly knowingly or recklessly disregarded the falsity  
12 of their depiction of Plaintiff, including a fake interview and false endorsement.<sup>11</sup> *Browne*, 611 F.  
13 Supp. 2d at 1062; *Eastwood*, 123 F.3d at 1257; Casady Decl. ¶¶ 11, 13.

14 The cases cited by Defendant, including *Davis v. Costa-Gravias*, 654 F. Supp. 653  
15 (S.D.N.Y. 2015) (docudramas are “appropriate and unexceptional *if the content is not distorted*  
16 *when dealing with public and political figures.*”) (emphasis added), to support their position are not  
17 California cases, are therefore not binding authority for this Court, and are interpreting law and  
18 statutes which are irrelevant to this action. The direct and circumstantial evidence shows

19 ///

20 ///

21 <sup>10</sup> Defendants suggest that they have license to have Plaintiff call her sister a “bitch,” even if she  
22 never did this. Motion at 9-10. They cite no authority for this proposition. The references they cite  
23 for her alleged use of the word “bitch” include two books, which mention Plaintiff only in passing,  
24 and they have her use the word “bitch” to describe only a role in a movie and a director who was  
25 mistreating the actors, not her sister or a friend in public. Supp. Decl. of Cort Casady (“Casady  
26 Supp. Decl.”) ¶¶ 6-7. Neither book has a reference to a firsthand source, and Defendants did not  
27 verify with Plaintiff when they could have. *Id.*; ODH Supp. Decl. ¶¶ 2, 7.

28 <sup>11</sup> If Defendants created a false impression that Plaintiff endorsed “Feud,” the causes of action have  
a lower level of protection, thus even if Plaintiff does not offer proof of malice, her causes of action  
may still stand. *Comedy III*, 25 Cal. 4th at 396 (“The right of publicity is often invoked in the  
context of commercial speech when the appropriation of a celebrity likeness creates a false and  
misleading impression that the celebrity is endorsing a product. . . . [T]he First Amendment does  
not protect false and misleading commercial speech, and . . . the right of publicity may often trump  
the right of advertisers to make use of celebrity figures.”).

1 unequivocally that Defendants knowingly published false statements about de Havilland. *See*  
2 Section (B)(3) *supra*.<sup>12</sup>

3 **C. Plaintiff Has a Probability of Success on Her False Light Claim**

4 **1. Elements for False Light**

5 A claim for violation of the right of privacy (false light) consists of “a publication that is  
6 false, defamatory, unprivileged, and has a tendency to injure or cause special damage.” *Hawran v.*  
7 *Hixson*, 209 Cal. App. 4th 256, 277 (2012) (affirming trial court’s denial of an anti-SLAPP motion  
8 where plaintiff had probability of success on false light and defamation claims based on false  
9 statements in press release, which itself was a matter of public interest). Defendants contest only de  
10 Havilland’s ability to prove falsity and defamation. Motion at 8-12.

11 Falsity is proven if Defendants’ actions portray Plaintiff in a “false light” or give a “false  
12 impression” of Plaintiff. *Solano*, 292 F.3d at 1082. Defamation is proven if a reasonable person in  
13 the position of plaintiff would be highly offended by the statements. *Id.* at 1082; 1084-84.<sup>13</sup> Injury  
14 for false light damages includes economic harm. *Kanarek v. Bugliosi*, 108 Cal. App. 3d 327, 336  
15 (1980). Plaintiff offers substantial evidence of each element false light, and there is no affirmative  
16 defense on which Defendants can prevail as a matter of law.<sup>14</sup>

17 ///

18 \_\_\_\_\_  
19 <sup>12</sup> *Seale v. Gramercy Pictures*, 964 F. Supp. 918 (E.D. Penn. 1997) is also not on point. In *Seale*,  
the Court held that malice was not satisfied as defendants had consulted plaintiff’s own book for the  
20 challenged statements, unlike here. *Id.* at 927-29.

21 <sup>13</sup> Defendants assert that defamation is a question of law to be decided by the Court. Motion at 10.  
However, the case cited by Defendants stands for this proposition only “[i]f the material complained  
22 of is not fairly susceptible of a defamatory meaning . . .” *Polygram Records, Inc. v. Superior*  
*Court*, 170 Cal. App. 3d 543, 551 (1985). “If the language is capable of two meanings . . . one  
23 defamatory, it is the province of the trier of fact to determine in which sense the language was used  
and understood.” *Id.*; *see also ZL Techs., Inc. v. Does 1-7*, 13 Cal. App. 5th 603, 624-25 (2017).  
24 Portrayal of Plaintiff as a gossip who publicly uses vulgar language is defamatory. *Burnett v. Nat’l*  
*Enquirer, Inc.*, 144 Cal. App. 3d 991, 1013 (1983) (Plaintiff’s portrayal as a rude drunk was  
25 defamatory).

26 <sup>14</sup> Under California law, privilege is an affirmative defense. *Jacobson v. Schwarzenegger*, 357 F.  
Supp. 2d 1198, 1217 (C.D. Cal. 2004). To meet this, Defendants would have to show that the  
27 communication was made in judicial or quasi-judicial proceedings or that it was a “made without  
malice to protect a recognized interest” for qualified privilege. *Beroiz v. Wahl*, 84 Cal. App. 4th  
28 485, 492-93 (2000). Defendants offer no evidence of any such privilege. *Eastwood*, 123 F.3d at  
1249; ODH Decl. ¶ 4; *see also* Section (B)(3) *supra*.

1                                    2.        **Evidence in Support of False Light Comes from Defendants and Plaintiff**

2                                    Defendants clearly, and as they admit, publicized “Feud,” using the character of de  
3                                    Havilland as if she had made the statements and taken the actions they attribute to her. Zam Decl.  
4                                    ¶¶ 11-14; Murphy Decl. ¶¶ 7, 14-20; Minear Decl. ¶¶ 7-15; Berkley Decl. Ex. 54; Gibbons Decl. ¶¶  
5                                    10-13. Specifically, Defendants admit “Feud” places de Havilland in a counterfeit interview, one  
6                                    which never happened. ODH Decl. ¶ 5; Minear Decl. ¶¶ 7, 15; Zam Decl. ¶¶ 9, 11; Gibbons Decl. ¶  
7                                    10; Ladd Decl. ¶ 17; Casady Decl. ¶ 11. Defendants admit there was no interview of de Havilland  
8                                    in 1978 at the Academy Awards about the private relationship of Davis and Crawford, and that they  
9                                    made this up. *See generally* Motion; *see also* Minear Decl. ¶¶ 7, 15; Zam Decl. ¶¶ 9, 11; Gibbons  
10                                    Decl. ¶ 10. In that fake interview, de Havilland gossips and makes negative comments about Davis  
11                                    and Crawford’s personal life. Casady Decl. ¶ 11; Ladd Decl. ¶ 17; Berkley Decl. Ex. 54 (“Feud”  
12                                    episode 7). De Havilland never said these things. Casady Decl. ¶ 11; ODH Decl. ¶ 5; ODH Supp.  
13                                    Decl. ¶ 3; Minear Decl. ¶¶ 7, 15. “Feud” also has de Havilland call her sister, actor Fontaine, a  
14                                    “bitch” to others in the profession. Minear Decl. ¶¶ 15, 19; Murphy Decl. ¶¶ 16-18. She did not do  
15                                    this. ODH Decl. ¶ 6; ODH Supp. Decl. ¶ 5-6.<sup>15</sup> “Feud” has de Havilland sniping to Davis about  
16                                    Sinatra’s drinking habits. Casady Decl. ¶ 11; Minear Decl. ¶ 15; Berkley Decl. Ex. 54. This is not  
17                                    true. Minear Decl. ¶ 15; ODH Supp. Decl. ¶ 4; Galante Decl. ¶ 5. “Feud” and its promotional  
18                                    material is designed to give the impression that Plaintiff participated in and endorsed “Feud,” and  
19                                    the hurtful things her character says in the show. Casady Decl. ¶¶ 11, 13; Ladd Decl. ¶ 17. It gives  
20                                    the impression that today de Havilland is complicit in having herself in real life make such

21                                    \_\_\_\_\_  
22                                    <sup>15</sup> Defendants assert that “Dragon Lady,” as Plaintiff referred to her sister in an interview after her  
23                                    sister’s death, and on her 100<sup>th</sup> birthday, is a synonym to “bitch.” Defendants claim that having  
24                                    Plaintiff call her sister a “bitch,” is true. Motion at 9. They cite to the Merriam Webster definitions  
25                                    of the two words. *Id.* at 9 n.8. However, their own citations show the falsity. “Dragon Lady” is  
26                                    defined as “an overbearing or tyrannical woman; also: a glamorous often mysterious woman[.]” and  
27                                    “bitch” as “**a** *often offensive*: a lewd or immoral woman[.] **b** *often offensive*: a malicious, spiteful, or  
28                                    overbearing woman – sometimes used as a generalized term of abuse[.]” Merriam Webster,  
<https://www.merriam-webster.com/>. Clearly the two words are not equal, and the change in  
terminology from “Dragon Lady” to “bitch” is not a “slight” or “minor” inaccuracy. Motion at 8-9  
(quoting *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1262-63 (2017); Casady Supp. Decl. ¶ 8.  
There is a vulgar “F word” for “intercourse,” but no one would reasonably suggest that the two have  
the same implication.

1 statements, and also gives the impression that she endorsed that dialogue now in a television  
2 program. Casady Decl. ¶¶ 11, 13; Ladd Decl. ¶ 17. In fact, Plaintiff did not endorse “Feud” and  
3 she does not approve of the characterizations or comments made by “Feud,” particularly with  
4 respect to her. ODH Supp. Decl. ¶¶ 2, 9-10.

5 Defendants “dressed up” the fake statements in the guise of real, historical events to make  
6 the false statements appear authentic. Murphy Decl. ¶ 16 (discussing adding *Fontaine’s* claim  
7 (which is not true) that Plaintiff broke her collarbone to the “bitch sister” comment); Minear Decl.  
8 ¶¶ 14-15 (“we made sure not to put the de Havilland character in places where [she] did not actually  
9 appear . . . Ms. de Havilland attended the 1978 Academy Awards. . . Ms. de Havilland was not  
10 actually interviewed at the 1978 Academy Awards . . .”); Casady Decl. ¶ 11 (“There is an  
11 interview set at the 1978 Academy Awards ceremony, where Miss de Havilland did present an  
12 award. . . There are scenes with Miss de Havilland at the 1963 Academy Awards where the real  
13 Miss de Havilland did present the Best Picture Award. . . great attention [is] paid to the character  
14 of Miss de Havilland in “Feud,” to give the film extra realism . . .”).

15 Not only are the statements and conduct that “Feud” attributes to de Havilland false, but  
16 they were highly offensive to her. ODH Decl. ¶¶ 5-7; ODH Supp. Decl. ¶¶ 3-7, 9-10; Galante Decl.  
17 ¶ 5. The statements cast de Havilland in an untrue and ill-mannered fashion, which contradicts the  
18 professional reputation built over many decades of being a loyal friend, and person of integrity and  
19 restraint. They are not minor or insignificant.<sup>16</sup> Casady Decl. ¶¶ 11-12; Roesler Decl. ¶¶ 15, 20-21.  
20 “Feud” portrayed Plaintiff as a gossip, using vulgar language with regard to others.<sup>17</sup> Minear Decl.

21  
22 <sup>16</sup> None of the cases Defendants cite hold that falsehoods of the kind which Defendants admit to are  
23 not actionable. In *Carver v. Bonds*, 135 Cal. App. 4th 328, 351-52 (2005), there was a minor  
24 exaggeration of the number of times complaints were filed against Plaintiff. In *Gilbert v. Sykes*,  
25 Plaintiff plastic surgeon told Defendant that she would “look natural after surgery and that we didn’t  
26 want to make too such change.” 147 Cal. App. 4th 13, 30 (2007). The Court held Defendant’s  
27 statement online that she thought the surgery changes would be “subtle” was protected by the “truth  
28 defense.” *Id.* In *Jackson*, Defendant’s “exaggerated description of the extent of [Plaintiff]’s  
cosmetic surgery was, in substance, truthful” and plaintiff put on no expert evidence to the contrary.  
*Jackson*, 10 Cal. App. 5th at 1265.

<sup>17</sup> Defendants filed outtakes from 1944, Berkley Decl. Exs. 44, 46, 48. These show a number of  
stars, including Davis, Ronald Reagan, Jimmy Stewart, using expletives when they missed a line or  
made a mistake. On this video is a young Plaintiff using expletives directed to herself, when she  
missed a line, and not in public. This tasteless use of private moments, never meant by the stars,

¶¶ 7, 15; Zam Decl. ¶¶ 9, 11; Ladd Decl. ¶ 17; Casady Decl. ¶¶ 11-13; *Eastwood*, 123 F.3d at 1249 (claim that Eastwood was humiliated by the suggestion that he would give an interview to the sensationalist publication, the “National Enquirer,” was sufficient for damages award for defamation).

Defendants’ conduct here clearly has a tendency to injure Plaintiff or cause special damages. Roesler Decl. ¶¶ 21-25; Ladd Decl. ¶ 17; Casady Decl. ¶¶ 11-13. Plaintiff has also incurred costs in attempting to mitigate the false statements. Smith Decl. ¶¶ 4-5. Plaintiff has offered sufficient evidence of actual malice. *See* Section (B)(3) *supra*.<sup>18</sup>

### III. CONCLUSION

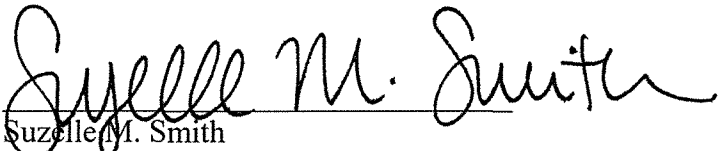
Based on controlling law and the clear and convincing evidence submitted by all parties, viewed in the light most favorable to the non-moving party, the Motion should be denied in its entirety.

Dated: September 15, 2017

Respectfully submitted,  
HOWARTH & SMITH

DON HOWARTH  
SUZELLE M. SMITH  
ZOE E. TREMAYNE

By:

  
Suzelle M. Smith  
Attorneys for Plaintiff  
OLIVIA DE HAVILLAND, DBE

including Plaintiff, to be made public, obviously does not show that Plaintiff is vulgar, and or that she would ever use such a term to refer to her sister or other actors. Casady Supp. Decl. ¶ 5. Indeed, even Defendants claim that is not the impression they know to be true of her real reputation. Minear Decl. ¶ 18; Murphy Decl. ¶¶ 15, 19; Zam Decl. ¶ 14. The outtakes are completely irrelevant and were not used in “Feud.”

<sup>18</sup> Defendants argue that as “Feud” is classified by its writers as a “docudrama,” it is per se unreasonable to for an audience to think the statements are verifiable fact. Motion at 10. Defendants cite to *Partington v. Bugliosi*, 56 F.3d 1147 (9th Cir. 1995), where the Court, interpreting Hawaii law, held the statements at issue were not defamatory as they were the personal viewpoint of Defendant and were not objectively verifiable facts. *Id.* at 1155-61. The case at issue applies California law, and includes substantial evidence from Defendants and Plaintiff that the endorsement and words spoken were not true. Casady Decl. ¶¶ 11-13; Ladd Decl. ¶ 17; ODH Decl. ¶¶ 4-7; ODH Supp. Decl. ¶¶ 2-10; Zam Decl. ¶¶ 9-11; Murphy Decl. ¶¶ 13; 16-18; Minear Decl. ¶¶ 7, 9-10, 13-19; Gibbons Decl. ¶¶ 10-13.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:

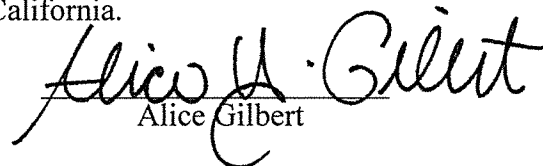
**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S  
THIRD AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP  
STATUTE, CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq. Robert Rotstein, Esq. Mitchell Silberberg & Knupp LLP 11377 W. Olympic Boulevard Los Angeles, CA 90064  <i>Attorneys for FX Networks, LLC and Pacific 2.1 Entertainment Group, Inc.</i>
--

- (BY FEDERAL EXPRESS) I caused such document to be transmitted with fees thereon fully prepaid via federal express to the offices of the above addressees.
- (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.
- (BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
7 ztremayne@howarth-smith.com  
8 523 West Sixth Street, Suite 728  
9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

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County of Los Angeles

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By: M. Soto, Deputy  
Moses Soto

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual,  
17 Plaintiff,

18 vs.

19 FX NETWORKS, LLC, a California limited  
20 liability company; PACIFIC 2.1  
21 ENTERTAINMENT GROUP, INC., a California  
22 corporation; and DOES 3 through 100, inclusive,

23 Defendants.

CASE NO. BC667011

[Complaint Filed June 30, 2017]

Assigned for all purposes to: Hon. Holly E.  
Kendig

**DECLARATION OF DAME OLIVIA DE  
HAVILLAND IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION TO STRIKE  
PLAINTIFF'S THIRD AMENDED  
COMPLAINT PURUSANT TO  
CALIFORNIA'S ANTI-SLAPP STATUTE,  
CAL. CIV. PROC. CODE § 425.16**

Hearing Date: September 29, 2017

Time: 8:30 am

Location: Department 42

Reservation ID: 170727238249

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I, Dame Olivia de Havilland, declare as follows:

1. I am the sole Plaintiff in the above entitled matter. The following facts are within my personal knowledge and, if called as a witness herein, I can and will completely testify thereto.

2. I reside in Paris, France.

3. My date of birth is July 1, 1916, and at present I am 101 years old.

4. I did not give my permission to the creators of "Feud" to use my name, identity or image in any manner.

5. I never gave an interview in which I talked about the personal relationship of Miss Bette Davis and Miss Joan Crawford.

6. I did not tell any director or producer that my sister, Miss Joan Fontaine was a "bitch." This kind of vulgarity is not language that I use.

7. The false statements and unauthorized use of my name, identity and image by the creators of "Feud" have caused me discomfort, anxiety, embarrassment, and distress.

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

Executed this JULY 4<sup>TH</sup>, 2017 in Paris, France.

*Olivia de Havilland*

---

Dame Olivia de Havilland



**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:

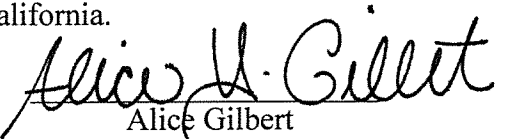
**DECLARATION OF DAME OLIVIA DE HAVILLAND IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD  
AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE,  
CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
2.1 Entertainment Group, Inc.*

- (BY FEDERAL EXPRESS) I caused such document to be transmitted with fees thereon fully prepaid via federal express to the offices of the above addressees.
- (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.
- (BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
7 ztremayne@howarth-smith.com  
8 523 West Sixth Street, Suite 728  
9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

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Superior Court of California  
County of Los Angeles

SEP 15 2017

Sherri R. Carter, Executive Officer/Clerk  
By: M. Sato, Deputy  
Moses Sato

7 Attorneys for Plaintiff  
8 OLIVIA DE HAVILLAND, DBE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11 OLIVIA DE HAVILLAND, DBE, an individual,  
12 Plaintiff,  
13 vs.  
14 FX NETWORKS, LLC, a California limited  
15 liability company; PACIFIC 2.1  
16 ENTERTAINMENT GROUP, INC., a California  
17 corporation; and DOES 3 through 100, inclusive,  
18 Defendants.

) CASE NO. BC667011  
)  
) [Complaint Filed June 30, 2017]  
)  
) Assigned for all purposes to: Hon. Holly E.  
) Kendig  
)  
) **SUPPLEMENTAL DECLARATION OF**  
) **DAME OLIVIA DE HAVILLAND IN**  
) **SUPPORT OF PLAINTIFF'S**  
) **OPPOSITION TO DEFENDANTS'**  
) **MOTION TO STRIKE PLAINTIFF'S**  
) **THIRD AMENDED COMPLAINT**  
) **PURUSANT TO CALIFORNIA'S ANTI-**  
) **SLAPP STATUTE, CAL. CIV. PROC.**  
) **CODE § 425.16**  
)  
) Hearing Date: September 29, 2017  
) Time: 8:30 am  
) Location: Department 42  
) Reservation ID: 170727238249

22 ///  
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I, Dame Olivia de Havilland, declare as follows:

1. I am the sole Plaintiff in the above entitled matter and the following facts are within my personal knowledge.

2. No one associated with "Feud: Bette and Joan" contacted me at any time regarding the use of my name and identity for the portrayal of me in the show. I did not give my permission to the creators of "Feud" to use my name, identity or image in any manner. I did not endorse "Feud," and I did not speak with anyone from "Feud" regarding the program or its contents or accuracy.

3. I am aware that in "Feud" there is a character designed to look like me, sound like me, and do many of the things that I did and do as a professional actor, such as appear in movies, give interviews, and make presentations at the Academy Awards. I never gave an interview in which I talked about the personal relationship of Miss Bette Davis and Miss Joan Crawford. I considered Bette Davis a close personal friend and an actor I greatly admired. In my opinion, Bette would have considered it a betrayal for me to discuss her personal life and relationship with Joan Crawford in an interview, and I would have considered that to be so. I find it extremely offensive that the producers of "Feud" chose to use my life, reputation, and name in such a dishonest way for their own commercial purpose in sensationalizing their show.

4. I never commented to Bette Davis about Mr. Frank Sinatra's drinking habits, and to have done so would not have been my normal conduct, custom or habit.

5. I never had a conversation with Bette Davis where I referred to my sister, Joan Fontaine, as a "bitch," and I would not have done so.

6. I never had a conversation with director Robert Aldrich about "Hush... Hush, Sweet Charlotte," wherein I used the word "bitch," or said "you know how much I hate to play bitches; they make me so unhappy." (I hope you will excuse the present use of the word.)

7. If the producers of "Feud" had asked me, I could have told them what in the script attributed to me was inaccurate, but they did not ask.

8. I am aware that Defendants filed certain outtakes from 1944, where I and a number of other actors at Warner Bros., such as Lauren Bacall, Bette Davis, Ronald Reagan, and Jimmy Stewart made mistakes and used slang type expletives expressing frustration with ourselves. These were unguarded, impulsive moments, wherein I felt I was in a confidential setting. They were not public. Looking back at my younger self, I wish I had been more guarded in my language, but these outtakes or bloopers are just that, mistakes and errors, not language that I did or would use in discussing other friends or family in a normal, polite, private or public forum.

9. I do not approve of my characterization, or the untrue comments my character made, in "Feud."

10. The false statements and conduct that "Feud" attributes to me are highly offensive to me.

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

Executed this 10<sup>th</sup> day of September, 2017 in Paris, France.

A handwritten signature in black ink, appearing to read "O de H", with a stylized flourish at the end.

---

Dame Olivia de Havilland

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:


**SUPPLEMENTAL DECLARATION OF DAME OLIVIA DE HAVILLAND IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE, CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
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Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
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Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

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4 SUZELLE M. SMITH, (SBN 113992)  
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11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual, )

17 Plaintiff, )

18 vs. )

19 FX NETWORKS, LLC, a California limited )  
20 liability company; PACIFIC 2.1 )  
21 ENTERTAINMENT GROUP, INC., a California )  
22 corporation; and DOES 3 through 100, inclusive, )

23 Defendants. )

CASE NO. BC667011

[Complaint Filed June 30, 2017]

Assigned for all purposes to: Hon. Holly E. Kendig

**DECLARATION OF CORT CASADY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT PURSUANT TO CALIFORNIA'S ANTI-SLAPP STATUTE, CAL. CIV. PROC. CODE § 425.16**

Hearing Date: September 29, 2017

Time: 8:30 am

Location: Department 42

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Superior Court of California  
County of Los Angeles

SEP 15 2017

Sherri R. Carter, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

## Declaration of Cort Casady

I, Cort Casady, declare as follows:

1. I make this declaration based on my own personal knowledge and expert opinions, and if called as a witness, I could and would testify competently to the facts and opinions contained herein.

2. I have been retained as an expert for the purpose of forming and expressing an opinion in connection with this litigation. My hourly rates and daily fees are: \$250 per hour for initial review (minimum of 2 hours); \$275 per hour for deposition fees (minimum of 3 hours); and \$300 per hour for court fees (minimum of 4 hours).

3. I began my professional career in the television and film industry as a writer on the *The American Flyer*, a pilot for an entertainment magazine series. My career as a producer began in Nashville on *The Music City News Songwriter Awards*, where I produced live broadcasts for five years. Other awards show credits, as a producer and writer, include *The Blockbuster Entertainment Awards*, *The TV Guide Awards*, *The ALMA Awards*, *The Soap Opera Digest Awards*, the 2013 and 2016 *Humanitas Prize Awards*, the 2005, 2006, 2009, 2013, and 2014 *Writers Guild Awards*, and *The 2015 Kennedy Center Honors*.

4. I won my first Emmy Award for *New York at Night with Clint Holmes*, a daily, live, prime time variety-talk series I created for Super Station WOR New York. I co-created the format for and launched the long-running *Star Search* reality competition series. Other series include television's first weekly, solutions-oriented environmental series, *Network Earth*, which was launched as *Earthbeat* and ran for five years on TBS; *Small Talk*, a prime time reality-comedy with kids on CBS; *The Great American Celebrity Spelling Bee*, a reality competition on Fox; and *When Animals Attack!*, a factual reality series on Fox. I am currently developing a documentary series on the crisis in our oceans and seas.

5. For the past fourteen years, I have been Supervising Producer of the *American Film Institute (AFI) Life Achievement Award* tributes to America's greatest actors and filmmakers: Robert De Niro (2003), Meryl Streep (2004), George Lucas (2005), Sean Connery (2006), Al Pacino (2007), Michael Douglas (2009), Mike Nichols (2010), Morgan Freeman (2011), Shirley MacLaine (2012), Mel Brooks (2013), Jane Fonda (2014), Steve Martin (2015), composer John Williams (2016), and Diane Keaton (2017). I won my second Emmy Award in 2014 for AFI's tribute to Mel Brooks. I have also written and produced television concert-documentary tributes to R&B legends Lou Rawls, Quincy Jones, Stevie Wonder (2007 Image Award winner), Aretha Franklin, Smokey Robinson (2009 Image Award winner), Patti LaBelle, Lionel Richie (2011 Image Award winner) and Chaka Khan.

6. In addition to television awards, tribute, documentary and variety programming, I have several film credits including the five-installment TV movie mini-series, *Kenny Rogers as The Gambler*, for which I created the original story and characters, and an original screenplay sold to actor-producer Michael Douglas and Columbia Pictures. I am the co-author of a musical play, *King of the Road: The Roger Miller Story*, which had its World Premiere at the Laguna Playhouse in 2017. I have also written infomercial projects for MGM, Royal Caribbean, and 3M and produced corporate events for Apple. Additionally, my non-televised work includes live events for The Larry King Cardiac Foundation, the Michael Bolton Charities, Harvard University, The Paley Center for Media, and The American Diabetes Association. I have also acted as an arbitrator in credit disputes before the Writers Guild of America, West, in which capacity I have reviewed scripts and analyzed their structure, style, language, composition, tone, theme, and character development, among other things, in order to render an opinion as to the fair attribution of writing credits among those involved in the arbitration.



7. During my career, I have produced and been involved with the production of television shows under my supervision as writer, creator, and producer which were completely fictional and shows which were partly biographical.

8. I have a B.A. from Harvard University in Government.

9. In connection with this matter, I have reviewed: (1) all the episodes of "Feud: Bette and Joan" produced by Ryan Murphy and FX ("Feud"); (2) promotional materials for "Feud;" (3) the declaration of Don Bachardy; (5) the declarations of Miss Olivia de Havilland; (6) the Second and Third Amended Complaints and their exhibits; (7) the declaration of Suzelle M. Smith; and (8) the Motion for Trial Setting Preference. I have also done research regarding Olivia de Havilland and the development of "Feud," including watching several interviews with Catherine Zeta-Jones about her portrayal of Olivia de Havilland in "Feud" and reviewed interviews with Ryan Murphy about the development of "Feud," including his statements about Olivia de Havilland, and I have seen the published statement of Fox 21 about "Feud" and the use of Miss de Havilland's name and identity in "Feud."

10. As an award-winning supervising producer for AFI's tributes to Hollywood's greatest actors and filmmakers, and as a writer, creator, and producer of televised documentaries, movies, live events, and specials, I am familiar with the protocols and standards in the entertainment industry for including the name, image, character, performance or identity of a celebrity in a script or production.

11. The standard practice in the film and television industry generally, and at AFI, Super Station WOR New York, CBS, Fox, TBS, TNT and other networks and organizations with which I have had business dealings, is that whenever a script or production calls for the inclusion of the name, identity, character, performance or image of a celebrity, consent from the celebrity or their legal representative must be obtained. If the use is significant, as in a supporting character role in a film, compensation needs to be paid for the value of that use. For any use without compensation, a release and waiver of

compensation must be obtained. Even for the minor use of the name and likeness of a celebrity, or a non-celebrity for that matter, if the use is to be broadcast, consent must be obtained. Frequently, compensation is paid, however, even when compensation is not paid, the celebrity or non-celebrity, is asked to sign a consent/waiver. To use the name and identity of a celebrity without permission is conduct below industry standard. To use the name and identity of Olivia de Havilland, in the way that she was used in “Feud,” cannot have been done by accident, but must have been an intentional act. Miss de Havilland is used as a narrator of the drama in “Feud,” an important structural element of the story. The first lines in the first episode of “Feud” are spoken by an actress, Catherine Zeta-Jones, playing Miss de Havilland in such a way as to establish Miss de Havilland’s presence in the series. Miss de Havilland is portrayed in six of eight episodes, and Ms. Zeta-Jones receives “special guest star” billing in the credits, immediately following Susan Sarandon (playing Bette Davis) and Jessica Lang (playing Joan Crawford), rather than being lumped into the long list of actor credits which follows. There is an interview set at the 1978 Academy Awards ceremony, where Miss de Havilland did present an award. References are made to the fact that Miss de Havilland and Bette Davis were well-known to have been close friends. There are scenes with Miss de Havilland at the 1963 Academy Awards where the real Miss de Havilland did present the Best Picture Award. In other words, there is clearly great attention paid to the character of Miss de Havilland in “Feud,” to give the film extra realism and to capitalize on the fame of the real-life Olivia de Havilland. As portrayed by Catherine Zeta-Jones, Miss de Havilland is not transformed in the artistic sense into some alien from outer space or a superhero parody, where the notoriety of the actual person might be camouflaged or incidental and any famous person might fill the role. To the contrary, Miss Zeta-Jones is called upon by the script to very much represent the real-life Olivia de Havilland, and she does so. The writers of “Feud” clearly and intentionally capitalized on the actual character and fame of Olivia de Havilland by depicting her doing things she

did, such as presenting at the Academy Awards and starring in movies, like “Hush Hush, Sweet Charlotte” and “Lady in a Cage,” both referenced in the series, while, at the same time, misrepresenting Miss de Havilland’s true character and putting false words in her mouth. For example, there is a fake interview with Miss de Havilland gossiping about the personal life of Bette Davis, her close friend, which never happened. The Olivia de Havilland character makes snide comments about Frank Sinatra’s drinking, which she never made in real life. Indeed, by conflating fact and fiction, the portrayal of Miss de Havilland is intended to and does convey falsely that the words delivered by her character should be believed, and the counterfeit interview with Miss de Havilland about Bette Davis and Joan Crawford’s relationship actually happened at the Academy Awards. In fact, Miss de Havilland denies that she ever gave any such interview or that she would have ever given such an interview about a friend’s relationship with another actor. I have found no such interview published or referenced by the producers. Nonetheless, the script is intentionally constructed to make it appear that Miss de Havilland participated in the events attributed to her in “Feud.” Furthermore, as she is the only significant character in “Feud” who is still living, and it is well known in the industry that she is alive (see for example articles about the 100<sup>th</sup> Birthday of Olivia de Havilland, and Wikipedia), it is obvious that the storyline for “Feud” was constructed to make it appear that Miss de Havilland actually made the statements about her private relationship with Bette Davis and Joan Crawford which were written for Catherine Zeta-Jones. To my knowledge, Miss de Havilland’s reputation over the decades has been that of an actor who has avoided participating in Hollywood gossip and, instead, is known for her integrity and decorum. The characterization of Miss de Havilland in “Feud” not only misrepresents her reputation, but also undermines the public image that she has projected and nurtured over a lifetime. Furthermore, the construction of “Feud’s” storyline is designed to appear to the viewer as if the still-living Miss de Havilland endorsed the production and its content, which is not true. It is not industry practice to use a

celebrity's name and identity in a commercial production without permission, and it is certainly beneath industry standards – in fact, it is production malpractice – to attribute false statements and inaccurate endorsements to a person portrayed in a production without their permission. As mentioned above, there are standard releases commonly used in the industry to obtain consent and industry standards for the negotiation of fair compensation. Olivia de Havilland's name and identity in "Feud" were significant to the overall dramatic impact of the series and the commercial success of "Feud." The truth about Miss de Havilland's position on not speaking publicly about the personal relationship of Miss Davis and Miss Crawford would have been easy for the writers and producers of "Feud" to discover, both by research from public sources and by contacting representatives of Miss de Havilland. Ryan Murphy and the other producers of "Feud" have admitted in the press they did not contact Miss de Havilland, and I know of nothing that undercuts her sworn statement that she did not make the comments attributed to her in "Feud." The conduct of the writers and producers of "Feud" is intentional and was done without regard for the truth.

12. The use of Miss de Havilland's name and identity without her permission and without compensation, if allowed to occur without consequence, depreciates the property value of her name and identity, which is considerable. Olivia de Havilland is a unique, two-time Oscar winner from the Golden Age of Hollywood, virtually the last of her kind. If anyone can use her name and identity without permission and compensation in the manner done by the producers and writers of "Feud," then Miss de Havilland loses the monetary value of her right to use of her own name and identity. And the fact that her name and identity have significant commercial value is clearly evidenced by the use of her name and identity in "Feud." In order for the property rights to have value to Miss de Havilland, she must be able to control their use and limit their use to productions for which she has given consent and which are accurate. "Feud's" unauthorized and untrue portrayal, left unchecked, has and will devalue Miss de Havilland's name and identity

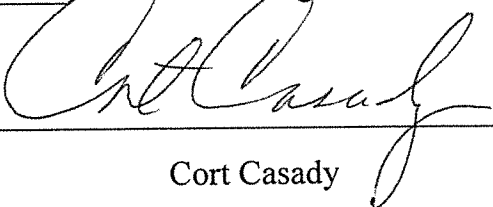
and her ability, and the ability of her heirs, to obtain compensation for such use now and in the future.

13. Another point here is that, if a film suggests that a celebrity has endorsed it or is part of the production, then, of course, the audience is likely to assume that this is true and consent has been obtained. "Feud" was written and produced to lead viewers to believe that Olivia de Havilland endorsed the production. She has sworn that she did not, and I have not seen any evidence from "Feud" to rebut that statement. Celebrity endorsements are very valuable to a series, and the right to use a celebrity's name and identity this way should be compensated. This valuable property right of any celebrity should not be allowed to be appropriated for the commercial advantage of a writer or studio without consent and compensation to the celebrity. The use of Miss de Havilland's name and identity to suggest an endorsement of "Feud," both in the production and in promotional materials, was done intentionally, with the knowledge of the writers and producers, knowing full well that Miss de Havilland had not, in fact, endorsed or participated in "Feud."

14. The statements and opinions herein are made with a reasonable degree of professional certainty and confidence.

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

Executed this 10th day of September, 2017 in Los Angeles, California.

  
\_\_\_\_\_  
Cort Casady

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:

**DECLARATION OF CORT CASADY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE, CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
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Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
2.1 Entertainment Group, Inc.*

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Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

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7 Attorneys for Plaintiff  
8 OLIVIA DE HAVILLAND, DBE

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Superior Court of California  
County of Los Angeles

SEP 15 2017

Sharri R. Garibi, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11 OLIVIA DE HAVILLAND, DBE, an individual, ) CASE NO. BC667011  
12 )  
13 Plaintiff, ) [Complaint Filed June 30, 2017]  
14 )  
15 vs. ) Assigned for all purposes to: Hon. Holly E.  
16 ) Kendig  
17 FX NETWORKS, LLC, a California limited )  
18 liability company; PACIFIC 2.1 )  
19 ENTERTAINMENT GROUP, INC., a California )  
20 corporation; and DOES 3 through 100, inclusive, )  
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22 Defendants. )  
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Hearing Date: September 29, 2017  
Time: 8:30 am  
Location: Department 42  
Reservation ID: 170727238249

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28 ///

I, Cort Casady, declare as follows:

1. I make this declaration based on my own personal knowledge and expert opinions, and if called as a witness, I could and would testify competently to the facts and opinions contained herein.

2. I prepared a declaration including my expert opinions based on my review of materials, other than the declarations filed by FX Networks, LLC and Pacific 2.1 Entertainment Group, Inc. (“Defendants”) in opposition to their Motion to Strike Plaintiff’s Third Amended Complaint. *See* Declaration of Cort Casady, dated September 10, 2017. I have now reviewed Defendants’ Motion to Strike pursuant to California’s Anti-SLAPP Statute, and the Declarations of Ryan Murphy, Stephanie Gibbons, Michael Zam, James Berkley, and Timothy Minear in support of such Motion. This supplemental declaration includes several points in addition to my original declaration.

3. Defendants’ declarations include hundreds of pages of exhibits, most of which are irrelevant to the issue at hand regarding the unconsented and false portrayal of Miss de Havilland.

4. For example, Exhibit 1 to the Declaration of Michael Zam consists of a copy of the “Best Actress” screenplay which, according to the declarations was used as a starting point for *Feud: Bette and Joan* (“Feud”). This script is filed as an exhibit in its entirety, and is over 100 pages long. However, the “Best Actress” script is not relevant here as it differs substantially from “Feud,” and is not the script used in “Feud.” The “Best Actress” script does not include the fake interview with Miss de Havilland at the 1978 Academy Awards, and it does not include the lines about her sister and others that are attributed to her in “Feud” which she denies ever saying. Further, the “Best Actress” script does not portray Miss de Havilland cursing or using the word “bitch.” The “Best Actress” script does not demonstrate that Defendants did not intentionally portray Miss de Havilland falsely, as I set forth in my initial declaration. It is not annotated and has no references to actual published comments by Miss de Havilland. Interestingly, the actual script used in “Feud” was not filed by Defendants. This final actual script almost certainly



would have been annotated, and there would have been notes about needing to secure the permission of Miss de Havilland, a living celebrity. The failure to file the actual “Feud” script is noteworthy.

5. Defendants include as Exhibit 44 to the Declaration of James Berkley a video titled “Breakdowns of 1944,” a “bloopers reel” which shows a number of celebrities, including Bette Davis, Ronald Reagan, Humphrey Bogart, Jimmy Stewart and others, using expletives and cursing themselves when they have missed a line or made a mistake during filming. Included in this video is a young Miss de Havilland using expressions directed at herself when she missed a line during filming on a private film set. Like the other actors, especially at the time, she would have assumed that such moments were private and such outtakes would not be seen by the public. Also, scolding yourself using the expression, “son of a bitch,” is not the vernacular or verbal equivalent of calling someone a “bitch” or using the expletive “bitch” in conversation. I also note that in Exhibit 59 to the Declaration of Mr. Berkley titled “Video Compilation,” the outtakes in which Miss de Havilland uses the expressions “son of a bitch” and “Oh, Christ” are included twice, as if to imply that she said these things more often than the evidence indicates. Moreover, none of these outtake moments are used in “Feud,” and they do not justify putting words into a living person’s mouth in a television series that is to be broadcast publicly.

6. Defendants rely on Miss de Havilland’s supposed use of the word “bitch” during a private conversation she reportedly had with director Robert Aldrich in which she supposedly said, “You know how much I hate to play bitches. They make me *so* unhappy.” As a source of this quote, Defendants rely on a book by Shaun Considine called “Bette & Joan: The Divine Feud,” attached as Exhibit 19 to the Declaration of James Berkley. This book makes no reference or citation to support this statement. In addition, this supposed quote from Miss de Havilland is directly contradicted by Defendants’ own sources. Exhibit 25 to the Declaration of James Berkley includes three newspaper articles discussing a reported phone call between Robert Aldrich and Miss de Havilland. None of these articles state that Miss de Havilland used the word “bitch” in conversation with Robert Aldrich. In fact, one article mentions Miss de

Havilland's concerns about the role because, at first, she thought "the part was just too evil for me . . ." Miss de Havilland herself has commented on this conversation, including that she did not talk about "bitches." Given the lack of support for this statement and the very well-known public reputation of Miss de Havilland as a consummate lady, refusing to even ask Miss de Havilland about the truth of this comment was intentional disregard by Defendants of the truth of the statements.

7. The Declaration of James Berkley cites another book, "Round Up the Usual Suspects: The Making of Casablanca – Bogart, Bergman, and World War II" by Aljean Harnetz, attached as Exhibit 52 to Mr. Berkley's declaration. This book discusses an alleged private conversation between Samuel Goldwyn, Jr. and Miss de Havilland in which Miss de Havilland supposedly vented about director Michael Curtiz who was mistreating actors, stating "he was a son of a bitch when I was seventeen, and he's still a son of a bitch." Again, this book includes no reference or citation to support this statement. Further, Defendants do not state that they relied on this book while creating "Feud," rather it was obtained later for the purposes of their Motion. *See* Declaration of Timothy Minear at ¶ 12. This book could not have formed a basis for their mischaracterization of Miss de Havilland, and, again, this supposed conversation did not appear in "Feud."

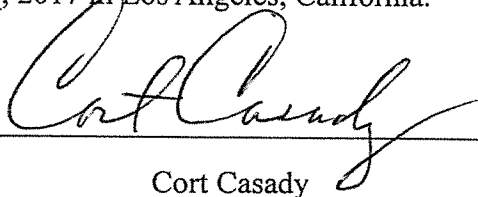
8. The declaration of Ryan Murphy states that he chose to have Miss de Havilland's character use the word "bitch" instead of "Dragon Lady" because "bitch" is a more contemporary term and, according to Mr. Murphy, the two expressions are equivalent in meaning and usage. Murphy Decl. at ¶ 17. As a professional writer and a reader, it's clear to me that these expressions do not have the same meaning and are not considered to be of equal vulgarity and offensiveness in the literary world. Instead of using the expression that Miss de Havilland used to describe her sister ("Dragon Lady"), Defendants opted to put a vulgar, value-laden, contemporary slang expletive in her character's mouth, an expression which Miss de Havilland did not use publicly or authorize to be used.

9. The declaration of Timothy Minear claims that the use of Miss de Havilland was sporadic and minor. Minear Decl. at ¶ 11. This is not true, as Defendants themselves admit. Indeed, Mr. Minear concedes that the character of Miss de Havilland was the narrator, and her interview provided the framework for the rest of the drama. Minear Decl. ¶¶ 7; 15. Use of Miss de Havilland in six out of eight episodes, and as the initial voice opening the series, is not minor or sporadic but significant and crafted to advance the story line.

10. None of the declarations filed by Defendants change my opinions and analysis as set forth in my original declaration. In fact, these declarations and their references are mostly a huge download of information about other actors, or simple notations that Miss de Havilland appeared at a certain place or time or was in a movie. They do not support or justify the false statements, the false endorsement, and the fake interview with Miss de Havilland which place her in an unfavorable and misleading light. Also, importantly, none of the declarations filed by Defendants explain or justify Defendants' outright failure to secure Miss de Havilland's permission to be included in "Feud."

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

Executed this 13<sup>th</sup> day of September, 2017 in Los Angeles, California.

  
Cort Casady

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:


**SUPPLEMENTAL DECLARATION OF CORT CASADY IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD  
AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE,  
CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
2.1 Entertainment Group, Inc.*

- (BY FEDERAL EXPRESS) I caused such document to be transmitted with fees thereon fully prepaid via federal express to the offices of the above addressees.
- (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.
- (BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
7 ztremayne@howarth-smith.com  
8 523 West Sixth Street, Suite 728  
9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

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Superior Court of California  
County of Los Angeles

SEP 15 2017

Sherri R. Lazari, FACILITY OFFICER/Clerk  
By: M. Soto, Deputy  
Moses Soto

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual,  
17 Plaintiff,

18 vs.

19 FX NETWORKS, LLC, a California limited  
20 liability company; PACIFIC 2.1  
21 ENTERTAINMENT GROUP, INC., a California  
22 corporation; and DOES 3 through 100, inclusive,  
23 Defendants.

) CASE NO. BC667011

) [Complaint Filed June 30, 2017]

) Assigned for all purposes to: Hon. Holly E.  
Kendig

) **DECLARATION OF DAVID LADD IN**  
) **SUPPORT OF PLAINTIFF'S**  
) **OPPOSITION TO DEFENDANTS'**  
) **MOTION TO STRIKE PLAINTIFF'S**  
) **THIRD AMENDED COMPLAINT**  
) **PURUSANT TO CALIFORNIA'S ANTI-**  
) **SLAPP STATUTE, CAL. CIV. PROC.**  
) **CODE § 425.16**

) Hearing Date: September 29, 2017

) Time: 8:30 am

) Location: Department 42

) Reservation ID: 170727238249

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## Declaration of David Ladd

I, David Ladd, declare as follows:

1. I make this declaration based on my own personal knowledge and, if called as a witness, I could and would testify competently to the facts contained herein.

2. My professional career in Hollywood began in 1956, when I was 9 years old, with a supporting role in a film starring my father, titled *The Big Land*. As a result of that film's success, Samuel Goldwyn Jr. offered me a role as a mute in the 1958 movie *The Proud Rebel*, once again playing opposite my father and co-starring Olivia de Havilland. I won a Golden Globe award as the "Best Juvenile Actor" and received a Best Supporting Actor Golden Globe nomination as well as numerous film critic awards in the years between 1958 and 1962. I was in a series of films over the next 20 years, including *The Sad Horse* (1959), *A Dog of Flanders* (1960), *Raymie* (also 1960) and *Misty* (1961), as well as appearing in numerous television shows including *Wagon Train*, *Gunsmoke*, *Bonanza*, *Zane Grey Theatre*, and Shirley Temple's *Story Book Theatre* (as Tom Sawyer). After college I returned to acting, and some of other feature film credits include *RPM* (1970), *Deathline* (1973), *The Day of the Locust* (1975), *The Treasure of Jamaica Reef* (1975), *Jonathan Livingston Seagull* (1977) and *The Wild Geese* (1978) as well as numerous guest star roles on television.

3. In 1979, I began producing television, including a television movie and a variety special for ABC.

4. In 1982, I began working at Columbia Pictures as a creative executive. Shortly thereafter, John Veitch stepped down as president of Columbia and asked me to join him in establishing a new production company based at Columbia.

5. My first solo producing credit on a motion picture came on the film, *The Serpent and the Rainbow* (1988), which was a fictional representation based on Wade Davis' nonfiction PhD thesis of the same name. There was extensive reference to well-known living people, which we had to carefully either authenticate or eliminate. When

we referred to fictional people that were based on well-known living people, we had to stick to the exact facts or change their identities so as to avoid any legal conflicts. Therefore, we had to carefully authenticate each fact or change the character and storyline accordingly.

6. I joined my brother, Alan Ladd Jr., at Pathe Films in 1988. We produced several films before acquiring Metro-Goldwyn-Mayer (MGM) in 1990, and I supervised many of the productions.

7. I became a senior production executive at MGM, where we produced many films, including the hit *Get Shorty* (1995). At MGM, I developed and supervised the courtroom thriller, *Red Corner* (1997), starring Richard Gere; crime drama *Mulholland Falls* (1996), *The Cutting Edge* (1992), and *Untamed Heart* (1993), among many others. I produced a feature film re-imagining the hit TV series *The Mod Squad*, with Aaron Spelling. I also developed and produced a screenplay for the 2002 film, *Hart's War*, directed by Gregory Hoblit and starring Bruce Willis, Colin Farrell and Terrence Howard. The 2003 comedy, *A Guy Thing*, starring Jason Lee, Julia Stiles and Selma Blair, followed.

8. Shortly thereafter, MGM was sold, and I left the company to work as an independent. I have developed projects for Fox, Universal and Paramount, as well as projects for the independent film market-place. For example, in 2008, I executive produced Kevin Sheridan's *Leaving Barstow*, which won several awards on the film festival circuit.

9. During my career, I have produced and been involved with the production and development of films under my supervision as an executive, which were completely fictional and those which were partly non-fictional.

10. I have a B.S. from the University of Southern California in Business Administration.

11. In 2007, I taught film production at the Savannah College of Art and Design. Additionally, I guest lectured several times at the University of Southern California's School of Cinematic Arts.

12. I am a member of the Producers Guild of America, the Academy of Motion Picture Arts and Sciences, and an emeritus member of the Screen Actors Guild.

13. I have watched all the episodes of "Feud: Bette and Joan," produced by Ryan Murphy and FX. I have reviewed the declaration of Olivia de Havilland, dated July 4, 2017.

14. As an executive and/or producer for ABC, Columbia Pictures, Universal, and MGM, and as an independent producer, I am familiar with the protocols and standards in the entertainment industry when a script intends to use the name, image, character or identity of a well-known living person.

15. The practice and standard in the film and television industry generally and at ABC, Columbia, Fox, Pathe, MGM, Universal and Paramount studios with which I had business relationships as described above over decades, is that whenever a script calls for the use of a name, identity, character or image of a well-known living person, consent from that person or their legal representative should be obtained as it nears production. If the film suggests that the well-known person endorses or is part of the production, then of course this must be accurate and consent obtained. If the use is significant, as in a supporting character role, then if consent is obtained compensation is negotiable. In my personal experience, this issue was delegated to and handled by people who worked either for or with me, either in the legal or business affairs departments of the studios or outside counsel. Before any project begins production, the errors and omission insurance policies were strict about the studios confirming consent from well-known living persons, or well-documented authentications of previously disclosed statements or conduct by the well-known living person.



16. If consent could not be obtained from a well-known living person, then the name, image, character or identity could not be properly used in the production unless the use was based on authenticated facts previously disclosed by the well-known living person. Certainly, a studio may not suggest that a celebrity endorses or is part of a project if this is not true. A failure to obtain consent and still use the name, image, character or identity of a celebrity would be a serious breach of the standards and protocol in the movie industry and would run the risk of the studio being subjected to legal repercussions. Obtaining consent of a well-known person for use of their name, identity, character or image, is a serious matter on the standard pre-production checklist for a film. Failure to obtain proper consent would be out of the ordinary.

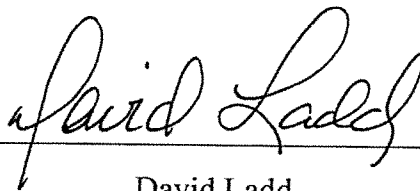
17. I have known Olivia de Havilland for over 60 years, since we starred in a film in 1957. I knew Bette Davis and worked with Joan Crawford. Miss de Havilland never expressed any views about the relationship of Miss Davis and Miss Crawford to me, even in private conversations, and even though we knew each other very well. She did not even gossip about the estranged relationship with her sister, actor, Miss Joan Fontaine, in public statements, even when provoked. She has a valuable public reputation developed over seven decades for not discussing the private lives of fellow actors and not engaging in gossip in order to attract media attention to herself. I know this because of my relationship with Miss de Havilland and my observations. It is also part of her professional reputation. If she was not going to gossip about these fellow actors with me, it is highly improbable that she would do so with others. There are no public statements that I am aware of made by Olivia de Havilland about the relationship of Miss Davis and Miss Crawford, and I am not aware of an interview given by her on this topic at the 1978 Academy Awards. "Feud" was constructed as if Miss de Havilland, a narrator, was being interviewed to make it appear that she, virtually the only living, significant person in the series from the actual era, endorsed "Feud." The premise suggested that she indeed participated in the gossip in Hollywood at the time, and

represented that on camera. To my knowledge, this never happened, certainly not in public appearances, and therefore "Feud" portrays Miss de Havilland in a false, negative light. A member of the viewing public watching "Feud" is not informed that Miss de Havilland, a great lady and extraordinary actor, did not consent to making the statements attributed to her, and did not in truth give interviews about the relationship of Miss Davis and Miss Crawford.

18. The statements made herein are made based on my experience and training over 60 years in the Hollywood entertainment business in roles from actor to senior executive of a major studio. The statements and opinions herein are made with a reasonable degree of certainty and confidence.

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

Executed this 11<sup>th</sup> day of August, 2017 in Los Angeles, California.

A handwritten signature in cursive script that reads "David Ladd". The signature is written in black ink and is positioned above a horizontal line.

David Ladd

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:

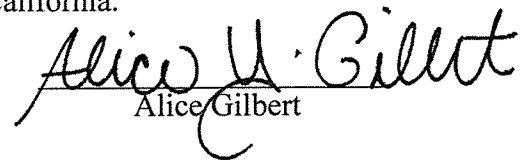
**DECLARATION OF DAVID LADD IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE, CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
2.1 Entertainment Group, Inc.*

- (BY FEDERAL EXPRESS) I caused such document to be transmitted with fees thereon fully prepaid via federal express to the offices of the above addressees.
- (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.
- (BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
7 ztremayne@howarth-smith.com  
8 523 West Sixth Street, Suite 728  
9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 15 2017

Sherril R. Carter, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual,  
17 Plaintiff,  
18 vs.  
19 FX NETWORKS, LLC, a California limited  
20 liability company; PACIFIC 2.1  
21 ENTERTAINMENT GROUP, INC., a California  
22 corporation; and DOES 3 through 100, inclusive,  
23 Defendants.

) CASE NO. BC667011  
)  
) [Complaint Filed June 30, 2017]  
)  
) Assigned for all purposes to: Hon. Holly E.  
) Kendig  
)  
) **DECLARATION OF DON BACHARDY**  
) **IN SUPPORT OF PLAINTIFF'S**  
) **OPPOSITION TO DEFENDANTS'**  
) **MOTION TO STRIKE PLAINTIFF'S**  
) **THIRD AMENDED COMPLAINT**  
) **PURSUANT TO CALIFORNIA'S ANTI-**  
) **SLAPP STATUTE, CAL. CIV. PROC.**  
) **CODE § 425.16**  
)  
) Hearing Date: September 29, 2017  
) Time: 8:30 am  
) Location: Department 42  
) Reservation ID: 170727238249

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1 I, Don Bachardy, declare as follows:

2 1. I live in Santa Monica, California.

3 2. I am a professional artist and have been for over 60 years.

4 3. I painted a portrait of Bette Davis in 1973, a copy of which is attached as  
5 Exhibit A.

6 4. I own the portrait of Miss Davis.

7 5. On or around January 25, 2017, Florencia Martin on behalf of Ryan Murphy  
8 Productions contacted my agent Craig Krull and asked permission to use my name and the  
9 portrait of Bette Davis in connection with the FX television series "Feud: Bette and Joan."  
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11 I declare under penalty of perjury under the laws of the State of California that the  
12 foregoing is true and correct.

13 Executed on 18 July 2017, 2017 in Santa Monica, California.  
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Don Bachardy

# **EXHIBIT A**



# DON BACHARDY DRAWINGS

February 15 - April 7, 1971

The New York Cultural Center, 2 Columbus Circle, New York

in cooperation with the City of New York

with the assistance of the City of New York

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:

**DECLARATION OF DON BACHARDY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE, CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
2.1 Entertainment Group, Inc.*

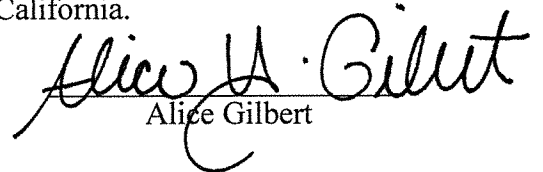
(BY FEDERAL EXPRESS) I caused such document to be transmitted with fees thereon fully prepaid via federal express to the offices of the above addressees.

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

(BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert



1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
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9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

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Superior Court of California  
County of Los Angeles

SEP 15 2017

Sheriff R. Galante, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual,  
17 Plaintiff,

18 vs.

19 FX NETWORKS, LLC, a California limited  
20 liability company; PACIFIC 2.1  
21 ENTERTAINMENT GROUP, INC., a California  
22 corporation; and DOES 3 through 100, inclusive,  
23 Defendants.

) CASE NO. BC667011

) [Complaint Filed June 30, 2017]

) Assigned for all purposes to: Hon. Holly E.  
Kendig

) **DECLARATION OF GISELE GALANTE**  
) **CHULACK IN SUPPORT OF**  
) **PLAINTIFF'S OPPOSITION TO**  
) **DEFENDANTS' MOTION TO STRIKE**  
) **PLAINTIFF'S THIRD AMENDED**  
) **COMPLAINT PURSUANT TO**  
) **CALIFORNIA'S ANTI-SLAPP STATUTE,**  
) **CAL. CIV. PROC. CODE § 425.16**

) Hearing Date: September 29, 2017

) Time: 8:30 am

) Location: Department 42

) Reservation ID: 170727238249

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I, Gisele Galante Chulack, declare as follows:

1. I am the daughter of Olivia de Havilland and I have personal knowledge of the facts stated herein, and, if called as a witness, I can and will competently testify thereto.

2. My mother, Olivia de Havilland, is 101 years old and lives in Paris. I visit her frequently. When my mother learned from one of her friends, who had seen television promotions, about the production of "Feud," using her name and identity, my mother was disturbed and distressed that the part of Olivia de Havilland had been written into the story without asking her and without her consent. She has since learned that the Olivia de Havilland character in "Feud," says untrue things which she never said.

3. I have seen "Feud: Bette and Joan" ("Feud") and the portrayal of my mother by the writers and producers. My mother never gave any interview, as seen in "Feud" and would never have done so. She has always been a highly ethical woman and would never have disclosed private, confidential information about her friend, Miss Bette Davis, in a public interview, as it would have been betraying her.

4. She was never contacted by anyone on behalf of the producers of "Feud" to ask her permission for using her name or identity or to verify any statements made in "Feud." She naturally saw this as a sign of disrespect. She did not endorse the program or "Feud's" counterfeit and false interview of her at the 1978 Academy Awards, where she did present an Oscar.

5. I have never heard my mother use the word "bitch," in private and certainly not in public. "Feud's" characterization of my mother as a person who would use this type of language describing others casually in conversations, is inconsistent with her private and professional reputation, and she and I find it highly offensive.

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

Executed this 13 day of September, 2017 in Los Angeles.

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

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Gisele Galante Chulack

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On September 15, 2017, I served the foregoing document described as:

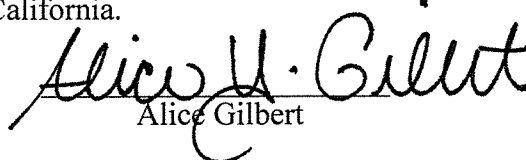
**DECLARATION OF GISELE GALANTE CHULACK IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S THIRD  
AMENDED COMPLAINT PURUSANT TO CALIFORNIA'S ANTI-SLAPP STATUTE,  
CAL. CIV. PROC. CODE § 425.16**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Aaron Wais, Esq.  
Robert Rotstein, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
2.1 Entertainment Group, Inc.*

- (BY FEDERAL EXPRESS) I caused such document to be transmitted with fees thereon fully prepaid via federal express to the offices of the above addressees.
- (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.
- (BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2017, at Los Angeles, California.

  
Alice Gilbert

1 HOWARTH & SMITH  
2 DON HOWARTH, (SBN 53783)  
3 dhowarth@howarth-smith.com  
4 SUZELLE M. SMITH, (SBN 113992)  
5 ssmith@howarth-smith.com  
6 ZOE E. TREMAYNE, (SBN 310183)  
7 ztremayne@howarth-smith.com  
8 523 West Sixth Street, Suite 728  
9 Los Angeles, California 90014  
10 Telephone: (213) 955-9400  
11 Facsimile: (213) 622-0791

12 Attorneys for Plaintiff  
13 OLIVIA DE HAVILLAND, DBE

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 OLIVIA DE HAVILLAND, DBE, an individual,  
17 Plaintiff,

18 vs.

19 FX NETWORKS, LLC, a California limited  
20 liability company; PACIFIC 2.1  
21 ENTERTAINMENT GROUP, INC., a California  
22 corporation; and DOES 3 through 100, inclusive,  
23 Defendants.

CASE NO. BC667011

[Complaint Filed June 30, 2017]

Assigned for all purposes to: Hon. Holly E. Kendig

**DECLARATION OF MARK ROESLER  
IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
MOTION TO STRIKE PLAINTIFF'S  
THIRD AMENDED COMPLAINT  
PURUSANT TO CALIFORNIA'S ANTI-  
SLAPP STATUTE, CAL. CIV. PROC.  
CODE § 425.16**

Hearing Date: September 29, 2017

Time: 8:30 am

Location: Department 42

Reservation ID: 170727238249

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Superior Court of California  
County of Los Angeles

SEP 15 2017

Sherri R. Carter, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

## Declaration of Mark Roesler

I, Mark Roesler, declare as follows:

1. I am the Chairman and Chief Executive Officer of Celebrity Valuations, LLC.

2. I give the following testimony and expert opinions on the valuation of particular losses suffered by Miss Olivia de Havilland, as set forth below, due to the unconsented use of her name, identity and character, likeness, image and false suggestions of endorsement and other false statements attributed to Miss de Havilland by FX Defendants in the series “Feud: Bette and Joan” (“Feud”) based on materials ordinarily used by experts in the field of property right valuations of celebrity names, identity, image, likeness, and character, and if called as a live witness, I could and would so testify.

3. I have been retained by counsel for Miss Olivia de Havilland (“de Havilland”) to assist in determining certain economic or special damages caused by use of de Havilland’s name, image, character, identity and likeness (“Right of Publicity,” “Publicity Rights,” or “ROP”) and invasion of her right to privacy from being publicized in a false light (“Right to Privacy”) in connection with the advertisement and broadcast of the television series, *Feud: Bette and Joan* (“FEUD” or “SHOW”), by the producers and writers, including FX Networks, LLC and Pacific 2.1 Entertainment Group, Inc., and/or their employees or agents (the “FX Use” or “FX’s Use,” defined hereafter). I have employed a fair market value (“FMV”) analysis to quantify the economic loss to Miss de Havilland from what she alleges is the unauthorized use of her name, character, image and identity in FEUD as well as what she alleges is the false characterization of her in FEUD by FX Networks, LLC and Pacific 2.1 Entertainment Group, Inc. (collectively, “FX Defendants”). I have not evaluated or included any non-economic or punitive

damages or attorneys' fees which may be available to Miss de Havilland. I have also not included the allocation of revenues from FEUD which should be attributed to use of her name, character, image and identity, as this will depend on information only known to FX Defendants.

4. I hold a reasonable degree of professional certainty as to all opinions that I express in this declaration; all such opinions being based upon my qualifications, experience, research, and analysis of the pleadings and factual materials as referenced herein.

5. This declaration is intended for the use by de Havilland in opposition to Defendants' Motion to Dismiss under the anti-SLAPP statute. Because of the filing of the anti-SLAPP Motion, I am informed that FX Defendants have not responded to outstanding discovery requests. Therefore, the opinions given herein are based on information from public sources, the Third Amended Complaint ("TAC") and its exhibits, declarations referred to herein, including declarations of witnesses for FX Defendants, and my own research, training and experience. If there is information produced by FX Defendants in discovery, I retain the right to modify any opinions as may be necessary in the circumstances.

6. I am the Chairman and CEO of Celebrity Valuations, which is a subsidiary of CMG Worldwide, Inc. ("CMG"), a premier rights management agency representing over 300 of the 20th Century's iconic personalities and brands such as James Dean, Jackie Robinson, Maya Angelou, Amelia Earhart, Arthur Ashe, and the National Baseball Hall of Fame and Museum. Since its inception in 1981, CMG has worked with over 1,500 famous living and deceased individuals in the sports, entertainment, music, and historical fields. Our services are twofold: protecting and monetizing client assets (trademark, right of publicity, and copyright) and providing expert witness consultation, valuation, and litigation support services. Notwithstanding, CMG's primary business and

reputation includes the representation of personalities, including facilitating licenses and endorsements for these celebrity clients.

7. Today, CMG is internationally recognized and credited with breaking legal ground in expanding statutory recognition and establishing guidelines that control and impact the commercial licensing and protection of one's name, image, and likeness. CMG has come to dominate the licensing arena while expanding its legal footprint in providing precedent setting testimony and methodologies in the celebrity valuation realm. With respect to licensing, CMG has procured, negotiated, and executed over 15,000 right of publicity deals alone. Our celebrity clients often make it on Forbes' "Highest Earning Deceased Celebrities" list. Such consistent recognitions earned the company a top spot on *60 Minutes* during a season premiere and a host of speaking engagements, appearances, and most notably, consistent expert witness retention on high-profile cases, including expert witness engagements for the IRS and parties engaged in disputes with the IRS.

8. As Chairman and CEO, I have been called on by celebrities from Richard Nixon to Muhammad Ali, corporate entities, and even government entities as an advisor and expert witness to provide consultation and litigation support services across a variety of areas including infringement damage assessment, marital dissolution, and estate taxation. Being in my 37th year as CEO of CMG, I receive thousands of inquiries each year. As such, I am acutely aware of the types of commercial problems celebrities encounter, the licensing and legal considerations thereof, and the appropriate fees for such contemplated or unauthorized uses. My *curriculum vitae* is attached as Appendix A to this Report.

9. Some information relating to de Havilland's portrayal in *Feud: Bette and Joan* ("Feud" or "Show") initially was provided by counsel to de Havilland as is set forth herein and has been relied upon and accepted without further verification except as



specifically set forth in this declaration. I was provided with the Third Amended Complaint and exhibits thereto, the declaration of David Ladd, the declaration of Don Bachardy, the declaration of Olivia de Havilland, a number of promotional materials available from public sources, and Motion for Trial Setting Preference. I was well aware of Miss Olivia de Havilland's career and reputation before I was retained in this matter. I have watched every episode of *Feud* and supplemented such information with my team's findings as noted herein. I have reviewed FX Defendants' Motion to Strike under the Anti-SLAPP statute and the declarations of Ryan Murphy, Timothy Minear, Michael Zam, Stephanie Gibbons, and James Berkley referred to therein. As set forth above, there has been no formal discovery in this matter to date and therefore I have no information provided directly by FX Defendants, other than as attached to their Anti-SLAPP motion. I reached many of my opinions set forth herein before FX Defendants filed their Motion to Strike and the declarations of their employees. Having reviewed those declarations, my opinions were confirmed or strengthened.

10. Unless otherwise specified herein, I am unaware of any lawsuits (other than the instant) or contractual obligations that would enhance or diminish the value of de Havilland's FMV in connection with FX's Use. If the presence of such matters is revealed, I reserve the right to modify my opinions expressed herein.

11. Unless otherwise noted, this declaration and its conclusions of value are only applicable to the FX Use as identified and for the specified purpose identified in this declaration. For clarity, the current universe evidencing FX's Use is limited and subject to additional disclosures and discovery.

12. I have no personal interest or bias with respect to the subject matter of this declaration or the Parties involved.

13. The fee for my retention as an expert witness is not contingent upon the values reported or the outcome determined.

14. Subject to the foregoing, my value opinion was based on the information provided to me at the time my declaration was prepared. Should additional relevant information become available, I reserve the right to revise my value opinion.

15. Olivia de Havilland is an iconic American actress who has achieved critical acclaim and success as one of the leading movie stars during Hollywood's golden age. Perhaps best known for her role in "Gone with the Wind," the two time Oscar winner's lawsuit against Warner Bros. resulted in the collapse of the studio contract system. Throughout her 80 year career, de Havilland has appeared in 49 feature films and, at 101 years old, is among the last living stars from this period. She is the last living significant character in Feud. Throughout her life and career, De Havilland has developed and actively maintained her reputation for elegance and integrity as "the lady's prototype of Lady, pretty-faced, gentle-faced, and well-mannered."<sup>1</sup> De Havilland has deliberately refused to engage in Hollywood gossip about the lives and relationships of other actors, even in personal matters regarding the infamous sibling rift with Joan Fontaine ("Fontaine"). Despite Fontaine's public acerbic criticisms of de Havilland, she exercised extreme restraint in discussing her sister, and refrained from vulgar reaction in like kind. The press repeatedly asked de Havilland to comment about Fontaine's public accusations, and the most she would say on the eve of her 100<sup>th</sup> birthday, after her sister had been dead for some years was that she had come to refer to her as "dragon lady" and that Fontaine had an astigmatism in her perceptions which could be hurtful. There is no first hand record of de Havilland using the vulgar expression "bitch" to describe her sister in public or private. There is no reliable source that she criticized or used vulgar language concerning her sister to others in the industry or even with friends. De Havilland was a

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<sup>1</sup> See *Olivia de Havilland 101: Everything you need to know as the movie legend celebrates her 101<sup>st</sup> birthday*, L.A. TIMES, (Jul. 1, 2017, 6:00 AM), <http://www.latimes.com/entertainment/movies/la-et-mn-olivia-de-havilland-101-birthday-20170701-htmlstory.html>, a true and correct copy of which is attached hereto as Exhibit 1.

close friend of Bette Davis, who had earned her trust as almost no one else had. These facts are based on my own research and are confirmed not only by experts in support of de Havilland but at base also by the FX witness declarations. Notwithstanding these known and admitted facts, De Havilland's reputation as a person of moral integrity, refinement and loyalty who would not talk behind one of her best friend's back or capitalize on intimate knowledge of a friend or family member's personal life in public, is challenged and distorted by FX's Use and depiction of de Havilland in the Show.

16. FX is an American basic cable and satellite television channel owned by 21st Century Fox through FX Networks, LLC.<sup>2</sup> FX's programming primarily includes original drama and comedy series, along with reruns of theatrical films and broadcast network sitcoms.<sup>3</sup> As reported in July 2015, FX is available to approximately 94 million pay television households in the United States.<sup>4</sup> The network also licenses its name (and content) to a number of related pay television channels internationally.<sup>5</sup> FX's continued growth, acquisition and development of original programming has resulted in success. This success, in part, has led to expanded budgets and higher-quality production value.

17. Beginning in 2002, FX emerged as a major force in original cable programming, gaining acclaim and notoriety for edgy dramas such as *Nip/Tuck*.<sup>6</sup> Similarly, FX has also distinguished itself from other broadcast networks by releasing original programming that depict strong profanity, sexual, and/or violent content, thereby requiring a "TV-MA" rating.<sup>7</sup> To date, some of FX's most popular original shows include *It's Always Sunny in Philadelphia*, *Sons of Anarchy*, *Archer*, *American Horror*

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<sup>2</sup> See *FX (TV channel)*, WIKIPEDIA, <https://en.wikipedia.org/wiki/FX> (TV channel), (last updated Sep. 5, 2017) a true and correct copy of which is attached hereto as Exhibit 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

*Story* (“AHS”), and *American Crime Story* (“ACS”).<sup>8</sup>

18. Ryan Murphy (“Murphy”) is an American screenwriter, director, and producer who is best known for creating/co-creating/producing a number of successful television series including *Nip/Tuck*, *Glee*, *AHS*, and *ACS*, and more recently, *Feud*.<sup>9</sup> Murphy has a long track record of success with FX, his name being attached with the network with every show in the aforementioned list excluding *Glee*. Fox Television Group Chairmen and CEOs Dana Walden and Gary Newman have praised Murphy, crediting him with revolutionizing the modern anthology with the *AHS* and *ACS* franchises. Murphy has been known for casting top Hollywood talent in his shows and integrating the same talent in different roles within and between his shows. Both Jessica Lange and Sarah Paulson appear in *Feud* and other Murphy productions.<sup>10</sup> Since Murphy is also known to attract top talent and has collaborated now three times with studio partner 20th Century Fox Television/Fox 21, *Feud* was similarly an easy sell for FX.<sup>11</sup>

19. On May 5, 2016, *Feud* was picked up to series by FX.<sup>12</sup> *Feud* is an American anthology television series created by Murphy, Jaffe Cohen, and Michael Zam, presented as the dramatization of actual events relating to a feud between Joan Crawford (“Crawford”) and Bette Davis (“Davis”) during and after the production of their 1962 film *What Ever Happened to Baby Jane*.<sup>13</sup> The Show generated much buzz and excitement, especially as the all-star cast was announced. *AHS* alum Jessica Lange would reteam with Murphy as Joan Crawford, while fellow Academy Award winner

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<sup>8</sup> *Id.*

<sup>9</sup> See Ryan Murphy (writer), WIKIPEDIA, [https://en.wikipedia.org/wiki/Ryan\\_Murphy\\_\(writer\)](https://en.wikipedia.org/wiki/Ryan_Murphy_(writer)), (last updated Aug. 28, 2017), a true and correct copy of which is attached hereto as Exhibit 3.

<sup>10</sup> See Kelsie Gibson, *15 Actors Who Can't Stop Working With Ryan Murphy*, POPSUGAR, (Jan. 28, 2017), <http://www.popsugar.com/entertainment/Actors-Who-Have-Been-Multiple-Ryan-Murphy-Shows-43041654>, a true and correct copy of which is attached hereto as Exhibit 4.

<sup>11</sup> See Elizabeth Wagmeister, *Ryan Murphy Lands Another FX Anthology, 'Feud,' Starring Jessica Lange & Susan Sarandon*, VARIETY, (May 5, 2016), <http://variety.com/2016/tv/news/feud-ryan-murphy-fx-anthology-jessica-lange-susan-sarandon-1201758686/>, a true and correct copy of which is attached hereto as Exhibit 5.

<sup>12</sup> See *Feud (TV series)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Feud\\_\(TV\\_series\)](https://en.wikipedia.org/wiki/Feud_(TV_series)), (last updated Aug. 15, 2017), a true and correct copy of which is attached hereto as Exhibit 6.

<sup>13</sup> *Id.*

Susan Sarandon would play Bette Davis; other heavy hitters such as Academy Award winner Catherine Zeta Jones (“Jones”), Stanley Tucci, and Judy Davis were also attached to the production.<sup>14</sup> The eight episode series was televised on March 5, 2017, garnering 5.17 million viewers, making it the highest rated new series debut on FX since *ACS: The People v. O.J.Simpson*.<sup>15</sup> The Show is set to premiere on BBC Two in the UK in late 2017.<sup>16</sup> *Feud* has received 18 Emmy nominations since its broadcast.<sup>17</sup>

20. While *Feud* centers on the legendary rivalry between Crawford and Davis, it uses de Havilland as the primary vehicle to depict the narrative. The Olivia de Havilland character, portrayed by Catherine Zeta-Jones, is not minor; it provides the structure around which the other characters revolve. The FX use of de Havilland is a counterfeit of the typical life story use of a real person. It is counterfeit or fake because it places de Havilland in authentic settings where she actually went and in contact with people she actually knew, but it corrupts real events by placing words in her mouth which she did not say for the dramatic purposes of FX Defendants. Catherine Zeta-Jones, as Olivia de Havilland is given “special guest star,” recognition, which denotes her prominent role in the Show. As the narrator, de Havilland’s character, as played by Jones, rewrites history: in a fabricated interview, de Havilland is the quintessential gossip queen – making significant remarks, meddling in the feud between Crawford and Davis, and making vulgar, snide comments about Fontaine. The method employed by FX Defendants suggests to the viewer that de Havilland is part of the production and is endorsing the portrayals, including her own, in the Show. Such depiction was without consent and otherwise unverified regarding the veracity in the Show’s depiction of de

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<sup>14</sup> See Lesley Goldberg, *Ryan Murphy Anthology 'Feud,' Starring Jessica Lange and Susan Sarandon, Set at FX*, THE HOLLYWOOD REPORTER, (May 5, 2016, 11:00 AM), <http://www.hollywoodreporter.com/live-feed/ryan-murphy-anthology-feud-starring-890863>, a true and correct copy of which is attached hereto as Exhibit 7.

<sup>15</sup> See Cynthia Littleton, *'Feud' Grabs FX's Hightest Series Debut Ratings Since 'People v. O.J. Simpson*, VARIETY, (Mar. 10, 2017), <http://variety.com/2017/tv/news/feud-bette-and-joan-fx-ratings-1202006592/>, a true and correct copy of which is attached hereto as Exhibit 8.

<sup>16</sup> See *Feud: Bette and Joan coming to BBC Two*, BBC, <http://www.bbc.co.uk/medicentre/latestnews2017/feud-bette-and-joan>, (last updated Aug. 8, 2017), a true and correct copy of which is attached hereto as Exhibit 9.

<sup>17</sup> See *Feud: Bette and Joan*, Emmys, <http://www.emmys.com/shows/feud-bette-and-joan>, (last viewed Sep. 5, 2017), a true and correct copy of which is attached hereto as Exhibit 10.

Havilland, or lack thereof. Murphy has detailed the cast and crew's preparatory efforts in connection with the Show, portrayal of depicted characters, and measures to ensure all details, however small, were prepared and portrayed in an authentic way.<sup>18</sup> Such accuracy and attention to detail were important to Murphy, who simply noted, "...if you're going to do it, do it right."<sup>19</sup> When Catherine Zeta Jones was cast as Olivia de Havilland in August, 2016, Murphy "tweeted" the news to the press and said he was "thrilled" that she had join the Show.<sup>20</sup> Notwithstanding, both Murphy and Jones have confirmed that neither spoke to, consulted, or obtained de Havilland's permission regarding any depictions or use of de Havilland in the Show. Instead, Murphy's use and depiction of de Havilland was based on some accurate information the public already knew of de Havilland: that she was presenting "Best Picture" at the 35th Annual Academy Awards in 1963; that her sister Joan Fontaine had viciously criticized her in an autobiography; in 1978 she presented an honorary award to Margaret Booth; and that she was a close friend and confidante of Davis.<sup>21</sup> The authentic details are used to lead the viewers into believing that what de Havilland says and does is accurate and factual, rather than made up and false, and that de Havilland herself endorsed the "Feud" portrayal of her private and public remarks about other actors at the time "Feud" is set. *Feud* also debuted with a TV MA-L rating, signaling to viewers that the Show contained strong/coarse language, with the premiere episode even using the "c-word," resulting in backlash from watchdog groups such as the Parents Television Council, which criticized

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<sup>18</sup> See Scott Feinberg, *Emmys: Ryan Murphy on the Role the Oscars Play Throughout 'Feud' (Q&A)*, THE HOLLYWOOD REPORTER, (Apr. 1, 2017), <http://www.hollywoodreporter.com/race/emmys-ryan-murphy-role-oscars-play-throughout-feud-q-a-990187>, a true and correct copy of which is attached hereto as Exhibit 11.

<sup>19</sup> *Id.*

<sup>20</sup> See Ryan Murphy tweet dated August 16, 2016, [https://twitter.com/MrRPMurphy?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/MrRPMurphy?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor), a true and correct copy of which is attached hereto as Exhibit 12.

<sup>21</sup> See Scott Feinberg, *Emmys: Ryan Murphy on the Role the Oscars Play Throughout 'Feud' (Q&A)*, THE HOLLYWOOD REPORTER, (Apr. 1, 2017), <http://www.hollywoodreporter.com/race/emmys-ryan-murphy-role-oscars-play-throughout-feud-q-a-990187>, *supra* note 18.

the network as having no standards.<sup>22</sup>

21. For purposes of this declaration, I have assumed that liability is proven based on the facts set forth in the declarations and pleadings. Therefore, my opinion expresses a fair market licensing value of de Havilland's Right of Publicity and Right to Privacy (collectively, "ROP Related Rights") for the kind of usage made by the FX Defendants. In other words, my opinion only expresses the reasonable fee for the FX Defendants' specific use of de Havilland's ROP Related Rights in connection with its advertisement and broadcast of *Feud*. The failure to obtain consent and negotiate a FMV payment for use of Miss de Havilland's name and identity as well as the false use resulted in the losses to Miss de Havilland as set out herein. There may be other losses including non-economic damages, other forms of economic damages, such as payments to mitigate harm and depreciation of the value of Miss de Havilland's name and identity, which are not the subject of this current declaration. As such, references to the "FX Use" or "FX's Use" refer to the FX Defendants' use of Jones in character as Olivia de Havilland for an ongoing period beginning with the first promotion of the Show on February 5, 2017 during the Super Bowl LI's broadcast:

- Depiction of de Havilland in 75% of the Show's actual episodes.
  - De Havilland's character appears in 6/8 episodes (every episode excluding 3 and 6).
- 20 trailers, promotions, and/or advertisements that were broadcast on TV and/or available on the internet. Internet sites include FX Networks' official website and youtube channels<sup>23</sup>:
  - 5 trailers to promote Show;

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<sup>22</sup> See Lesley Goldberg, *Why FX's 'Feud' Used the C-Word in Its Premiere*, THE HOLLYWOOD REPORTER, (Mar. 5, 2017), <http://www.hollywoodreporter.com/live-feed/why-fxs-feud-just-used-c-word-983177>, a true and correct copy of which is attached hereto as Exhibit 13.

<sup>23</sup> See *Feud: Bette and Joan*, FX NETWORKS, <http://www.fxnetworks.com/shows/feud>, (last viewed Sep. 5, 2017) and *Feud: Bette and Joan Season 1*, YOUTUBE, <https://www.youtube.com/playlist?list=PLIDyzBpnfjqk3C8ABfdoIE2oyOxtAddYm> (last updated May 15, 2017), respectively, true and correct screenshots of which are attached hereto as Exhibit 14.

- 7 weekly trailers promoting upcoming episodes;
  - 7 Inside Look promotional videos that remain available on FX's websites<sup>24</sup>; and
  - 1 World Premiere promotional video that was likely broadcast on TV and available on the internet. Internet site includes FX Network's official YouTube Channel<sup>25</sup>
- At least 3 advertisements or promotions from third parties on the internet and/or broadcast on TV, *e.g.* Jones promoting the Show and her role on the Jimmy Kimmel Show on/around March 1, 2017<sup>26</sup>; and
- 15 social media uses/promotions of the Show and/or character on the following official, verified social media accounts- Facebook, Instagram, and Twitter<sup>27</sup>:
  - Catherine Zeta Jones:
    - 2 instagram posts of photos and videos;
    - 4 facebook posts of photos and videos.
  - FX Network:
    - 1 instagram video post; and
    - 1 Twitter video post.
  - Feud FX:
    - 4 instagram posts featuring photos and/or videos;
    - 1 facebook post featuring photo and quote; and
    - 1 Twitter post of a scene clip.
  - Ryan Murphy:
    - 1 Twitter post announcing that Catherine Zeta Jones would be portraying de Havilland in *Feud*.

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<sup>24</sup> See *Inside Feud: Bette and Joan*, FX NETWORKS, <http://www.fxnetworks.com/shows/feud/extras> (last viewed Sep. 5, 2017) a true and correct screenshot of which is attached hereto as Exhibit 15, and *Feud: Bette and Joan Season 1*, *supra* note 23, respectively.

<sup>25</sup> See *Feud: Bette and Joan Season 1*, *supra* note 23.

<sup>26</sup> See screenshots of advertisements and promotions of the Show, true and correct copies of which are attached hereto as Exhibit 16.

<sup>27</sup> See screenshots of social media uses and promotions of the Show, true and correct copies of which are attached hereto as Exhibits 17 and 12.



22. This declaration establishes the FMV of the FX Use based upon my opinion regarding the fair market licensing value of de Havilland's identity (ROP Related Rights) for the kind of usage made by the FX Defendants, assuming such use had been properly negotiated and compensated. This hypothetical, negotiated agreement before the unauthorized FX Use evidences a reasonable and reliable "use value" and considers the current/actual uses identified above as well as prospective uses consistent with industry standards and norms in televised programming of the type and caliber of a FX-Murphy production ("Agreement").

23. In my experience, I routinely use the industry standard including the following 10 licensing factors to establish the framework for fee negotiations with respect to the celebrity's ability to command merchandise, advertising, or endorsement campaigns. Alternatively, in instances where the allegedly unauthorized use has already occurred, these same factors are used retroactively to assign various weight/priority in the FMV calculation. While certain factors may carry more weight or relevance to the fee range inquiry, no single factor is dispositive and all must be read and considered in totality:

A. Licensee:

This factor focuses on who the prospective licensee is and its reputation as it relates to the prospective use, product, or celebrity at hand. This factor looks to the licensee's past licensing history, rapport with the celebrity/licensing agency, presence of other licenses, and quality of goods produced.

B. Budget for Prospective Use:

This factor assesses the budget allocated for the prospective use/campaign. This factor has more application in licensing related to video games, mobile

applications, and more digital-oriented campaigns, in which case, the budget is assessed more along the lines of the media buy.

C. Type/Nature of Use:

This factor focuses on the nature of the use by looking at the category of use-- whether it be a traditional ad campaign, an image of the celebrity as set dressing, the production of hard goods subject to a traditional merchandising campaign and quality control constraints, and so forth. This factor also takes into consideration the pervasiveness of use in an endorsement campaign. The more a celebrity's name, image, or likeness is used in connection with the brand, products, or services, the higher the fee. The consumer's viewpoint drives the weight of this factor---the celebrity would be able to command a higher fee if the consumer would interpret the use of the celebrity to be an explicit endorsement of the company, brand, or product.

D. Role of Celebrity in Campaign:

Assuming the celebrity is marketable (*e.g.* generally has good reputation and appeal, no bad conduct before the public, good Q scores, and so forth), we assess the role of the celebrity in the campaign. This factor assesses specifically how the celebrity will be used-- for instance, will the celebrity be the "face" of the campaign or company? Will the celebrity's name, image, voice, or likeness be used without any explicit showing of support for the campaign or company? Whether the company gives the celebrity any aesthetic or creative control in the campaign.

Personal Services Required:

Generally, if there is a personal service component, additional inquiry is required to determine how much time the celebrity is expected to spend to

providing such services. A celebrity's time is expensive. Generally, personal service is directly correlated with compensation: the more personal service required of the celebrity, the higher the compensation.

E. Territory:

This factor measures the geographic scope (and thereby population exposure) of a particular use. Generally, the wider the geographic territory of distribution/dissemination, the greater the fee. Notwithstanding, in instances where only a limited aspect of the campaign is distributed/disseminated in a wider territory, the medium of distribution is highlighted. By way of example, a t-shirt license may have a license agreement that establishes the territory of distribution as United States only, while the licensee is also able to advertise the sale of t-shirts on its website online, which is accessible and viewable by consumers on a worldwide, not state-wide level. This means the sale of t-shirts may only be sold/shipped to retailers and/or directly to consumers in the United States, but the contractual term would read as follows, "United States; worldwide-vis-a-vis internet advertising."

F. Media:

This factor looks at what types of media will be used. Different types of media include television, film, radio, print, point of purchase, billboards, internet, and direct mailings. Of these, television has the most exposure and, thus, generally commands the highest fee. On the other end of the spectrum are uses that are inherently local in nature, such as a billboard, for which fees are generally the lowest.

Linking/Framing: Specific Internet Uses:

Increasingly, the internet is expanding as a medium that prospective

licensees seek as a media outlet and medium of distribution. While we do not purport to make a legal distinction in this Report as of the actionability or lack thereof of specific social media platform uses on the internet, we do consider various factors in social media uses in our daily negotiations that may increase the fee associated with a use. Generally, a use of celebrity's name, image, or likeness on a social media post that includes a living or directly embedded link to a page that sells a distinct item or product bearing the celebrity's name, image, or likeness increases the licensing fee associated with the grant of rights.

G. Duration:

This factor measures how long the campaign will run. Generally, the longer the campaign, the higher the fee and vice versa if the campaign is shorter.

H. Exclusivity:

This is almost always a factor that increases the cost to use a particular celebrity, since any exclusivity, by its nature, precludes the celebrity from engaging in a similar use.

I. Other Intellectual Property Rights Holders/Contractual Limitations/Infringement Policing and Monitoring:

This factor looks at which intellectual property rights the celebrity controls and whether other third parties or entities have a proprietary interest in such rights that may affect the celebrity's ability to engage in endorsement campaigns. Specifically, this factor looks at whether other intellectual property rights exist with regards to a particular individual and who those rights belong to- whether it is the celebrity who owns these right(s) or a

third party. Additionally, this factor assesses the general policing efforts a celebrity engages in with respect to protecting her various intellectual property rights on the open marketplace. Celebrities who indiscriminately monitor and/or do not enforce such rights may leave themselves open to unauthorized uses that saturate the marketplace- a subfactor in my analysis that may affect her marketability, endorsement opportunities, and attendant fees.

J. Synergy with the Company/Product:

The greater the overlap between the celebrity and the audience to which she appeals and the company or product she will be endorsing and the purchasers of that company's product, the more likely the company will want to use that celebrity in the endorsement and be willing to pay a higher fee.

24. In consideration of the 10 licensing factors, the hypothetical Agreement would need to encompass all current and prospective details of the FX Use. As such, this Agreement would take the form of a life story rights/consultation/endorsement agreement which would contain a waiver of claims and a grant of rights and services. Consistent with similar productions, the rights licensed herein would allow for worldwide advertisements, broadcast, and in perpetuity distribution across all mediums now known or later identified. With this type of Agreement, de Havilland could reasonably and probably command a range of compensation between \$1.38 million to \$2.1 million across at least three major areas:

A. Life story and endorsement rights at a premium.

The "life story" and endorsement designator typically promises two things: 1) cooperation by the subject (*e.g.* through the provision of promotional services and/or the

explicit and vocal authorization/support of the film) and 2) a waiver of the right to sue for defamation and the invasion of privacy. Here, de Havilland could offer support via independent or joint statements with the Show. I have made adjustments to account for de Havilland's age; it would not be practical or reasonable to require de Havilland to render personal services or engage in the type and amount of press and promotional appearances Jones, Sarandon, and Lange are required to render. Notwithstanding, technological advances could still enable de Havilland reasonable means to support the Show in various mediums and platforms. Without limitation, she could film a limited amount of shorts, interviews, or behind the scenes clips, and/or allow the Show to use her Right of Publicity in connection with print and digital ads, quotes, pictures, and statements to support the Show. She could make a public statement on camera or written endorsement of "Feud" and explain that she approved the portrayal, even though license had been taken with aspects of her character which were not historically accurate. She also could have assisted the writers and producers and Jones in achieving greater accuracy in the production and avoiding mistakes which detract from the narrative. As only one example, Bette Davis did not break the contract system with a lawsuit in 1936, as Feud has Jack Warner state in the first episode. In reality, Warner Bros. sued Davis in London for breach of contract and won.<sup>28</sup> It was actually Olivia de Havilland who sued Warner Bros. in Los Angeles, and broke the contract system.<sup>29</sup>

There are two ways to calculate the life story endorsement rights in this context: a flat fee or a percentage of the Show's ingoing budget. Regarding the latter, the typical percentage granted for the life story endorsement rights ranges between 1-3% of the ingoing budget. However, since the FX Defendants' portrayal and use of de Havilland in the Show wields wide, creative and aesthetic liberties (*e.g.* completely fictionalizing an interview, using her as the narrator to frame and depict the narrative of Crawford and

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<sup>28</sup> See *Warners Sues Bette Davis, loses yet saves her career*, CLASSIC MOVIE FAVORITES, (May 16, 2015), <http://www.classicmoviefavorites.com/warners-sues-bette-davis-she-loses-and-saves-her-career/>, a true and correct copy of which is attached hereto as Exhibit 18.

<sup>29</sup> See Matthew Belloni, *De Havilland lawsuit resonates through Hollywood*, REUTERS, (Aug. 23, 2007), <http://www.reuters.com/article/industry-lawsuit-dc/de-havilland-lawsuit-resonates-through-hollywood-idUSN2329585820070824>, a true and correct copy of which is attached hereto as Exhibit 19.

Davis' feud, recreating a prosthetic "waddle" on Jones, using crude and snide vernacular in describing Fontaine and Sinatra, etc.) de Havilland would undoubtedly be able to command a higher premium for her depiction. Considering her solid public reputation and restraint in avoiding gossip about other public figures private lives, de Havilland's willingness to authorize such a depiction would likely result in her receiving between 4-5% of the ingoing budget, which would also account for the exclusivity associated with this grant. An hour long show on a cable network like FX generally allocates an episodic budget of \$3-4 million. Due to Murphy's association and previous success, I believe each *Feud* episode would have a budget of at least \$4 million. This would result in a total end budget of \$32 million (8 episodes x \$4 million). It is my expert opinion that de Havilland could command between \$1.28 million and \$1.6 million in this category alone (4% of \$32 million = \$1.28 million; 5% of \$32 million = \$1.6 million).

The waiver to sue could similarly be quantified in this Agreement. As noted, de Havilland's waiver could also be construed as a grant to allow the Show the right to use the story of her life and experiences in a factual or fictional manner. Such grant would effectively be a waiver to sue for any ensuing depictions and proceeds. The value of this waiver would have to consider the potential cost and expense of anticipated legal fees and availability of other monetary and equitable remedies.

#### B. Consultation/producer fees.

As an extension of the celebrity's cooperation on the project, a celebrity like de Havilland, can often command additional compensation by providing consultation and/or producer services in connection with the production. This service and fee is especially relevant in the instant case. As the last living star from Hollywood's Golden Age, de Havilland's participation and vocalization of such participation/attachment to the Show would singularly be able to command a premium. As noted, she solidified her 80-year career by deliberately remaining out of the spotlight, especially as it related to celebrity

gossip and meddling in others' affairs. Even in her only self-authored autobiography, *Every Frenchman Has One* ("Book"), she is conspicuously careful in her depictions and accounts. She opens the Book with an essay titled, "I'm Not at All Sure If You know That I'm Alive," an appropriate encapsulation to reflect her active disengagement from the Hollywood culture of spotlight and gossip. A recent republication of the 1962 Book adds a new interview reflecting the same sentiments where de Havilland cites the lessons she's learned from Parisian women, highlighting "the importance of tact, restraint, subtlety, and the avoidance of banality."<sup>30</sup>

As one of the last living persons from this era and the only living major figure in *Feud*, de Havilland brings a layer of authenticity and consultation that quite literally, no one else from this period can offer. Her association with the production and offering of such insight could elevate her to a producer role, or credit in the very least. Murphy similarly gave John Travolta a producer credit in *ACS: The People v. O.J. Simpson* and to both Lange and Sarandon in *Feud*; de Havilland should not be excluded.

### C. Back end participation.

Typically, an individual who enters into a life story rights and consultation agreement will also have the opportunity to participate in the success of the project in the form of back end participation. Customarily, this fee is a percentage of profits, defined by contract but often times based off of a modified adjusted gross revenue definition ("MAGR"). My clients that enter into life story rights and consultation agreements can typically demand 5% of MAGR. The actual amount that one can expect to receive from this portion of the fee, however, is unpredictable since it is determined by the financial success of the project.

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<sup>30</sup> See John Williams, *Populism's Origin Story*, N.Y. TIMES, (June 24, 2016), <https://www.nytimes.com/2016/06/26/books/review/populisms-origin-story.html?mcubz=3>, a true and correct copy of which is attached hereto as Exhibit 20.



25. In consideration of the foregoing, it is my opinion that a FMV of the FX Defendant's use of de Havilland's ROP Related Rights, assuming such use had been properly negotiated and compensated, in a television production of the instant type and caliber would be between \$1.38 million to \$2.1 million, conservatively. This results in losses to de Havilland per episode and a financial benefit to FX Defendants from the unauthorized and false use of her name, identity, character and image of approximately \$172,500- 262,500 per episode.<sup>31</sup>

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

Executed this 12 day of September, 2017 in Los Angeles, California.

  
\_\_\_\_\_  
Mark Roesler

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<sup>31</sup> FX Defendants reference a Warner Bros. outtake or "bloopers" montage found on YouTube from 1944 which catch A list actors, including Miss de Havilland, Errol Flynn, Bette Davis, Ronald Reagan, James Stewart, making mistakes on their lines and cursing themselves as a result. *See* Declaration of James Berkley at ¶¶ 51-58. The fact that Miss de Havilland used the words "son of a bitch," to herself in an outtake where she made a mistake is clearly not the equivalent of calling her sister a "bitch" to others in the profession. The existence of the outtake montage of the young Miss de Havilland speaking in what clearly should have been a private set, not for broadcast, does not change my FMV opinions as set forth herein.

## Appendix A

### *Curriculum Vitae*<sup>32</sup>

#### MARK ALLEN ROESLER

10500 Crosspoint Boulevard, Indianapolis, Indiana 46256

(317) 570-5000 [Mark@CMGWorldwide.com](mailto:Mark@CMGWorldwide.com)

[www.MarkRoesler.com](http://www.MarkRoesler.com) | [www.CMGWorldwide.com](http://www.CMGWorldwide.com) | [www.Facebook.com/MarkRoesler](http://www.Facebook.com/MarkRoesler)

#### **Education**

Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana

Doctor of Jurisprudence, January 1982

Admitted to practice in Indiana

Indiana University Kelley School of Business, Indianapolis, Indiana

Masters of Business Administration, January 1982

DePauw University, Greencastle, Indiana

Bachelor of Arts: Business and Communications

#### **Affiliations**

Board Member: The Jackie Robinson Foundation, New York, NY

Member: Indiana Bar Association

Member: Board of Visitors, Indiana University School of Law, Indianapolis, IN

Member: Advisory Board, The Licensing Journal, Westport, CT

#### **Former Affiliations**

Member: National Board of Directors, American Arbitration Association

Member: Indiana Advisory Council: Large Complex Case Program / American Arbitration Association

Member: Foundation Board Member of St. Vincent Hospital, Indianapolis, IN

Member: Foundation Board Member of St. Francis Hospital, Indianapolis, IN

#### **Awards & Honors**

2013 Indiana University Robert H. McKinney School of Law Distinguished Alumni Award

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<sup>32</sup> Please note that due to confidentiality constraints, protective order, or otherwise, many engagements are currently omitted.

- 2008 Indiana University Kelley School of Business Alumni Association Distinguished Entrepreneur Award
- 2007 Indianapolis Monthly's Top Indiana Lawyers
- 2003 LIMA Best Entertainment Brand Licensee of the Year (Hard Goods) Nomination
- 1999 The Institute of Internal Auditors Indianapolis Chapter Indiana Focus on Excellence Award
- 1998 Ernst & Young LLP Entrepreneur of the Year
- 1998 Ernst & Young LLP Indiana Entrepreneur of the Year Finalist
- 1997 Ernst & Young LLP Indiana Entrepreneur of the Year Finalist
- 1996 Election into the Babe Ruth Baseball Hall of Fame for Outstanding Service & Contribution
- 1996 Butler University Cooperative Education Partnership Award
- 1991 European Licensing Awards: Licensing Reporter Award for James Dean License
- 1991 LIMA Advertising Campaign Licensing Famous Movie Stars of the Past Award

**Speaking Engagements**

- 2016 Featured Guest Speaker: I.P. Valuation- Complexities of Estate Planning and Taxation, Business Manager Discussion Group, Los Angeles, California, May 2
- 2015 Featured Guest: "Is it Legal" podcast - Ind. Univ. McKinney School of Law, Feb. 25
- 2014 Speaker: Robert. H. McKinney School of Law Center for Intellectual Property Law and Innovation Event - Right of Publicity, Nov. 11
- 2014 Speaker: Indiana University, MBA Commencement, Aug. 6
- 2014 Guest Lecturer: Marketing and Protection of Celebrities, Anderson University School of Music and School of Anderson, IN, Mar. 25
- 2013 Panelist: Estate Planning and Legacy Issues, California CPA Entertainment Industry Conference, Jun. 12
- 2012 Featured Speaker: How Technology and Social Media are Affecting Celebrities' Intellectual Property Rights, IU Robert H. McKinney School of Law, Oct. 30
- 2012 Keynote Speaker: Pace Law School's Second Annual Exposition on I.P., Sports & Entertainment Law, Sep. 25
- 2012 Featured Speaker: 22nd All Ohio Annual Institute on Intellectual Property

- (AOAIOIP), Sep. 20-21
- 2012 Featured Speaker: Building Celebrities into Brands Through Trademarks, Kentucky Bar Association Annual Convention, Jun. 6
- 2011 Keynote Speaker: INTA/ASIPI Conference on Trademarks in the Sports and Entertainment Worlds, San Juan, Puerto Rico, Mar. 20
- 2011 Speaker: INTA/ASIPI Negotiation Techniques & Personal Image Rights, San Juan, Puerto Rico, Mar. 21
- 2010 Speaker: CEO-NET's Annual Linkages Conference, Carmel, IN, Oct. 12
- 2010 Speaker: 3<sup>rd</sup> Annual Summit on Business Valuation in Divorce, Chicago, IL, Sep. 13
- 2009 Commencement Speaker: IU Kelley School Business, Indianapolis, IN, May 10
- 2009 Speaker: American Intellectual Property Law Association, San Diego, CA, May
- 2008 Speaker: Kelley School of Business Alumni Association, Indianapolis, IN, Oct. 15
- 2008 Speaker: CLE Annual Continuing Education Program, Indianapolis, IN, Oct. 14
- 2007 Speaker: Interplay Between Right of Publicity and Trademark, USPTO Presentation, Washington, DC
- 2006 Featured Speaker: Use of Athletes' Image in Communication, Rio de Janeiro Sports Conference, Nov. 11
- 2006 Speaker: Developments of the Right of Publicity, Los Angeles Copyright Society, Mar. 11
- 2006 Speaker: Developments of the Right of Publicity, 23rd Annual National CLE Conference, Aspen, CO, Jan. 4
- 2005 Speaker: Beverly Hills Bar Association Luncheon on Right of Publicity
- 2005 Keynote Speaker: International Trademark Association (INTA) 127th annual meeting, San Diego, CA, May 14
- 2005 Speaker: Hoosier American Marketing Association, Indiana division - Celebrity Endorsements

**Expert Witness Services and Other Consultation Services**

- 2017 *Estate of Mary Tyler Moore*
- 2017 *Estate of Joseph Paterno v. National Collegiate Athletic Association*, (Centre County, Docket No. 2013-2082).

2017 *Estate of Michael Jackson v. Commissioner* (T.C. Docket No. 17152-13).  
 2016 *Reese Witherspoon v. Marketing Advantages Int'l, Inc.*, (Cal. Supp. Ct.)  
 2015 *Estate of Joan Rosenberg*  
 2014 *Halle Berry v. ToyWatch, S.p.A.*, (C.D. Cal.).  
 2013 *Bradley Cooper & Liam Neeson v. Vutec Corp.*, (Cal. Supp. Ct.).  
 2013 *In re Marriage of Wade*, (Cir. Ct. Ill.).  
 2013 *Machowicz v. LWRCI*, (C.D. Cal.).  
 2013 *Machowicz & Mindlab Media, LLC v. LWRC Int'l, Inc.*, (C.D. Cal.).  
 2013 *Katherine Jackson v. AEG Live, LLC*, (Cal. Supp. Ct.).  
 2012 *Harry Connick Jr. v. People's Health*, (E.D. La.).  
 2012 *IRS v. Sergio Garcia*, (US Tax Court).  
 2012 *Ore. Brewing Co. v. New NWF, LLC*, (Ore. Cir. Ct.).  
 2011 *Bruce Lee Enters., LLC v. A.V.E.L.A., Inc.*, 2011 WL 1327137 (S.D.N.Y.).  
 2011 *Estate of Nell G. Pepper v. Pease Family Partnership*, (S.D. Iowa).  
 2011 *Michelle Pfeiffer, Diane Keaton, Mandy Moore, Sandra Bullock, Cameron Diaz, & Kate Hudson v. TigerDirect, Inc.*, (Cal. Supp. Ct.).  
 2011 *Samuel Moore v. The Weinstein Co., LLC*, (M.D. Tenn.).  
 2010 *Cosmetic Warriors Ltd. v. Lush The Art of Hair, LLC*, (S.D. Ind.).  
 2010 *Spartan Home Ent., LLC v. Boondock Saints, LLC*, (Cal. Supp. Ct.).  
 2009 *Evgeni Petrosyan v. DirecTV, Inc.*, (E.D.N.Y.).  
 2007 *In re Estate of Coretta Scott King*  
 2007 *Bill Daniel v. Safeway, Inc.*  
 2007 *Daryl Hannah v. Classified Cosmetics*, (Cal. Supp. Ct.).  
 2007 *In re Marriage of Greg Norman*, (19th Cir. Fla.).  
 2006 *In re Marriage of Nicholas Lachey*, (Cal. Supp. Ct.).  
 2006 *Jerry Garcia Estate, LLC v. Moe's Southwestern Grill, LLC*, (N.D. Ga.).  
 2005 *John B. Holway v. The Negro Leagues Museum, Inc.*, (W.D. Mo.).  
 2005 *Richard Bach & Russell Munson v. Forever Living Products U.S., Inc.*, (W.D. Wash.).  
 2005 *Tara Reid v. Sky Las Vegas Condominiums, Inc.*, (C.D. Cal.).  
 2005 *Marcus Williams v. William Romanowski*, (Cal. Supp. Ct.).  
 2004 *Daryl Peterson a.k.a. Maxx Payne v. Rockstar Games, Inc.*, (D. Utah).  
 2004 *Estate of Richard Lollar v. Ray Lewis*, (5th Cir. Ga.).  
 2004 *Franklin C. Feranna aka Nikki Sixx v. Vans, Inc.*, (Cal. Supp. Ct.).  
 2004 *John Desalvo & Donna Decianni v. Buca, Inc.*, (C.D. Cal.).  
 2004 *Scott O'Grady v. 20th Century Fox Film Corp. et al.*, (E.D. Tex.).  
 2004 *Sheffield Enters., Inc. v. The Main Event, Inc.*, (C.D. Cal.).

- 2004 *Wolf v. Walt Disney Pictures & Television*, 114 Cal. App. 4th 1343.  
 2003 *Corbis Corp. v. Amazon.com, Inc.* (W.D. Wash.).  
 2003 *Jose Eber v. Opal*  
 2002 *Anna Kournikova v. General Media Communications, Inc.*, (C.D. Cal.).  
 2002 *Akroyd & Pisano v. House of Blues Ent.*  
 2002 *In re Marriage of Jeff Gordon*, (15th Cir. Fla.).  
 2001 *Alfrederick Joyner & Mary Ruth Joyner v. The Washington University*,  
 (22nd Cir. Mo.).  
 2001 *Hailwood v. Ducati Motor Holdings, S.p.A.*, (D.N.J.).  
 1998 *Sharon Rufo v. OJ Simpson* (Cal. Ct. App.).

### **Publications**

- 2015 “Brands That Never Die (*What I Learned from Bogie, Elvis, Marilyn and James Dean and More than 300 Other Dead Celebrities I Represent*)” by Mark Roesler with Robert L. Shook  
 2005 “A Legend Never Goes Out of Style” Baseball and the Sultan of Swat: Babe Ruth at 100 Chapter 33 (Robert N. Keane, AMS Press, Inc.)  
 1999 Mark A. Roesler, *Celebrity Licensing*, in THE LICENSING DESKBOOK § 7.03 (Gregory J. Battersby & Charles W. Grimes, eds., Aspen Press)  
 1994 *LIMA's Beginner's Guide To Licensing* “Merchandising & Endorsements Involving Deceased Celebrities”  
 1992 *The International Licensing Directory* “Merchandising & Endorsements Involving Deceased Celebrities”  
 1992 *The Indiana Lawyer* “Merchandising & Endorsements Involving Deceased Celebrities”

### **Work Experience**

#### ***CMG Worldwide***

##### **1981-Present**

Chief Executive Officer and founder of CMG Worldwide, Inc., an international licensing and rights management company representing over 300 iconic personalities and brands. An illustrative sample of current and former clients includes the following:

**Sports:** Lou Gehrig, Jackie Robinson, Jesse Owens, Lou Brock, Vince Lombardi, Whitey Ford, Jack Dempsey, Mark Spitz, and Oscar De LaHoya.

**Corporate:** I ♥ NY ®, City of Beverly Hills, and Hollywood Chamber of Commerce

**Entertainment:** Marilyn Monroe, Bettie Page, James Dean, Sir Laurence Olivier, Ingrid Bergman, Sophia

Loren, Pamela Anderson and Ivana Trump

**Music:** Buddy Holly, Chuck Berry, Don McLean, Duke Ellington, Billie Holiday, Ella Fitzgerald, and Buddy Rich.

**Historical:** Diana, Princess of Wales, Will Rogers, Mark Twain, Malcolm X, Frank Lloyd Wright, and Amelia Earhart.

**Artists:** Norman Rockwell, Olivia DeBerardinis, and Alberto Vargas.

***The Curtis Publishing Company***

**1981-1994**

Vice President of the parent & holding company.

***Curtis International*** (a subsidiary of Curtis Publishing Company)

**1982-1984**

President

# **EXHIBIT 1**



# Olivia de Havilland 101: Everything you need to know as the movie legend celebrates her 101st birthday

By **Nardine Saad**

JULY 1, 2017, 6:00 AM

In Hollywood, you're never too old to sue.

At least not if you're Olivia de Havilland, the much-beloved, two-time Oscar winner whose 1943 lawsuit against Warner Bros. resulted in the collapse of the binding long-term contract system and put the De Havilland Law on the books.

On Friday, on the eve of her 101st birthday, De Havilland announced that she was suing FX and Ryan Murphy Productions over what she alleges was the unauthorized use of her identity in the recent miniseries "Feud: Bette and Joan."

Many women have fought for equal footing in Hollywood for years; De Havilland has now, officially, been at it in two centuries.

"Feud," which chronicles the longtime rivalry between actresses Bette Davis and Joan Crawford, used De Havilland, played by Catherine Zeta-Jones, as a commentator about the women, their relationship and Hollywood throughout the eight-episode show.

De Havilland, who resides in France, filed the lawsuit in Los Angeles Superior Court, claiming that FX didn't ask permission to use her name and identity and did not compensate her for the use.

According to a statement made by her attorneys, Suzelle M. Smith and Don Howarth, "the FX series puts words in the mouth of Miss de Havilland which are inaccurate and contrary to the reputation she has built over an 80-year professional life, specifically refusing to engage in gossip mongering about other actors in order to generate media attention for herself."

The suit accuses FX and its partners of placing the actress in "a false light to sensationalize the series," noting that all the other real-life players who are featured in the series are dead.

FX declined to comment on the lawsuit, and Murphy's team did not immediately respond to The Times' request for comment Friday. De Havilland's team plans to file a motion seeking an expedited trial date because of De Havilland's age, although the action would indicate that De Havilland is not going gently anywhere any time soon.

No matter how the suit turns out, it is a remarkable moment even in a highly remarkable life.



Catherine Zeta-Jones as Olivia de Havilland in the FX miniseries "Feud: Bette and Joan." (Kurt Iswarienko / FX )

## Olivia 101: A primer of must-know facts

The winner of two Academy Awards, the living legend is best known for playing the demure Melanie Wilkes in the 1939 epic “Gone With the Wind,” as well as for her numerous on-screen pairings with dashing leading man Errol Flynn during Hollywood’s Golden Age. She’s also known for being half of one of Hollywood’s most-heated sibling rivalries.

The newly minted English dame was dubbed by this newspaper as “the lady’s prototype of Lady, pretty-faced, gentle-faced and well-mannered.” The well-spoken pioneer’s chic coifs, expensive clothes and ever-present pearls are often noted.

De Havilland is also no stranger to legal proceedings. The acclaimed actress, who has worked in Hollywood since the 1930s, came up weathering Hollywood’s actor-studio contractual agreements long associated with early 20th century cinema — until she decided enough was enough.

Thanks in part to her 27-year-old self’s tenacity and leveling that landmark lawsuit against Warner Bros., the indentured servitude of the system began to collapse.

## **But first, a little background and a lot of Shakespeare.**

De Havilland was born in Tokyo on July 1, 1916, to British parents. Her father, Walter de Havilland, headed a patent law firm in Japan, while her actress mother, Lillian Ruse, taught choral music.

She was named after the beautiful, sought-after lady of William Shakespeare’s “Twelfth Night,” a nod to her mother’s training at the Royal Academy of Dramatic Arts in London.

De Havilland and her younger sister, fellow Oscar winner Joan Fontaine, grew up in Northern California, where De Havilland made her stage debut in a 1933 community theater production of “Alice in Wonderland.”

Fresh out of high school and with a scholarship to Mills College, the 18-year-old actress deferred admission to appear in Max Reinhardt’s staging of the Bard’s “A

Midsummer Night's Dream” at UC Berkeley’s Greek Theatre. She would later become a second understudy in Reinhardt’s Hollywood Bowl production.

De Havilland referred to Reinhardt as “the greatest director in the world,” and, as luck would have it, she took the stage as Hermia when both her predecessors left the comedy before the premiere. Soon after that, Warner Bros. tapped Reinhardt to direct the studio’s flashy 1935 film adaptation with William Dieterle, leading De Havilland to a contract with the studio in 1934 and a starting salary of \$200 a week.

**As a contract player at Warner Bros., she made nearly two dozen films — eight of them with leading man Errol Flynn.**

De Havilland’s “Shakespeare all the way” expectation of prestige roles at Warner Bros. was not to be so. The studio, known primarily for gangster melodramas led by male stars such as Edward G. Robinson and James Cagney, often typecast her as arm candy or in ingenue roles, often playing opposite fellow newcomer Flynn.



"The Adventures of Robin Hood" starred Errol Flynn and Olivia de Havilland. (Warner Home Video)

Together they became one of Hollywood's most popular romantic duos, beginning with the swashbuckler "Captain Blood" (1935); their most enduring pairing is in "The Adventures of Robin Hood" (1938).

"I think of Errol all the time," De Havilland told The Times in 2006. "In different ways, almost every day...He really was a mixed-up man, but of course he was extraordinary-looking and had great charm." (The rakish matinee idol died of a heart attack in 1959 following years of philandering, heavy drinking and drug use.)

"But, oh, he did mean a great deal to me, but in that day a woman did not declare her feelings for a man," she said. "When his autobiography came out, I couldn't resist checking the index and going to the page where he mentioned me. He said he thought he loved me. 'Thought!' That meant he didn't! I didn't read another word! Then several years ago when I was returning for the release of the DVD

version of 'Gone With the Wind,' I was determined to read more. I began with his second sentence about me in which he said that he decided that he did love me. To think of all those years I didn't believe he did."

De Havilland was also romantically linked to Howard Hughes, James Stewart, John Huston and several others. She married writer Marcus Aurelius Goodrich, author of the bestseller "Delilah," in 1946, and they had a son named Benjamin before divorcing in 1952. A year later, De Havilland met Pierre Galante, a writer and executive of Paris Match magazine, and they wed in 1955, had a daughter, Giselle, and divorced in 1979.


### **She took on substantial roles while on loan to other studios, including MGM's "Gone With the Wind."**

De Havilland took secret meetings to play "namby-pamby" Melanie in George Cukor's sweeping drama "Gone With the Wind." A top director at MGM, Cukor suggested "something entirely illegal" and asked De Havilland to surreptitiously journey to the Culver City-based studio and meet with producer David O. Selznick. The proposition easily could have incited legal action by Warner if the obstinate exec were to find out.

"[Cukor] said, 'Well, I'm going to suggest something to you which is entirely illegal. Would you come over to Selznick studios and read for the part?' He said tell no one, absolutely no one. I went to a secret entrance and they were waiting for me at the appointed time. They unlocked the door to the entrance and let me in to George's office," she told The Times in 2004.

She read two scenes, committed them to memory and read them again for Selznick. He agreed to cast her in the epic if Warner would agree to loan her out. He didn't agree.

"So I called up Mrs. Warner and asked her to have tea with me," De Havilland said. "She agreed and I told her how much the part meant to me. She had been an actress before she married Jack. She said, 'I understand how you feel and I will try to help you.' She was the one who persuaded Jack to let me go."



De Havilland portrayed Melanie in 1939's "Gone With the Wind."

The 1939 blockbuster earned 13 Academy Award nominations and won eight. De Havilland's costar Vivien Leigh clinched the lead actress Oscar as Scarlett O'Hara, while De Havilland lost in the supporting category to costar Hattie McDaniel, whose role as Mammy made her the first African American entertainer to win an Oscar. But De Havilland's nod further strengthened her resolve for more substantial roles in serious pictures.

De Havilland earned her second Oscar nomination for 1941's "Hold Back the Dawn" at Paramount, playing an honest American schoolteacher in the romance.

### **She took on the studio system at age 27 — and won.**

Though studio boss Warner jump-started her career, he would soon become De Havilland's courtroom rival. When the studio lobbed roles she deemed unacceptable, De Havilland began taking unpaid suspensions as retribution. Following "Hold Back the Dawn," she waited out her seven-year contract, which was set to expire in 1943, eager to take on meatier parts elsewhere.

However, California labor statutes favored employers at the time, and the "peonage" law, as she called it, meant the studio was entitled to six more months'

worth of work and could tack on her suspension penalties to the end of her contract. De Havilland took them to court, was backed by the Screen Actors Guild, and the battle went all the way up to the Supreme Court of California, which ultimately ruled in her favor by deciding that contracts had to be restricted to seven calendar years of service.

Decades later, De Havilland's legal precedent helped musician and future Oscar winner Jared Leto persuade the courts to apply the De Havilland Law to recording contracts as well.

## **The nominations kept coming and so did the Oscars. And she had pal Bette Davis to thank.**

In all, De Havilland was nominated for five Academy Awards, winning two.

### **OSCAR TALLY**

- **NOMINATED:** supporting actress, "Gone With the Wind" (1939)
- **NOMINATED:** lead actress, "Hold Back the Dawn" (1941)
- **WON:** lead actress, "To Each His Own" (1946)
- **NOMINATED:** lead actress, "The Snake Pit" (1948)
- **WON:** lead actress, "The Heiress" (1949)





Olivia de Havilland holds her two Academy Award statuettes in March 1950. (Associated Press)

After her nods for “Gone With the Wind” and “Hold Back the Dawn,” De Havilland earned her first Oscar in 1947 playing an unwed teenage mother in 1946’s romantic drama “To Each His Own.” She received another nod for Anatole Litvak’s “The Snake Pit” portraying a young wife flung into a mental institution “at a time when there was still a medieval attitude toward mental illness,” she said.

“I believed in following Bette Davis’ example,” she told The Times in 1988. “She didn’t care whether she looked good or bad. She just wanted to play complex, interesting, fascinating parts, a variety of human experience. I wanted Melanie to be just one of the images. Let’s have a few others.”

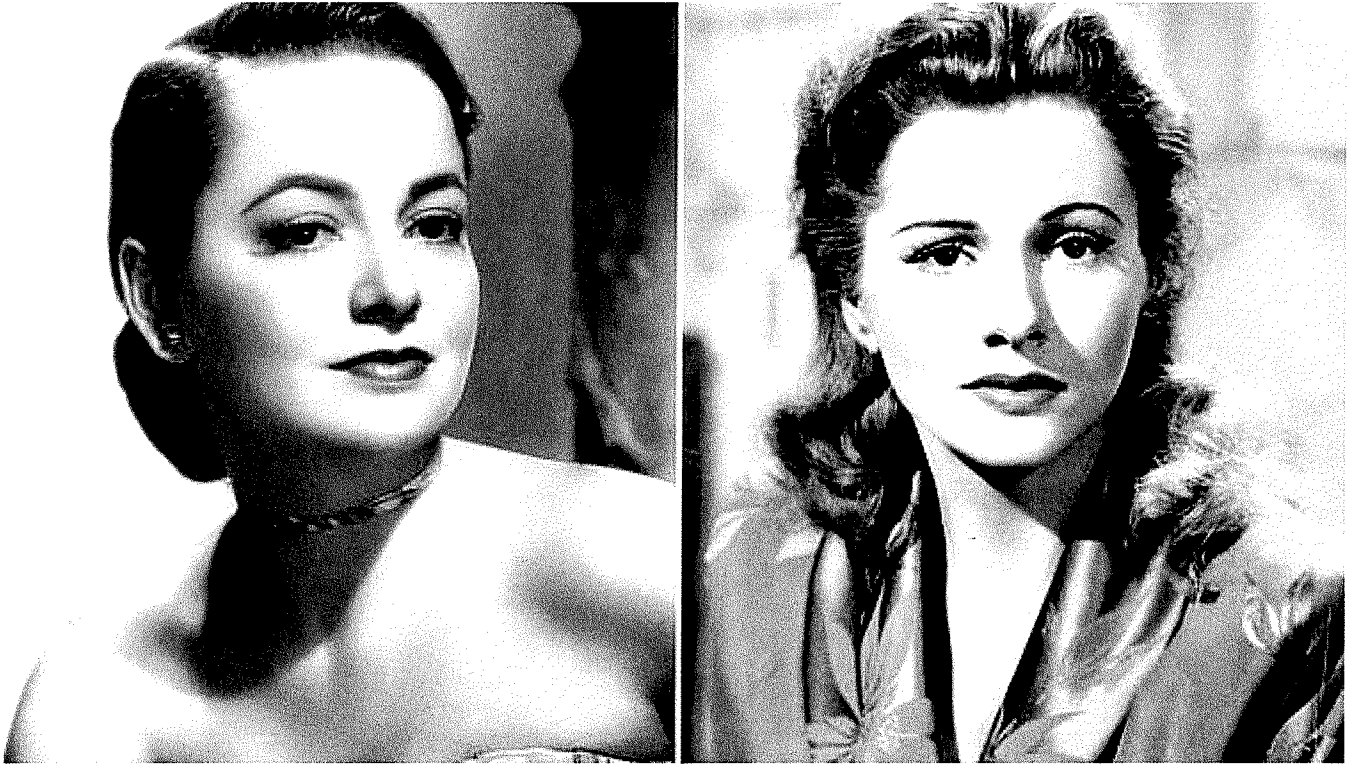
While the “The Snake Pit” meant the most to her, it was her role as a spinster in William Wyler’s adaptation of cruelty-oozing “The Heiress” that garnered her second Academy Award.

Olivia de Havilland Wins Best Actress: 1950 Oscars

James Stewart presents Olivia de Havilland the Oscar for lead actress for “The Heiress.”

De Havilland said that her first Oscar win had been marred by her sister, which leads us to...

## Her infamous feud with her sister, Joan Fontaine, led to a notorious rebuff at the Academy Awards.

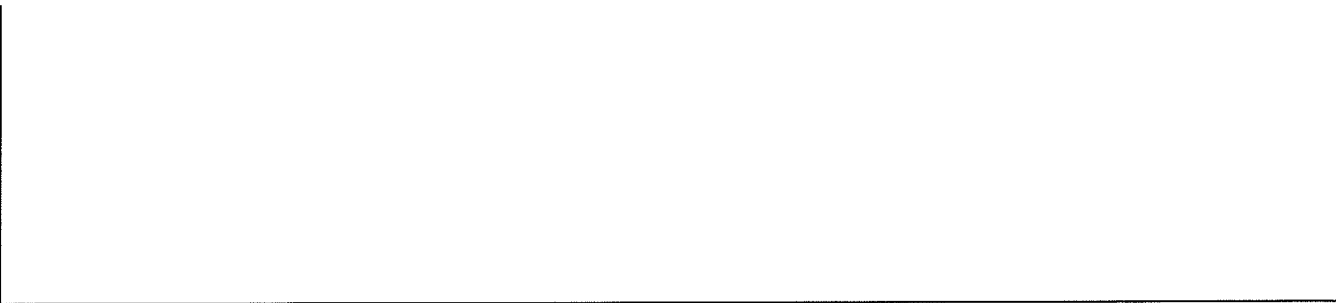


Left: A portrait of actress Olivia de Havilland in 1945. Right: Actress Joan Fontaine in 1941's "Suspicion." (Left: Paramount Pictures. Right: RKO Radio)

The press jumped on De Havilland and Fontaine's sibling rivalry even before the 1941 Oscars race — they pulled each other's hair and had savage wrestling matches as children, and went after the same parts and the same men as adults.

"You see, in our family, Olivia was always the breadwinner, and I the no-talent, no-future little sister not good for much more than paying her share of the rent," Fontaine explained to columnist Hedda Hopper in 1949.

Actress Olivia De Havilland Talks Sibling feud



Olivia de Havilland in a rare interview celebrating her 100th birthday in 2016.

The plot thickened when Fontaine delivered her Oscar-winning performance as the threatened wife in Alfred Hitchcock's "Suspicion," the same year for which De Havilland was nominated for "Hold Back the Dawn."

Fontaine, who by her career's end was nominated for four Oscars and won one, once compared herself to her sister this way in 1978: "I married first, won the Oscar before Olivia did, and if I die first, she'll undoubtedly be livid because I beat her to it!"

When De Havilland won her first Oscar for "To Each His Own," Fontaine allegedly reached out her hand to congratulate her, but De Havilland quickly turned away, her Oscar clutched to her breast — an infamous moment that De Havilland disputed.

## **Sister vs. Sister: What happened Oscar night**

### **Fontaine**

- "I went over to congratulate her as I would have done to any winner. She took one look at me, ignored my hand, clutched her Oscar and wheeled away," she wrote in her memoir, "No Bed of Roses."

### **De Havilland**

- "Look, these pictures [of us] cannot be taken unless Joan apologizes to me. I will turn away," De Havilland told her press agent. "They didn't believe me. They thought I would be just as phony as anyone. I came offstage. I trusted them. I had won the Oscar. This was the great moment of my life. It was totally ruined."

“That year, backstage at the Oscars I wouldn’t speak to her,” De Havilland explained to *The Times*. “Let’s get it *straight*. My sister is very witty, and she made a remark about my first husband that came out in the *Hollywood Reporter*... I’m extremely loyal — savagely, not *screamingly* loyal — but savagely. My mother was Victorian and I was brought up on Victorian novels. If you were offended by a person, you never got angry. You just cut them dead. Read the novels. What’s required is an apology. Now, Joan knew that. She’d read the novels. A basket of flowers with just a name would have done it.”

“

**I married first, won the Oscar before Olivia did, and if I die first, she’ll undoubtedly be livid because I beat her to it!**

— Joan Fontaine in 1978 on her sibling rivalry with De Havilland

Their feud continued on and off for years until they were said to have had their final falling out in 1975 over their mother’s declining health. But De Havilland said they privately patched things up and expressed her sadness when Fontaine died at 96 in 2013.





Actress Olivia de Havilland poses with her accolades at home in Paris in 2003. (Jean-Marc Giboux / Getty Images / For The Times)

## **After retreating to Paris, she was lured back to Tinseltown now and again.**

The actress appeared on the screen intermittently until she retired in 1988. She famously replaced Joan Crawford in Robert Aldrich's "What Ever Happened to Baby Jane?" follow-up "Hush ... Hush, Sweet Charlotte" in 1964, sharing the screen with her pal Davis, who famously feuded with Crawford (as seen in the 2017 miniseries "Feud: Bette and Joan.")

# **EXHIBIT 2**

# FX (TV channel)

From Wikipedia, the free encyclopedia

**FX** (originally an initialism of "Fox Extended", pronounced and suggesting "effects") is an American basic cable and satellite television channel launched on June 1, 1994, based in Los Angeles, California and owned by 21st Century Fox through FX Networks, LLC. FX's programming primarily includes original drama and comedy series (which aspire to the standards of premium cable channels like HBO and Showtime, in regard to adult themes and higher-quality writing/directing/acting) and reruns of theatrical films and "broadcast network" sitcoms.

As of July 2015, FX is available to approximately 94,006,000 pay television households (80.8% of households with at least one television set) in the United States.<sup>[2]</sup> In addition to the flagship U.S. network, the "FX" name is licensed to a number of related pay television channels in various countries around the world.

	<b>FX</b>
<b>Launched</b>	June 1, 1994
<b>Owned by</b>	21st Century Fox (FX Networks, LLC)
<b>Picture format</b>	720p (HDTV) 480i (SDTV)
<b>Slogan</b>	<i>This is us</i>
<b>Country</b>	United States
<b>Language</b>	English
<b>Broadcast area</b>	Nationwide
<b>Headquarters</b>	10201 West Pico Boulevard Building 103, 4th Floor Los Angeles, CA 90035, United States <sup>[1]</sup>
<b>Formerly called</b>	fx (1994–1997)
<b>Sister channel(s)</b>	Fox Business Fox Fox News FXX FXM Movies!
<b>Website</b>	fxnetworks.com (http://fxnetworks.com)
	<b>Availability</b>
	<b>Satellite</b>
<b>DirecTV</b>	248 1248 (VOD)

## Contents

- 1 History
    - 1.1 1994–97: Early years
    - 1.2 1997–2001: Fox Gone Cable
    - 1.3 2002–07: Emergence in original programming
    - 1.4 2008–13: "There Is No Box"
    - 1.5 2013–present: "Fearless"
  - 2 Programming
    - 2.1 Sports programming
  - 3 Sister channels
    - 3.1 FX Movie Channel
    - 3.2 FXX
    - 3.3 FX Now
  - 4 International
    - 4.1 Asia
    - 4.2 Australia
    - 4.3 Canada
    - 4.4 Latin America
    - 4.5 South Africa
    - 4.6 Turkey
  - 5 Network slogans
  - 6 High definition
  - 7 See also
  - 8 Notes
  - 9 References
  - 10 External links

## History



## 1994–97: Early years

FX, originally stylized as "fX", launched on June 1, 1994. Broadcasting from a large "apartment" in Manhattan's Flatiron District, fX was one of the first forays into large-scale interactive television. The channel centered on original programming, which was broadcast live every day from the "fX Apartment," and rebroadcasts of classic television shows from the 1960s, 1970s and 1980s, such as *Batman*, *Wonder Woman*, *Eight Is Enough*, *Nanny and the Professor* and *The Green Hornet*. fX had two taglines during this period: "TV Made Fresh Daily" and "The World's First Living Television Network".<sup>[3]</sup> The "f" in the channel's name and logo was rendered in lower-case to portray a type of relaxed friendliness; the stylized "X" represented the channel's roots: the crossing searchlights of the 20th Century Fox logo.

The live shows were each mostly focused on one broad topic. Shows included *Personal fX* (collectibles and antiques), *The Pet Department* (pets), *Under Scrutiny with Jane Wallace* (news) and *Sound fX* (music). The channel's flagship show, *Breakfast Time*, hosted by Laurie Hibberd and Tom Bergeron, was formatted like an informal magazine program and was an Americanized version of Great Britain's *The Big Breakfast*. *Breakfast Time* and *Personal fX* would regularly feature the channel's "roving reporters" – which included Suzanne Whang, John Burke and Phil Keoghan – visiting unique places around the United States live via satellite. Other notable fX personalities included Karyn Bryant and Orlando Jones, who were panelists on *Sound fX*.

The channel prided itself on its interactivity with viewers. fX, in 1994, was an early adopter of the internet, embracing e-mail and the World Wide Web as methods of feedback. Most of the shows would feature instant responses to e-mailed questions, and one show, *Backchat* (hosted by Jeff Probst), was exclusively devoted to responding to viewer mail, whether sent through e-mail or traditional postal mail. Select viewers were allowed to spend a day at the "apartment" and take part in all of the channel's shows. Inside the channel's syndicated programming blocks, channel hosts would frequently appear during commercial breaks to read news headlines, respond to e-mails from viewers about the episode that was airing, or to promote upcoming programming.

The first incarnation of fX was not available on Time Warner Cable, one of the major cable systems in New York City, where its programming originated. TWC would not carry the channel until September 2001.<sup>[4]</sup>

The live shows gradually disappeared one by one until only *Personal fX* remained. *Breakfast Time* was moved to the Fox network and renamed *Fox After Breakfast* in mid-1996. It underwent several format changes, but never found a substantial audience and was canceled less than a year later. By the time that all live programming (with the exception of *Personal fX*) was dropped, the channel focused entirely on its classic television shows until its relaunch in mid-1997. *Personal fX* remained on the refocused FX until May 1, 1998. FX vacated the "apartment" in the summer of 1998 and the channel's operations were streamlined with the other Fox-owned cable channels.

## 1997–2001: Fox Gone Cable

In early 1997, fX was relaunched as "FX: Fox Gone Cable",<sup>[5]</sup> refocusing the channel's target audience towards men aged 18 to 49. During the first few years after its relaunch, FX was known for little else than airing reruns of such Fox shows as *The X-Files* and *Married... with Children*, as well as 20th Century Fox-produced shows such as *M\*A\*S\*H* and *Buffy the Vampire Slayer*. The channel also added Major League Baseball games to its lineup at that time (at one point sharing rights with then-sister network Fox Family), and eventually expanded its sports programming to include NASCAR races in 2001.

<b>StarSat South Africa</b>	133
<b>Dish Network</b>	136
	<b>Cable</b>
<b>Available on most U.S. cable systems</b>	Consult your local cable provider for channel availability
<b>Verizon FiOS</b>	553 53 (SD)
<b>AT&amp;T U-verse</b>	1129 129 (SD)
	<b>Streaming media</b>
<b>PlayStation Vue</b>	Internet Protocol television
<b>Sling TV</b>	Internet Protocol television

In the summer of 1998, FX debuted three original series: *Bobcat's Big Ass Show*, *Instant Comedy with the Groundlings* and *Penn & Teller's Sin City Spectacular*. All three series were cancelled the following year. Soon after its relaunch, the "Fox Gone Cable" tagline was dropped. By 1999, new original programs were added with the debut of shows such as *Son of the Beach* (a *Baywatch* parody that starred Timothy Stack and was executive produced by Howard Stern) and *The X Show* (a male-oriented late night panel talk show).<sup>[6]</sup> The channel also acquired the cable syndication rights to reruns of series such as *Ally McBeal*, *NYPD Blue* and *The Practice* for then-record high prices then unseen in the cable industry despite all three 20th Century Fox Television series being under common ownership; when these shows expensively fumbled in primetime, FX predominantly ran movies in its more high-profile time periods, though with the move of premiere film rights from broadcast television to basic cable, FX unexpectedly would end up a benefactor of this change.

## 2002–07: Emergence in original programming

Beginning in 2002, the channel emerged as a major force in original cable programming, gaining both acclaim and notoriety for edgy dramas. That year, FX debuted the police drama *The Shield*, which became a breakout hit. This trend continued the following year with *Nip/Tuck*, a drama about two plastic surgeons, and the Denis Leary-helmed *Rescue Me*, about the lives of a crew of firemen from the New York City Fire Department post-9/11. Both shows were lauded by critics, and achieved equal success with viewers. *Rescue Me* was one of the few television series to be given an order for an additional season prior to the broadcast of its most recent season: in June 2009 FX renewed the show for an 18-episode sixth season, although the fifth season had not premiered at the time.<sup>[7]</sup>

Unlike many broadcast networks, FX has chosen to take risks with its programming and push the envelope of what can be shown on television; as a result, most (though not all) of the channel's original programming are assigned TV-MA ratings, often for strong profanity, sexual and/or violent content. Opinions on these shows are mixed; some organizations, such as the Parents Television Council and American Family Association, have asked advertisers to boycott these shows due to their graphic content.<sup>[8][9]</sup> The shows have also been critically acclaimed for their strong storylines and characters.

Capitalizing on the success of the hit documentary *Super Size Me*, filmmaker Morgan Spurlock launched a new series, *30 Days*, which debuted on FX in June 2005. The series place its subjects in situations uncomfortable to them for 30 days, such as making millionaires work for minimum wage, and having Christians live in a Muslim community.

In the summer of 2005, FX debuted two new comedy series, *Starved*, about the daily lives of four friends with eating disorders who live in New York City; and *It's Always Sunny in Philadelphia*, about the usually very politically incorrect comic misadventures of four people who own a bar in the titular city. Both of these shows feature frank sexual dialogue and strong language, and were pitched as "The Dark Side of Comedy." *Starved* was derided by groups that sought to publicize eating disorders and was cancelled after its first season due to low ratings. Conversely, *Sunny* quickly became a critical darling, consistently achieved high viewership, and was picked up for a second season within days of its first season finale. Fox aired an edited version of *Sunny* for a three-episode run in the summer of 2006, in an effort to further promote the series.

In 2006, FX debuted two new series, the reality series *Black. White.* and the drama *Thief*; neither series was picked up for a second season. During 2007, FX introduced three new dramas: *Dirt*, starring Courteney Cox; *The Riches*, starring Eddie Izzard and Minnie Driver; and *Damages*, starring Glenn Close, Ted Danson and Rose Byrne. All three performed well in the ratings and were renewed for second seasons. By 2008, FX was available in 90.6 million homes in the U.S.

## 2008–13: "There Is No Box"

In 2008, the channel launched a new branding campaign built around the theme "There Is No Box." It alluded to the phrase "thinking outside the box" and referred to how the channel's programming goes beyond "the box" concept. In addition, this was a pun related to the channel's creating original programs to compete against premium channels such as HBO. The channel's logo was updated on December 18, 2007, retaining only the FX wordmark while removing the klieg light logo box that had been placed to its left since the 1997 rebrand. The new branding included an advertising campaign featuring a post-game ad for the channel during Fox's coverage of Super Bowl XLII.<sup>[10]</sup> The promo used the James Morrison song "You Give Me Something".<sup>[11]</sup>



FX logo used from 2008 to 2013.

During 2008, competition with other cable channels increased, which was evident in the second season ratings for series *Dirt* and *The Riches*, whose ratings decreased significantly from their freshman seasons. During some weeks, viewership for both shows barely exceeded 1 million. Both shows were cancelled in 2008; acquired programs *Dharma and Greg*, *Buffy the Vampire Slayer*, *Married... with Children*, and *Fear Factor* were also removed from the schedule.

On September 3, 2008, FX debuted *Sons of Anarchy*, a drama series created by Kurt Sutter (who previously served as executive producer of *The Shield*) about a fictional outlaw motorcycle club devoted to protecting their sheltered California town from corporate developers and drug dealers; its September premiere coincided with that of *The Shield*'s final season. *Sons of Anarchy* became a critical and commercial success, having aired for seven seasons as of 2014. In 2010, the series attracted an average of 4.9 million viewers per week, making it *FX*'s highest rated series to date.<sup>[12]</sup> Other new shows that premiered in 2010 included the Kenny Hotz comedy *Testees*, which debuted in October 2008 and was cancelled after its first season. In August 2008, FX relaunched its website, adding streaming of full episodes of its original programs. In 2009, reruns of the former ABC sitcom *Spin City* were removed from the schedule (though it was restored early the following year).

In July 2009, FX ordered three new comedy pilots: *Archer*, an animated series featuring a spy agency, which premiered on January 14, 2010;<sup>[13]</sup> *The League*, with a group of friends who are part of a fantasy football league;<sup>[14]</sup> and *Louie*, a sitcom starring stand-up comedian and writer Louis C.K., which "blend[s] stand-up material with[...] 'extended vignettes' depicting moments from [the comedian's] offstage experiences."<sup>[15]</sup> The following year, FX debuted *Wilfred*, a comedy series starring Elijah Wood. It is based on the Australian comedy series of the same name.<sup>[16]</sup>

In March 2010, the channel debuted *Justified*, a drama series created by Graham Yost based on Elmore Leonard's short story "Fire in the Hole" (which was the series' original working title). It starred Timothy Olyphant as U.S. Marshal Raylan Givens – a tough, soft-spoken lawman with a rough side – and chronicles his cases and personal life, including unfinished business with an ex-wife and his aging father.<sup>[17]</sup> FX also picked up the crime comedy-drama *Terriers*, created by Ted Griffin, for its fall 2010 lineup; in 2011, the channel debuted the boxing drama *Lights Out*, about retired boxing champion Patrick "Lights" Leary who is considering a comeback despite the serious risks it entails. Despite the critical acclaim that *Terriers* and *Lights Out* received, the two series were cancelled after their first seasons due to low viewership; For *Terriers* specifically, FX Networks president and General Manager John Landgraf would later admit in a 2016 interview with critic Alan Sepinwall that "I cannot think of a more painful moment of my career than the one when I defined *Terriers* as a failure by canceling it."<sup>[18]</sup>

On October 1, 2010, parent company News Corporation (which spun off FX and the company's other U.S.-based entertainment properties to 21st Century Fox in July 2013) pulled its channels from Dish Network due to a carriage dispute over retransmission consent revenue. FX returned to the satellite provider's channel lineup on October 29, 2010, after Dish Network and News Corporation signed a long-term carriage agreement. On November 1, 2010, following a similar dispute, FX and its sister channels were restored by New York City-based cable provider Cablevision through a separate carriage agreement.

On October 14, 2011, FX announced that it picked up the rights to develop a series based on *Scar Tissue* and *Lords of the Sunset Strip*, the autobiographies of the Red Hot Chili Peppers singer Anthony Kiedis and his father, Blackie Dammett. HBO had picked up the series, which was to be titled *Spider & Son*, a few years before but never completed the project. *Entourage* writer/producers Marc Abrams and Mike Benson were tapped as its showrunners and Kiedis was to be involved as a co-producer.<sup>[19]</sup> Dammett said in 2013 that the show has been "mothballed," and he hopes interest will resume on the project once the Red Hot Chili Peppers wrapped up their world tour that year. As of 2014 there has been no mention from FX, Kiedis or Dammett on the status of the series.<sup>[20]</sup> On January 30, 2013, FX premiered the 1980s-set Cold War drama *The Americans*.

## 2013–present: "Fearless"

On March 28, 2013, FX president John Landgraf announced their upcoming launch of a new channel, FXX, described as "slightly more comedy focused" and aimed at younger audiences 18-34 compared with FX's programming and viewers aged 25-54, respectively. The channel was launched alongside the new tagline, "Fearless", that was implemented during 2013 across the channels of FX Networks. These announcements were part of FX Networks' plans to further distinguish itself from "the sameness of broadcast TV and its endless basic cable imitators."<sup>[21]</sup>

On April 3, 2013, FX changes its logo by adopted its International logo (with the F and X attached to each other).<sup>[22]</sup>

On June 1, 2014, FX celebrated its 20th anniversary of programming.

## Programming

FX's most popular original shows include *It's Always Sunny in Philadelphia*, *Sons of Anarchy*, *Archer*, *American Horror Story*, *Anger Management*, *The Americans*, *Fargo*, *American Crime Story*, *Legion*, and *Atlanta*.

The channel also broadcasts theatrically released feature films from network sister company 20th Century Fox and other film studios (such as Sony Pictures Entertainment, Universal Pictures, and Paramount Pictures), which take up much of FX's primetime and the majority of its weekend schedules. It airs repeats of network television sitcoms (such as *Two and a Half Men* and *How I Met Your Mother*). From the late 1990s to the mid-2000s, the acquired programs which FX broadcast consisted largely of series originally broadcast on Fox between the late 1980s and the 2000s (such as *That '70s Show*, *Married... with Children*, and *In Living Color*).

## Sports programming

After obtaining the spring broadcast rights to NASCAR, Fox Sports announced that FX would serve as its cable partner for the 2001 inaugural season of race telecasts. As a result, FX covered several races in the series then known as the Busch Series and Winston Cup (including the All-Star Race), as well as select qualifying and final practice sessions. Having FX carry the race telecasts was intended to promote the channel and encourage NASCAR fans to contact their cable providers to add FX to their lineup. In 2002, Peter Liguori, who was then president of FX, praised NASCAR for its growth; the channel increased penetration from 58.5 million to 76.6 million households nationwide.<sup>[23]</sup> FX lost the broadcast rights to NASCAR after the 2006 season, as sister channel Speed Channel became the new cable partner for NASCAR on Fox.

In 1997, FX obtained partial cable television rights to Major League Baseball games; the channel initially aired game telecasts on Monday nights, before moving them to Saturday nights in 1998. In 2000, FX began sharing the Major League Baseball cable rights with then-sister network Fox Family Channel (taking rights to the league's Thursday evening games from Fox Sports Net), with games being scheduled on an alternating basis with FX.

Starting with the 2001 season, FX also obtained rights to games from the MLB Division Series, the only playoff round to which Fox did not hold television rights. Among the games televised on FX was Cal Ripken, Jr.'s final home game with the Baltimore Orioles in September 2001.

On April 27, 2011, FX began airing football games from the UEFA Champions League as part of the league's overall television deal with Fox Sports. In the fall of 2011, FX began broadcasting Big 12, Conference USA and Pac-12 college football games on Saturdays (mainly primetime games, with some daytime games mixed in), as part of Fox Sports' broadcasting contracts with the three conferences.<sup>[24]</sup> In January 2012, FX began broadcasting content from the Ultimate Fighting Championship.<sup>[25]</sup>

With the August 2013 launches of national sports cable networks Fox Sports 1 and Fox Sports 2, FX no longer serves as a regular cable outlet for Fox Sports. However, UFC 185 preliminary fights aired on FX due to FS1 showing college basketball. Also on March 5, 2016 FX aired a Bundesliga match between that league's top two teams Bayern Munich and Borussia Dortmund to provide wider distribution of the fixture, as Fox, FS1, and FS2 all had sporting commitments of their own at the time of the match and the match was to air on the little-distributed Fox Soccer Plus (which does not have carriage on numerous TV providers). Because this was Fox's first year of coverage of Germany's top soccer league and Bayern and Borussia are the two most successful Bundesliga teams (and have an intense rivalry known as *Der Klassiker*), Fox wanted to give the game wider distribution, and so the game was moved to FX in a last-minute decision. In June 2016, FX continued its broadcast of sports with the airing of three games from the Copa América Centenario in order to gain a wider viewing audience for the selected teams.<sup>[26]</sup>

## Sister channels

### FX Movie Channel

**FX Movie Channel** (or **FXM**) launched on October 31, 1994 as *fXM: Movies from Fox* (prior to its launch, the channel was originally named "Fox Movie Studio")<sup>[27]</sup> Originally launched as a spinoff of FX, the channel focused on feature films from the 20th Century Fox film library from the 1930s to the 1970s.<sup>[28]</sup> *fXM* became a separately branded channel on March 1, 2000, when it was renamed **Fox Movie Channel**.



On January 1, 2012, Fox Movie Channel's programming was divided into two 12-hour blocks: its main programming schedule, from 3:00 a.m. to 3:00 p.m. Eastern Time, was a commercial-free block retaining the older movies from the 20th Century Fox library. Another block, from 3:00 p.m. to 3:00 a.m. Eastern Time and a very largely advertiser-supported version, carried an expanded slate of more recent feature films from Fox and other film studios, which were targeted at audiences between the ages of 12 and 49.

On March 27, 2013, Fox Entertainment Group announced that Fox Movie Channel would be fully rebranded under the FXM name and format.<sup>[29]</sup> FX Movie Channel became the primary brand for the channel in September 2013; the classic film block retained the Fox Movie Channel name until June 9, 2014, when the block (which retains a commercial-free format) was renamed *FXM Retro*.

### FXX

Aimed at young men in the 18-34 age range, **FXX** is a digital cable and satellite channel that launched on September 2, 2013, replacing the sports-oriented Fox Soccer;<sup>[30][31]</sup> FXX is a general entertainment channel that primarily focuses on comedies (whereas FX focuses primarily on drama series and films, although FX and FXX do not maintain the same genre-



exclusive format as TBS and TNT as FX continues to carry sitcoms and comedic films, while FXX carries a limited selection of dramatic series and films); its programming includes original and acquired comedy series, some feature films and drama series.

With the launch of the channel, first-run episodes of some of FX's original comedy series (such as *It's Always Sunny in Philadelphia* and *Totally Biased with W. Kamau Bell*) were shifted over to FXX. At its launch, most providers that have agreements to carry FXX have placed the channel in extra-cost sports packages (despite being a general entertainment service) as an artifact of carriage deals with the previous holder of FXX's channel space, Fox Soccer, though this is expected to be rectified over time.

## FX Now

FX Now is a website for desktop computers, as well as an application for smartphones and tablet computers, along with Windows 10. It allows subscribers of participating cable and satellite providers (such as Time Warner Cable and Comcast Xfinity) numerous viewing options:

- individual episodes of FX and FXX's original series (which are made available the morning after their original airdate<sup>[32]</sup>),
- acquired series (most notably, the 552-episode catalog of the first 25 seasons of *The Simpsons*, which was added on August 21, 2014 as part of FXX's acquisition of cable syndication rights to the series), and feature films (with an initial library of 165 film titles, which will increase to more than 200 titles beginning in 2015),<sup>[33][34]</sup>
- Additional content includes behind-the-scenes features on computers and mobile devices via their TV Everywhere login provided by their cable provider.

Launched in January 2014, the service is also available through iOS, Android, Samsung and Windows 8 (later Windows 10) devices, Xbox One and Xbox 360, and the Roku streaming player.<sup>[35][36]</sup> Although the service is available for free to subscribers of participating cable, telco and satellite providers, programs available for streaming on FXNOW feature commercial interruption.<sup>[37]</sup>

In August 2017, Fox announced to launch FX+, an advertising-free video streaming service that will feature all the FX and FXX original series. Initially, the service will be available in the United States for Comcast's Xfinity TV customers at US\$5.99 per month.

## International

### Asia

In 2004, Fox Networks Group Asia and STAR India (through a distribution agreement) partnered to launch FX Asia. The channel is divided into four services: a national channel distributed throughout much of the continent, and three regional channels serving South Korea, and Philippines.

### Australia

FX launched in Australia in 1995, with a format reliant on classic television series (often branded on-air as "Golden Years of Television"). fXM was a nightly block on the channel that featured classic films from the 20th Century Fox library, hosted by Bill Collins (the block was often branded as "Bill Collins' Golden Years of Hollywood", which later aired on Fox Classics). In late 1998, FX became FX, a channel aimed at women (a format change affirmed in late 2000, as part of a rebrand that identified it as "Australia's first TV channel for women"), featuring shows such as *The View* and *Donny and Marie*.<sup>[38][39]</sup> The channel was relaunched as *W.* on November 1, 2003, to emphasize its appeal to women. In 2010 it rebranded as *SoHo*.

On October 9, 2011, Fox Networks Group announced that a new Australian version of FX would be launched in early 2012, featuring series such as *The Walking Dead*, *Transporter: The Series* and *Hell on Wheels*, designed to increase the breadth of its audience<sup>[40]</sup>

## Canada

On August 6, 2011, Rogers Media entered into a licensing agreement with FX Networks to launch FX Canada as a Category B digital cable and satellite specialty channel.<sup>[41]</sup> The channel is also carried by other providers such as EastLink, Shaw Cable and MTS TV.<sup>[42]</sup> The network, which launched on November 1, 2011, features a mix of FX original series; acquired American movies and series; and original Canadian programming and sporting events (as required by content rules imposed by the Canadian Radio-television and Telecommunications Commission).<sup>[43]</sup> FX Canada's broadcast license requires that 15% of its programming consist of Canadian content in its first year, 20% in its second year and 25% by its third year.

## Latin America

The FX channel in Latin America, is intended almost entirely aimed at a male audience, as a counterpart of Fox Life, created for the female viewers. In Brazil, it is broadcast mainly by NET TV, Vivo TV, Oi TV, SKY, Claro TV and GVT TV.

## South Africa

FX was launched in South Africa as part of the StarSat offering in May 2010.<sup>[44]</sup>

## Turkey

FX was launched in Turkey on April 14, 2008 on the D-Smart digital platform. It is also available on the Teledünya and Tivibu digital platforms.

## Network slogans

- "FX: The World's First Living Television Network" (primary; 1994–1996)
- "fX: TV Made Fresh Daily" (secondary; 1994–1996)
- "fX: TV with You in Mind" (1996–1997)
- "FX: Fox Gone Cable" (1997–2008)
- "There Is No Box" (2008–2013)
- "Fearless" (2013–2017)
- "This is us" (2017-present)

## High definition

FX began broadcasting a 720p high definition channel in 2007, which is available on the majority of cable and satellite providers; the standard definition channel, as is now standard with all of FX's and Fox's sports cable networks, is now merely downscaled at the provider from the HD feed rather than having a devoted standard definition feed.

## See also

- FX Movie Channel

- Fox Reality Channel

## Notes

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# **EXHIBIT 3**

# Ryan Murphy (writer)

From Wikipedia, the free encyclopedia

**Ryan Patrick Murphy** (born November 30, 1965) is an American screenwriter, director and producer. Murphy is best known for creating/co-creating/producing a number of successful television series, including the FX medical drama *Nip/Tuck* (2003–10), the Fox musical comedy-drama *Glee* (2009–15), and the FX anthology series *American Horror Story* (2011–present), *American Crime Story* (2016–present) and *Feud* (2017–present). He is also known for directing the 2010 film adaptation of Elizabeth Gilbert's bestselling memoir *Eat, Pray, Love* and the 2014 HBO film adaptation of Larry Kramer's *The Normal Heart*, which earned a Primetime Emmy Award for Outstanding Television Movie.

## Contents

- 1 Early life
- 2 Career
  - 2.1 Beginnings
  - 2.2 Television
- 3 List of series
  - 3.1 Unsold pilots
  - 3.2 Frequent casting
  - 3.3 Films
- 4 Personal life
  - 4.1 Controversy
- 5 Awards and nominations
  - 5.1 Emmy Awards
- 6 References
- 7 External links

## Early life

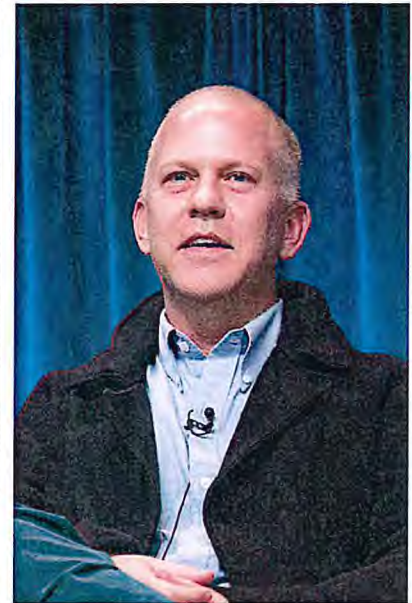
Murphy was born on November 30, 1965, in Indianapolis, Indiana,<sup>[1]</sup> where he was raised in an Irish Catholic family.<sup>[2][3]</sup> He attended Catholic school from first through eighth grade,<sup>[2]</sup> and graduated from Warren Central High School in Indianapolis. He has described his mother J. Andy Murphy as a "beauty queen who left it all to stay at home and take care of her two sons." She wrote five books and worked in communications for over 20 years before retiring. His father worked in the newspaper industry as a circulation director before he retired after 30 years.<sup>[4]</sup>

After coming out as gay, Murphy saw his first therapist, who found nothing wrong with him other than being "too precocious for his own good."<sup>[2][4]</sup> During a 2012 interview on *Inside the Actors Studio*, Murphy claimed that he secretly dated "a lot of football players" in high school.<sup>[5]</sup> He performed with a choir as a child, which would later inform his work on *Glee*.<sup>[2]</sup> Murphy attended Indiana University Bloomington, where he majored in journalism.<sup>[1]</sup>

## Career

### Beginnings

**Ryan Murphy**



Murphy at the PaleyFest 2013 panel for *The Normal Heart*

<b>Born</b>	Ryan Patrick Murphy November 30, 1965 Indianapolis, Indiana, U.S.
<b>Occupation</b>	Screenwriter, director, producer
<b>Alma mater</b>	IU Bloomington
<b>Spouse</b>	David Miller (m. 2012)
<b>Children</b>	2

Murphy started as a journalist working for *The Miami Herald*, *Los Angeles Times*, *New York Daily News*, *Knoxville News Sentinel* and *Entertainment Weekly*. He began scriptwriting in the late 1990s, when Steven Spielberg purchased his script *Why Can't I Be Audrey Hepburn?*.<sup>[4]</sup>

## Television

### *Popular and Nip/Tuck*

Murphy started his career in television with the teen comedy series *Popular*, which he co-created with Gina Matthews. The series premiered on The WB on September 29, 1999<sup>[6]</sup> and ran for two seasons, ending in 2001. He then created the FX drama series *Nip/Tuck*, which premiered on July 18, 2003. In 2004, Murphy earned his first Primetime Emmy Award nomination for Outstanding Directing for a Drama Series.<sup>[4]</sup> Murphy took the show's signature line, "Tell me what you don't like about yourself," from a plastic surgeon he met when he was a journalist researching an undercover story on plastic surgery in Beverly Hills. The series ended after six seasons in 2010.

### *Glee*

On May 19, 2009, Murphy's musical comedy-drama series, *Glee*, premiered on Fox. He co-created the series with Brad Falchuk and Ian Brennan. In its early seasons, the show was critically lauded.<sup>[7]</sup> Murphy won his first Primetime Emmy Award for directing the pilot episode.<sup>[8]</sup> The series concluded in 2015 following its sixth season.<sup>[9]</sup> Murphy was one of four executive producers on the reality television series *The Glee Project*, which premiered on Oxygen on June 12, 2011.<sup>[10]</sup> The show featured a group of contestants vying for the prize of a seven-episode arc on *Glee*, with someone being eliminated each week, until the winner is chosen in the final episode. The show was renewed for a second season, which ended up being its last.<sup>[11]</sup>

### *The New Normal*

Murphy and *Glee* co-executive producer Ali Adler created the half-hour comedy *The New Normal*, which premiered on NBC on September 10, 2012. The series was based on Murphy's own experiences of having a child via surrogate, with the main characters, Bryan and David, named for Ryan and his husband.<sup>[12]</sup> The series was ultimately cancelled after one season.<sup>[13]</sup>

### Anthology series

Murphy and Falchuk created the anthology series *American Horror Story*, which premiered on FX on October 5, 2011. Some of the same cast has played different characters in a different setting each subsequent season.<sup>[14][15]</sup> In October 2014, FX greenlit a companion anthology series, *American Crime Story*, which Murphy and Falchuk executive produce. The series premiered on February 2, 2016.<sup>[16]</sup>

Murphy, Falchuk and Brennan next co-created the comedy-horror semi-anthology series *Scream Queens*, which premiered on Fox on September 22, 2015.<sup>[17]</sup> The series was later cancelled after two seasons.<sup>[18][19]</sup>

Murphy's next project, the drama anthology series *Feud*, premiered on FX in 2017. The first season focused on the rivalry between Bette Davis and Joan Crawford on the set of their 1962 film *What Ever Happened to Baby Jane?*.<sup>[20]</sup> On June 30, 2017, a day before her 101st birthday, Olivia de Havilland, the only Hollywood star depicted in the series who is still alive,<sup>[21]</sup> filed a lawsuit against the *Feud: Bette and Joan* series for inaccurately portraying her and using her likeness without permission. In a 2017 interview, Murphy noted that he had not consulted with de Havilland because he "didn't want to be disrespectful and ask her, 'Did this happen? Did that happen? What was your take on that?'"<sup>[22]</sup>

## List of series

Series	Original run	Role
<i>Popular</i>	1999–2001 (The WB)	Co-creator
<i>Nip/Tuck</i>	2003–10 (FX)	Creator
<i>Glee</i>	2009–15 (Fox)	Co-creator
<i>American Horror Story</i>	2011–present (FX)	Co-creator
<i>The New Normal</i>	2012–13 (NBC)	Co-creator
<i>Scream Queens</i>	2015–16 (Fox)	Co-creator
<i>American Crime Story</i>	2016–present (FX)	Executive producer
<i>Feud</i>	2017–present (FX)	Co-creator

## Unsold pilots

Murphy has also created/produced a couple of failed pilots. The WB sitcom pilot *St. Sass*, starring Delta Burke and Heather Matarazzo, was not picked up. In 2008, Murphy wrote and directed the FX pilot *Pretty/Handsome*, which also was not picked up.<sup>[23]</sup> By April 2013, HBO had given a pilot order for Murphy's sexuality drama *Open*, which began filming in late 2013.<sup>[24]</sup> By September 2014, HBO had opted not to proceed to series.<sup>[25]</sup>

## Frequent casting

Actor	<i>Popular</i> (1999–2001)	<i>Nip/Tuck</i> (2003–10)	<i>Glee</i> (2009–15)	<i>American Horror Story</i> (2011–present)	<i>The New Normal</i> (2012–13)	<i>Scream Queens</i> (2015–16)	<i>American Crime Story</i> (2016–present)	<i>Feud</i> (2017–present)	Total roles	Ref.
Jacob Artist			Jake Puckerman	Todd Connors					2	
Angela Bassett				Various					2	
Kathy Bates				Various				Joan Blondell	2	
Willam Belli		Cherry Peck	Party guest		Nana Drag Queen				2	
Matt Bomer			Cooper Anderson	Various	Monty				3	
Connie Britton				Vivien Harmon			Faye Resnick		2	
Frances Conroy		Jane Fields		Various					2	
Darren Criss			Blaine Anderson	Justin			Andrew Cunanan		3	
Jessalyn Gilsig		Gina Russo	Terri Schuester						2	
Cuba Gooding Jr.				Dominic Banks			O. J. Simpson		2	
Max Greenfield				Gabriel			Santo Versace		2	
Leslie Grossman	Mary Cherry	Bliss Berger		Meadow Wilton	Melissa				4	
Neil Patrick Harris			Bryan Ryan	Chester Creb					2	
Colton Haynes				Detective Samuels		Tyler			2	
Jackie Hoffman					Frances			Mamacita	2	
Cheyenne Jackson			Dustin Goolsby	Various					2	
Bryce Johnson	Josh Ford	Corporal Oliver Brandt	Cody Tolentino						3	
Jessica Lange				Various				Joan Crawford	2	
NeNe Leakes			Roz Washington		Rocky Rhoades				2	
Billie Lourd				Winter Anderson		Sadie Swenson/Chanel #3			2	

<b>Jane Lynch</b>	<b>Suzi Klein</b>		<b>Sue Sylvester</b>					<b>2</b>	
<b>Ricky Martin</b>			<b>David Martinez</b>				<b>Antonio D'Amico</b>	<b>2</b>	
<b>Lea Michele</b>			<b>Rachel Berry</b>			<b>Hester Ulrich</b>		<b>2</b>	
<b>Sarah Paulson</b>		<b>Agatha Ripp</b>		<b>Various</b>			<b>Marcia Clark</b>	<b>Geraldine Page</b>	<b>4</b>
<b>Lily Rabe</b>		<b>Lanie Ainge</b>		<b>Various</b>					<b>2</b>
<b>Andrew Rannells</b>			<b>Himself</b>		<b>Bryan Collins</b>				<b>2</b>
<b>Emma Roberts</b>				<b>Various</b>		<b>Chanel Oberlin</b>			<b>2</b>
<b>John Stamos</b>			<b>Carl Howell</b>		<b>Brice</b>	<b>Brock Holt</b>			<b>3</b>
<b>Finn Wittrock</b>				<b>Various</b>			<b>Jeffery Trail</b>		<b>2</b>

## Films

In 2006, Murphy wrote the screenplay for and directed the feature film *Running with Scissors*. Based on the memoir by Augusten Burroughs, the movie version starred Annette Bening, Alec Baldwin and Brian Cox and, as the young Burroughs, Joseph Cross. In 2010, Murphy directed Julia Roberts in an adaptation of Elizabeth Gilbert's memoir *Eat, Pray, Love*. The film was a box office success but a critical failure, receiving harsh reviews criticizing its pacing and lack of credibility. To date, the film has grossed \$204,482,125 worldwide.<sup>[26]</sup>

Murphy next directed the 2014 television film adaptation of Larry Kramer's Broadway play *The Normal Heart*, starring Mark Ruffalo, Roberts, Baldwin, Matt Bomer and Jim Parsons.<sup>[27]</sup> Murphy then collaborated with *The Normal Heart* executive producer Jason Blum to produce the remake of the cult-classic horror film *The Town That Dreaded Sundown*.<sup>[28]</sup> The film was the directorial debut of Alfonso Gomez-Rejon and was also released in 2014.

Murphy has several films in development: *Dirty Tricks*, a political comedy, *One Hit Wonders*, a musical comedy, and a sequel to *The Normal Heart*. In 2014, Murphy was developing a feature film of the life of reclusive heiress Huguette Clark, based on the bestselling book *Empty Mansions: The Mysterious Life of Huguette Clark and the Spending of a Great American Fortune*.<sup>[29]</sup>

## Personal life

Murphy grew up in a Catholic household and continues to go to church.<sup>[2][30]</sup> He serves on the National Advisory Board of the Young Storytellers Foundation. He once owned a house designed by renowned mid-century modern architect Carl Maston.<sup>[31]</sup>

Murphy has been married to photographer David Miller since July 2012.<sup>[32]</sup> On December 24, 2012, Murphy and Miller welcomed their first child, a son named Logan Phineas, via a surrogate. In October 2014, they welcomed their second son, Ford.<sup>[33]</sup>

In October 2015, Murphy received the Award of Inspiration from the Foundation for AIDS Research for his contributions to TV and film as well as his work in the fight against AIDS.<sup>[34]</sup>

## Controversy



Ryan Murphy has had some public arguments with famous bands and their members, including Slash from Guns N' Roses, Dave Grohl of the Foo Fighters, and Kings of Leon lead singer, Caleb Followill, and drummer, Nathan Followill.<sup>[35]</sup> These arguments have stemmed from the musicians declining Murphy when asked to have their music covered on *Glee*.

## Awards and nominations

### Emmy Awards

Ryan Murphy has won 4 Emmy awards out of 25 nominations<sup>[36]</sup> as a producer, writer and director.



(l-r) Governor appointee Don Norte, *Glee* co-creator Ryan Murphy, and Norte's husband, gay activist Kevin Norte, at Spring Time G.L.A.A.D. 2010's Charitable Event in Century City, Los Angeles, California.

Year	Category	Nominated work	Result
2004	Outstanding Directing for a Drama Series	<i>Nip/Tuck</i>	Nominated
2010	Outstanding Comedy Series	<i>Glee</i>	Nominated
	Outstanding Writing for a Comedy Series		Nominated
	Outstanding Directing for a Comedy Series		Won
2011	Outstanding Comedy Series		Nominated
2012	Outstanding Miniseries or Movie	<i>American Horror Story</i>	Nominated
	Outstanding Main Title Design		Nominated
2013	Outstanding Miniseries or Movie	<i>American Horror Story: Asylum</i>	Nominated
	Outstanding Main Title Design		Nominated
2014	Outstanding Television Movie	<i>The Normal Heart</i>	Won
	Outstanding Directing for a Limited Series, Movie, or Dramatic Special		Nominated
	Outstanding Limited Series	<i>American Horror Story: Coven</i>	Nominated
	Outstanding Writing for a Limited Series, Movie, or Dramatic Special		Nominated
2015	Outstanding Limited Series	<i>American Horror Story: Freak Show</i>	Nominated
	Outstanding Directing for a Limited Series, Movie, or Dramatic Special		Nominated
	Outstanding Main Title Design		Nominated
	Outstanding Short-Format Nonfiction Program	<i>American Horror Story: Extra-Ordinary Artists</i>	Nominated
2016	Outstanding Limited Series	<i>The People v. O. J. Simpson: American Crime Story</i>	Won
	Outstanding Directing for a Limited Series, Movie, or Dramatic Special		Nominated
	Outstanding Short Form Nonfiction or Reality Series	<i>Inside Look: The People v. O. J. Simpson: American Crime Story</i>	Won
2017	Outstanding Limited Series	<i>Feud: Bette and Joan</i>	Pending
	Outstanding Directing for a Limited Series, Movie, or Dramatic Special		Pending
	Outstanding Main Title Design		Pending
	Outstanding Writing for a Limited Series, Movie, or Dramatic Special		Pending
	Outstanding Short Form Nonfiction or Reality Series	<i>Feud: Bette and Joan: Inside Look</i>	Nominated

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15 Actors Who Can't Stop Working With Ryan Murphy

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## Actors Who Have Been on Multiple Ryan Murphy Shows

### 15 Actors Who Can't Stop Working With Ryan Murphy

January 28, 2017 by [Kelsie Gibson](#)

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Image Source: [Getty](#)

Ryan Murphy has created a handful of buzz-worthy shows, and he doesn't plan on stopping anytime soon. After the success of [American Horror Story](#) (which has been [renewed through season nine](#)) and [The People v. O. J. Simpson: American Crime Story](#), he's tackling yet another limited series, [Feud](#). While all of his shows are different, the cast certainly isn't. Over the years, the writer has developed his own "squad" of sorts by casting the same stars over and over again. Of course, it's not like we're really complaining though. Who doesn't want to watch Sarah Paulson and Jessica Lange take on multiple characters?

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[The 25 Stars Who Keep Popping Up on American Horror Story](#)

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1 [Connie Britton: American Horror Story and American Crime Story](#)



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Fans remember Britton for her role as Vivien Harmon on **American Horror Story: Murder House**, but she also had a guest starring role on **The People v. O.J. Simpson: American Crime Story** as Faye Resnick.

1 / 15

2 Jane Lynch: Popular and Glee





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Before Lynch caused chaos as Sue Sylvester on *Glee*, she had a small role as Suzi Klein on Murphy's teen drama during season two.

2 / 15

3 Jessica Lange: *American Horror Story* and *Feud*



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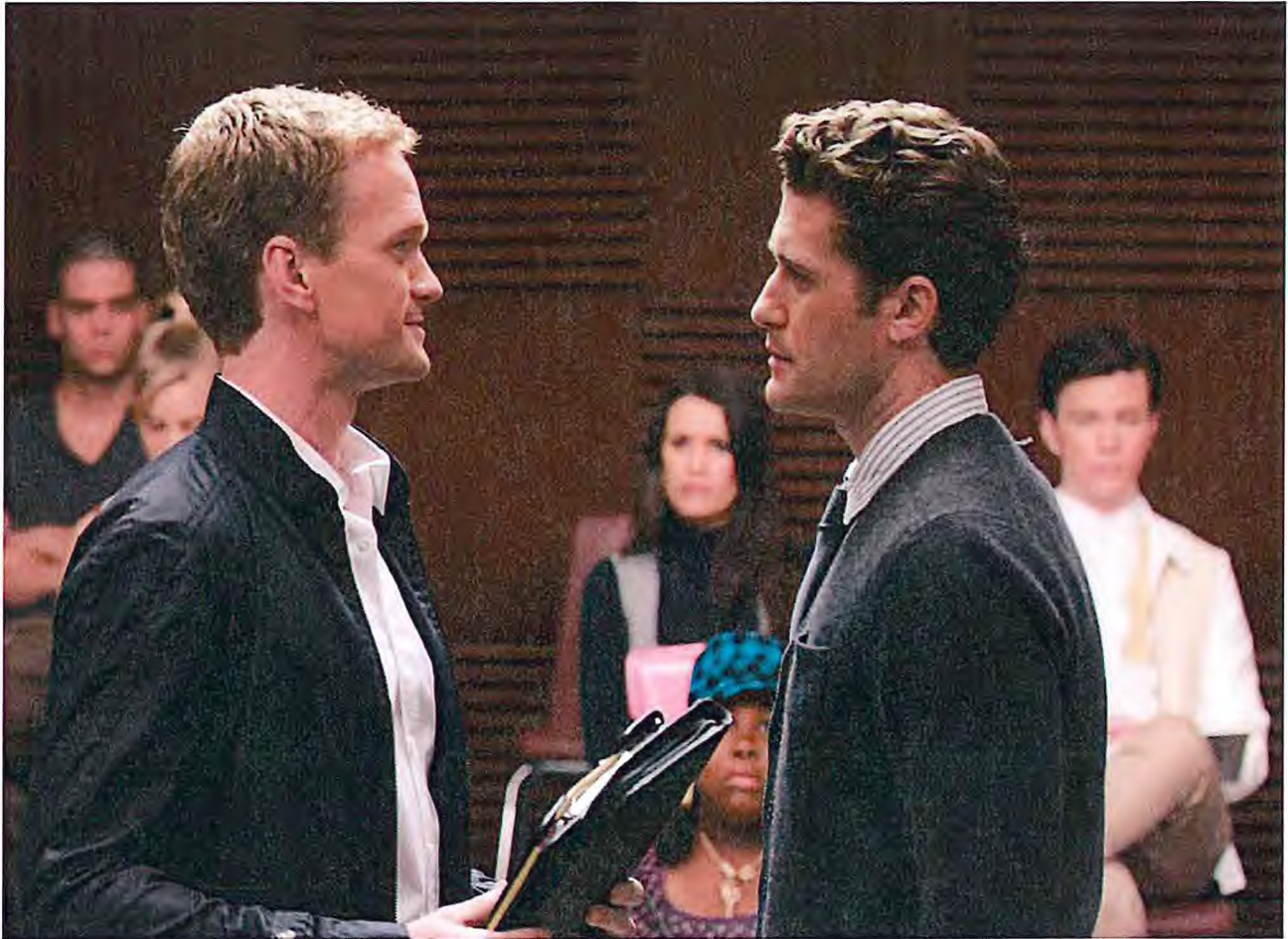
Lange was the shining star of **American Horror Story: Murder House, Asylum, Coven, and Freak Show** as Constance Langdon, Sister Jude Martin, Fiona Goode, and Elsa Mars, respectively, but soon she'll be teaming up with Murphy again when she plays Joan Crawford on **Feud**.

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[Feud: Every Fascinating Detail of Ryan Murphy's New FX Series](#)

3 / 15

4 Neil Patrick Harris: Glee and American Horror Story



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Harris played Will Schuester's rival, Bryan Ryan, on season one of *Glee* and a ventriloquist named Chester Creb on *American Horror Story: Freak Show*.

4 / 15

5 Jacob Artist: *Glee* and *American Horror Story*



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Most people remember Artist as Puck's half-brother Jake on **Glee** during seasons four through six, but he also had a small role as Todd Connors on **American Horror Story: Roanoke**.

5 / 15

6 Matt Bomer: **Glee** and **American Horror Story**



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Bomer has played Andy on **American Horror Story: Freak Show** and Donovan on **Hotel**, but he also had a guest-starring role on **Glee** as Blaine's older brother, Cooper Anderson, during season three. Yes, he sang, just in case you were wondering.

6 / 15

7 Lily Rabe: **Nip/Tuck** and **American Horror Story**



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Rabe is an AHS regular — she played Nora Montgomery on **Murder House**, Sister Mary Eunice McKee on **Asylum**, Misty Day on **Coven**, Aileen Wuornos on **Hotel**, and Shelby Miller on **Roanoke** — but before then, she played Lanie Ainge on Murphy's hit show, **Nip/Tuck**, during season five.

7 / 15

8 Cheyenne Jackson: **Glee** and **American Horror Story**



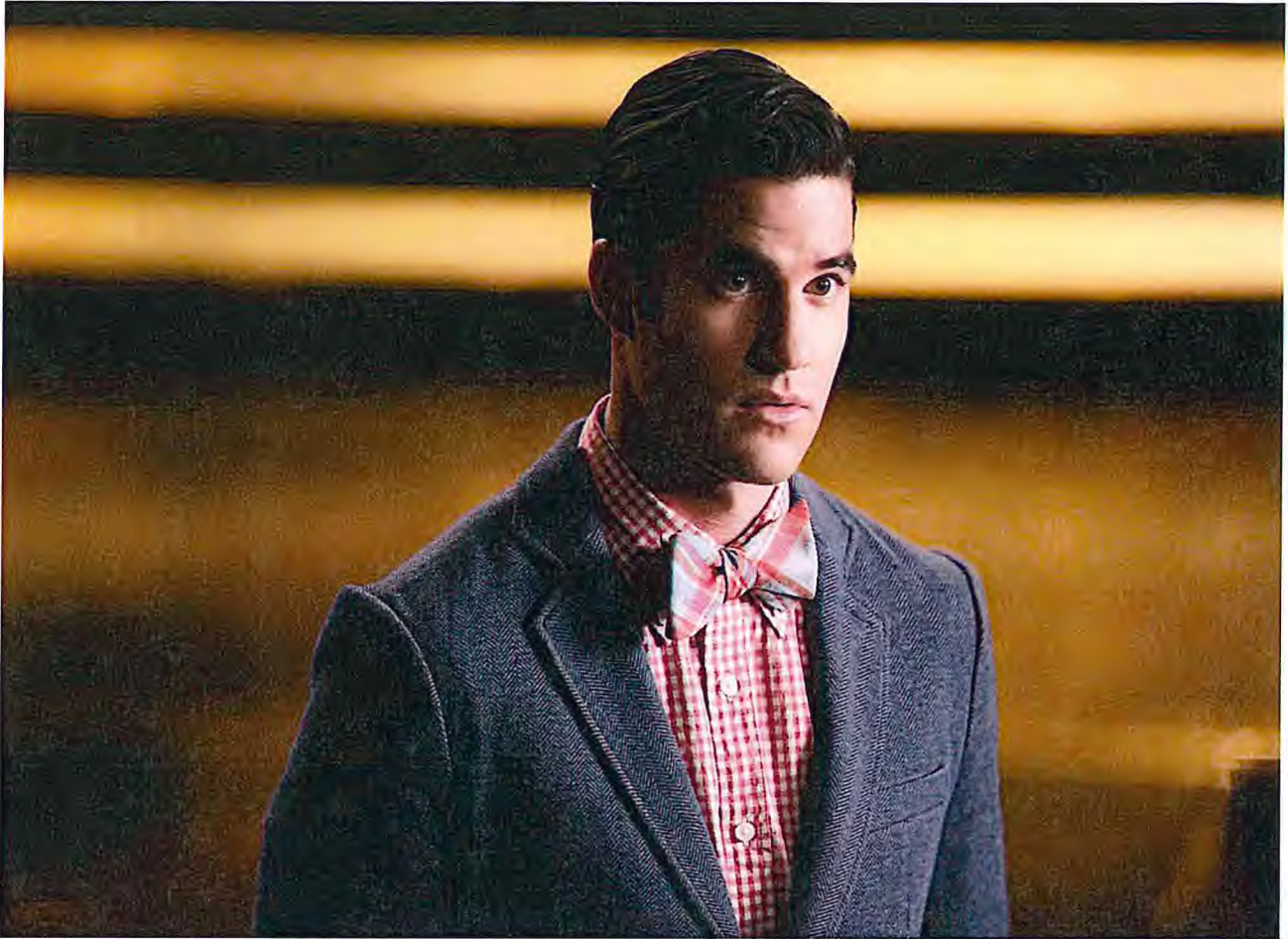
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Just like Bomer, Jackson also had a small role on the hit musical show. He played the coach of Vocal Adrenaline, the New Directions's rival glee group, during season two. He later went on to play Will Drake on **American Horror Story: Hotel** and Sidney James on **Roanoke**.

8 / 15

9 Darren Criss: Glee and American Horror Story



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Image Source: [Everett Collection](#)

Everyone knows Criss for his lovable role as Blaine on *Glee*, but he also teamed up with Murphy on *American Horror Story: Hotel* as Justin.

9 / 15

10 Cuba Gooding Jr.: *American Crime Story* and *American Horror Story*





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The actor is a recent installment in Murphy's pool of actors. After playing O.J. Simpson on **The People v. O.J. Simpson: American Crime Story**, he starred on **American Horror Story: Roanoke** as Dominic Banks/Matt Miller.

10 / 15

11 John Stamos: Glee and Scream Queens



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Before he played sexy Dr. Brock Holt on the second season of *Scream Queens*, he played the sexy Dr. Carl Howell on *Glee* during season two.

11 / 15

12 Kathy Bates: *American Horror Story* and *Feud*



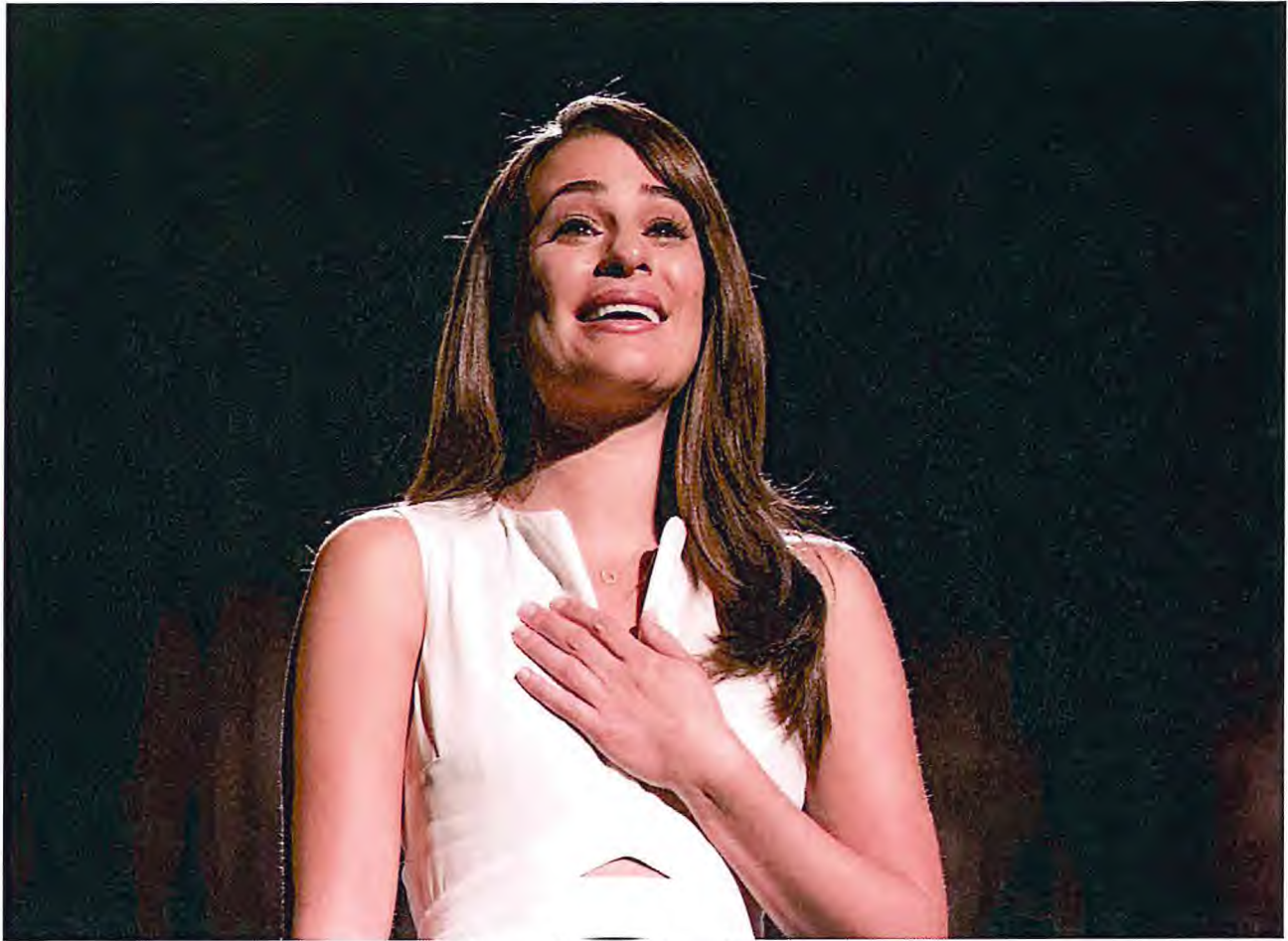
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Ever since Bates appeared as Madame Delphine LaLaurie on **American Horror Story: Coven**, she has become a regular on the anthology series, playing Ethel Darling on **Freak Show**, Iris on **Hotel**, and Thomasin White/Agnes Mary Winstead on **Roanoke**. She is also appearing on Murphy's upcoming show, **Feud**, as Joan Blondell.

12 / 15

13 Lea Michele: **Glee** and **Scream Queens**



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After playing Rachel Berry on *Glee*, Murphy hooked Michele up with a role as Hester Ulrich on *Scream Queens* during the first and second season.

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13 / 15

14 Emma Roberts: *American Horror Story* and *Scream Queens*



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Roberts appeared on **American Horror Story: Coven** and **Freak Show** as Madison Montgomery and Maggie Esmerelda, respectively, before playing mean girl Chanel Oberlin on **Scream Queens** during seasons one and two.

14 / 15

15 Sarah Paulson: **Nip/Tuck**, **American Horror Story**, **American Crime Story**, and **Feud**



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 Image Source: [FX](#)

It goes without saying that Paulson is the queen of Ryan Murphy shows. She played Agatha Ripp during season two of *Nip/Tuck*, she was in *American Horror Story: Murder House*, *Asylum*, *Coven*, *Freak Show*, *Hotel*, and *Roanoke*, as Billie Dean Howard, Lana Winters, Cordelia Foxx, Bette/Dot Tattler, Sally McKenna, and Shelby Miller/Audrey Tindall, respectively, she portrayed real-life prosecutor Marcia Clark in *The People v. O.J. Simpson: American Crime Story*, and is set to star on *Feud* as Geraldine Page!

15 / 15

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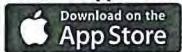
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# **EXHIBIT 5**

## Ryan Murphy Lands Another FX Anthology, 'Feud,' Starring Jessica Lange & Susan Sarandon

*Elizabeth Wagmeister*

TV Reporter

[@EWagmeister](#)



MAY 5, 2016 | 11:00AM PT

REX SHUTTERSTOCK

Third time's another charm.

Ryan Murphy is staying in business with FX — and not just with “American Horror Story” and “American Crime Story” — but with an entirely new anthology series, titled “Feud,” *Variety* has learned.

Marking his third anthology with the cabler, Murphy has landed a straight-to-series eight-episode order for the “Feud” themed project with the first installment centering around the legendary backstage battle between Joan Crawford and

Bette Davis. Susan Sarandon will play Davis and Jessica Lange will portray Crawford. Each installment of the anthology will center around a different epic battle.

Alfred Molina, Stanley Tucci, Judy Davis and Dominic Burgess round out the cast. Brad Pitt will serve as an exec producer with Murphy and Dede Gardner with Sarandon and Lange producing. Murphy will direct several episodes.

The first season of “Feud” will tell the story of the legendary rivalry between two of the greatest movie stars of all time, Crawford (Lange) and Davis (Sarandon), and how they came together in 1962 to collaborate on a picture each hoped would revive their careers — “What Ever Happened to Baby Jane?” which received five Academy Award nominations and became a cult classic, but not without the horror of the two women working together. Molina will play the film’s director Robert Aldrich; Tucci will play studio titan Jack Warner; Davis will play gossip columnist Hedda Hopper; and Burgess will play Crawford and Davis’ co-star Victor Buono.

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Hailing from Fox 21 Television Studios, Ryan Murphy Productions and Pitt’s Plan B Entertainment, the pilot is based on the script “Best Actress” by Jaffe Cohen and Michael Zam, which Murphy purchased.

“Feud” was an easy sell for FX, and sources say the project moved fast. Murphy — who is repped by CAA — has created some of the cable net’s most successful series starting with “Nip Tuck” in 2003. “American Horror Story” has won the cabler a slew of awards, and “The People v. O.J. Simpson: American Crime Story” is a shoo-in for Emmy season, plus ranked as cable’s most-watched new series of 2016.

“Ryan keeps re-inventing TV,” said FX Networks CEO John Landgraf. “Nip/Tuck’ brilliantly extended the boundaries of ad supported television. ‘Glee’ re-imagined the television musical. ‘American Horror Story’ pioneered the modern



anthological series, which has rapidly transformed the television landscape and been widely copied. 'The People v. O.J. Simpson: American Crime Story' was recognized by many as the best and most talked about new show this year. And all of those shows have been award-winning ratings hits. 'Feud' adds a third and equally ambitious franchise to Ryan's unprecedented slate of FX anthological limited series and marks our third such collaboration with studio partner 20th Century Fox Television/Fox 21. The series will offer a seductive, insightful look at what lies behind legendary personality conflicts."

"Ryan revolutionized the modern anthology with the 'American Horror Story' and 'American Crime Story' franchises, and he's come up with another gem in 'Feud,'" commented Fox Television Group Chairmen and CEOs Dana Walden and Gary Newman. "With Jessica and Susan headlining, it's already sure to be as flawlessly acted, wildly entertaining and fiercely provocative. It's a fantastic project which only Ryan Murphy could deliver."

Lange reunites with Murphy on the hot project, following the duo teaming up on "Horror Story" for the first four seasons, before the Emmy winner departed the franchise, though Murphy has teased she could return to a future installment. For Sarandon, she is entering her first television project as a series regular,

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& Molly," "Doll & Em," "The Big C" and "Rescue Me." The "Thelma &

Louise" alum becomes the latest big name to join a Murphy project, as the "Glee" creator has an impressive track record for attracting top-tier talent to TV. With Lady Gaga returning to season six of "Horror Story," Murphy has enlisted A-list vets including John Travolta ("Crime Story"), Jamie Lee Curtis ("Scream Queens"), Julia Roberts (HBO's "The Normal Heart") and Kathy Bates (Horror Story). The project also marks a fun "Thelma & Louise" reunion between Sarandon and Pitt who's producing.

For Murphy, "Feud" is the mega-producer's fourth current project, joining FX's "Horror Story," which has been renewed for a sixth season; FX's "Crime Story," which will center around the aftermath of Hurricane Katrina for its second season;

and Fox's "Scream Queens," which will be set in a hospital for its second round, following its first sorority-centric season. All shows hail from 20th Century Fox.

"Feud" heads into production this fall and will debut in 2017 on FX.

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# **EXHIBIT 6**

# Feud (TV series)

From Wikipedia, the free encyclopedia

*Feud* is an American anthology television series for FX created by Ryan Murphy, Jaffe Cohen, and Michael Zam, presented as the dramatization of actual events. It premiered on March 5, 2017.

The first season, which consists of eight episodes, is subtitled *Bette and Joan* and chronicles the rivalry between Bette Davis and Joan Crawford during and after the production of their 1962 film *What Ever Happened to Baby Jane?* In February 2017, FX renewed the series for a 10-episode second season called *Charles and Diana*, centered on the relationship between Charles, Prince of Wales and Diana, Princess of Wales, which is expected to premiere in 2018.

## Contents

- 1 Summary
- 2 Cast
  - 2.1 *Bette and Joan*
    - 2.1.1 Main
    - 2.1.2 Recurring
    - 2.1.3 Historical figures
- 3 Episodes
  - 3.1 Season 1: *Bette and Joan* (2017)
- 4 Development
- 5 Casting
- 6 Marketing
- 7 Broadcast
- 8 Reception
  - 8.1 Critical response
  - 8.2 Accolades
  - 8.3 Ratings
- 9 Controversy
- 10 References
- 11 External links

## Summary

The first season, titled *Bette and Joan*, centers on the backstage battle between Bette Davis (Susan Sarandon) and Joan Crawford (Jessica Lange) during and after the production of their 1962 film *What Ever Happened to Baby Jane?*.<sup>[1]</sup>

On February 28, 2017, FX renewed the series for a 10-episode second season, to be titled *Charles and Diana*, which will focus on the relationship between Charles, Prince of Wales and Diana, Princess of

### Feud



Intertitle from *Bette and Joan*

<b>Genre</b>	Historical period drama Anthology Docudrama
<b>Created by</b>	Ryan Murphy Jaffe Cohen Michael Zam
<b>Starring</b>	Jessica Lange Susan Sarandon Judy Davis Jackie Hoffman Alfred Molina Stanley Tucci Alison Wright
<b>Composer(s)</b>	Mac Quayle
<b>Country of origin</b>	United States
<b>Original language(s)</b>	English
<b>No. of seasons</b>	1
<b>No. of episodes</b>	8 (list of episodes)
	<b>Production</b>
<b>Executive producer(s)</b>	Ryan Murphy Dede Gardner Tim Minear Alexis Martin Woodall
<b>Producer(s)</b>	Jaffe Cohen Renee Tab Michael Zam Jessica Lange

Wales.<sup>[2]</sup> It will be written and executive produced by Murphy and Jon Robin Baitz.<sup>[2]</sup>

## Cast

### *Bette and Joan*

#### Main

- Jessica Lange as Joan Crawford
- Susan Sarandon as Bette Davis
- Judy Davis as gossip columnist Hedda Hopper
- Jackie Hoffman as Mamacita, Crawford's housekeeper
- Alfred Molina as director/producer Robert Aldrich
- Stanley Tucci as Warner Bros. studio head Jack L. Warner
- Alison Wright as Pauline Jameson, Aldrich's assistant

#### Recurring

- Catherine Zeta-Jones as Olivia de Havilland, Davis's friend and fellow actress who costars with her in *Hush... Hush, Sweet Charlotte* and participates in a 1970s documentary on Crawford
- Kathy Bates as Joan Blondell, Davis's friend and fellow actress who participates in a 1970s documentary on Crawford
- Kiernan Shipka as B. D. Merrill, Davis's daughter
- Dominic Burgess as Victor Buono, an actor who costars in *What Ever Happened to Baby Jane?* and *Hush... Hush, Sweet Charlotte*
- Reed Diamond as Peter, Joan's latest paramour
- Joel Kelley Dauten as Adam Freedman, a documentary filmmaker
- Molly Price as Harriet Foster Aldrich, Robert Aldrich's wife
- Ken Lerner as Marty, Crawford's agent

### Historical figures

*Feud* features appearances by a number of actors, directors and other historical figures of the period, including:

- Mark Valley as Gary Merrill, a fading actor and Bette Davis's estranged husband
- Jake Robards as Patrick O'Neal, Bette's costar in *The Night of the Iguana*
- Toby Huss as Frank Sinatra, singer and actor who stars in Aldrich's film *4 for Texas*
- Taylor Coffman as Lee Remick, Davis's co-nominee for Best Actress in 1963
- Sarah Paulson as Geraldine Page, Davis's co-nominee for Best Actress in 1963
- Cash Black as Rip Torn, Page's husband
- Serinda Swan as Anne Bancroft, winner of the Best Actress Oscar in 1963 for *The Miracle Worker*
- Paris Verra as Patty Duke, the 1963 Best Supporting Actress winner who appeared with Bancroft in *The Miracle Worker*
- Phillip Boyd as Maximilian Schell, winner of the Best Actor Oscar in 1962 for *Judgment at Nuremberg*
- Anthony Crivello as David Lean, winner of the Best Director Oscar in 1963 for *Lawrence of Arabia*
- Bryant Boon as Gregory Peck, winner of the Best Actor Oscar in 1963 for *To Kill a Mockingbird*
- John Waters as William Castle, director and producer of Crawford's 1964 horror B movie *Strait-Jacket*
- John Rubinstein as George Cukor, a film director and longtime friend of Crawford
- Earlene Davis as Agnes Moorehead, an actress who costars in *Hush... Hush, Sweet Charlotte*

	Susan Sarandon
<b>Location(s)</b>	Los Angeles, California
<b>Cinematography</b>	Nelson Cragg
<b>Editor(s)</b>	Andrew Groves Adam Penn Ken Ramos
<b>Running time</b>	45–58 minutes
<b>Production company(s)</b>	Plan B Entertainment Ryan Murphy Productions Fox 21 Television Studios
<b>Distributor</b>	20th Century Fox Television Distribution
	<b>Release</b>
<b>Original network</b>	FX
<b>Original release</b>	March 5, 2017 – present
	<b>External links</b>
<b>Website</b>	<a href="http://www.fxnetworks.com/shows/feud">www.fxnetworks.com/shows/feud</a> ( <a href="http://www.fxnetworks.com/shows/feud">http://www.fxnetworks.com/shows/feud</a> )

- Matthew Glave as Joseph Cotten, an actor who costars in *Hush... Hush*, *Sweet Charlotte*

## Episodes

### Season 1: *Bette and Joan* (2017)

No.	Title	Directed by	Written by	Original air date	Prod. code	U.S. viewers (millions)
1	"Pilot"	Ryan Murphy	Jaffe Cohen & Michael Zam and Ryan Murphy	March 5, 2017	1WBB01	2.26 <sup>[3]</sup>
<p>With her career waning, Joan Crawford pitches an adaptation of the horror novel <i>What Ever Happened to Baby Jane?</i> to director Robert Aldrich and rival actress Bette Davis. After a string of rejections, Aldrich brings <i>Baby Jane</i> to Jack L. Warner, who reluctantly comes on board despite his hatred toward both actresses. As filming begins, Crawford's acute narcissism and Davis' strong opinions quickly put them at odds.</p>						
2	"The Other Woman"	Ryan Murphy	Jaffe Cohen & Michael Zam and Tim Minear	March 12, 2017	1WBB02	1.32 <sup>[4]</sup>
<p>Bette and Joan act on their shared interest to eliminate a showy supporting actress, but their problems at home spill over at work and force Aldrich into the middle of the power play between them.</p>						
3	"Mommie Dearest"	Gwyneth Horder-Payton	Tim Minear	March 19, 2017	1WBB03	1.08 <sup>[5]</sup>
<p>Bette and Joan learn some intimate details about each other, but their animosity climaxes on set as filming winds down.</p>						
4	"More, or Less"	Liza Johnson	Gina Welch & Tim Minear	March 26, 2017	1WBB04	1.21 <sup>[6]</sup>
<p>Contrary to all expectations, <i>Baby Jane</i> is a huge hit. With no other film offers coming in, Joan's jealousy grows as Bette's performance is critically acclaimed. She fears that she will not get an Oscar nomination, but that Bette will. Meanwhile, Pauline hopes to direct her own film, but is discouraged by the lack of support from both Aldrich and Joan.</p>						
5	"And the Winner Is... (The Oscars of 1963)"	Ryan Murphy	Ryan Murphy	April 2, 2017	1WBB05	1.36 <sup>[7]</sup>
<p>With Bette nominated for Best Actress and Joan not recognized at all, Joan and Hedda Hopper plot to sabotage Bette by convincing voters to choose other nominees. Joan persuades nominee Geraldine Page to skip the ceremony and allow Joan to accept the award on her behalf if she wins; Anne Bancroft, unable to attend, also allows Joan to accept her award. Offering herself as a presenter, Joan arrives dressed like a "silver Oscar". With a crushed Bette watching, Joan accepts the Oscar for Bancroft.</p>						
6	"Hagsploitation"	Tim Minear	Tim Minear & Gina Welch	April 9, 2017	1WBB06	1.06 <sup>[8]</sup>
<p>As Joan promotes her new film, <i>Strait-Jacket</i>, Jack enlists Aldrich to write and direct a new film in the successful "Hagsploitation" genre. Aldrich ultimately takes his script, called <i>What Ever Happened to Cousin Charlotte?</i>, to Darryl F. Zanuck to produce. Aldrich is able to lure Joan in return for top billing, and Bette in return for creative control. Bette becomes increasingly unreasonable, and Joan's suspicions about Bette's influence over Aldrich are confirmed when Joan hears Bette having a bottle of champagne with him.</p>						
7	"Abandoned!"	Helen Hunt	Jaffe Cohen & Michael Zam	April 16, 2017	1WBB07	1.31 <sup>[9]</sup>
<p>Production of <i>Hush... Hush</i>, <i>Sweet Charlotte</i> is underway, and Joan feels like Bette is trying to humiliate her. Joan's lines are constantly changed, she is enraged to learn that Bette is a producer on the film, and awakens from a nap on set one night to discover that the entire production crew has left her and Mamacita behind. When filming returns to Los Angeles, Joan fakes an illness to stall filming in hopes that 20th Century Fox will cancel the film. Joan eventually learns that the studio is suing her for breach of contract, and while in hospital learns via radio announcement that she has been replaced by Olivia de Havilland. Furious with the news, Joan throws a potted plant at the window, just missing Mamacita, who promptly leaves Joan by herself screaming in the hospital, alone.</p>						
8	"You Mean All This Time We Could Have Been Friends?"	Gwyneth Horder-Payton	Gina Welch	April 23, 2017	1WBB08	1.30 <sup>[10]</sup>
<p>Following a bad experience in the critically panned film <i>Trog</i>, Joan officially retires from acting. In the years following her retirement, her health deteriorates rapidly. One night, Joan hallucinates seeing Jack and Hedda in her apartment having a party, where she joins them and is later joined by Bette. Despite being a false reality, Joan and Bette end their feud and speak positively about one another. The hallucination ends when Mamacita interrupts, and Joan dies a week later. Meanwhile Bette, who has worked consistently since <i>Sweet Charlotte</i>, mostly in television pilots, learns of Joan's death via a journalist who asks for comment. Bette responds with one final negative comment towards Joan. At that year's Academy Awards, Bette expresses sadness at Joan's brief appearance in the 'In Memoriam' segment. Finally, the film crew behind the documentary on Bette and Joan are denied an interview with Bette, while one of</p>						



the crew wonders what the very first day of filming *Baby Jane* was like for the two of them. A flashback, real or fictional is left to audience interpretation, shows the two of them chatting happily and willing to be friends, before going into their separate makeup trailers.

## Development

Ryan Murphy, a fan of Davis since his childhood, interviewed the actress just months before her death in 1989. The agreed-upon 20-minute interview lasted four hours, and inspired his characterization of Davis in *Feud*. He said, "When I would ask her about Joan Crawford ... She would just go on about how much she hated her. But then she would sort of say ... 'She was a professional. And I admired that'."<sup>[11]</sup> Murphy first conceived *Bette and Joan* as a film years before the FX series, and approached both Sarandon and Lange about the lead roles.<sup>[12]</sup> Sarandon said, "It just felt like it didn't have a context, just being bitchy and kind of funny, but what else? In expanding it to eight hours, you could get more complexity and so many other characters."<sup>[13]</sup> Season 1 of *Feud* was being written at the same time that Murphy was forming his Half Foundation, which promotes an increased presence of women in film and television production positions.<sup>[13]</sup> The season features 15 acting roles for women over 40,<sup>[13]</sup> and half the episodes were directed by women, including Helen Hunt.<sup>[12]</sup>

*Feud*, developed by Murphy, was picked up to series by FX on May 5, 2016.<sup>[14]</sup> Season 1's *Bette and Joan* is inspired by the real-life feud between Crawford and Davis,<sup>[14]</sup> and explores issues of sexism, ageism, and misogyny in Hollywood.<sup>[13]</sup> Its eight episodes were expanded from a feature-length screenplay Murphy had optioned called *Best Actress* by Jaffe Cohen and Michael Zam.<sup>[15]</sup>

Sarandon said, "In our story, it was a fact that [the people behind *Baby Jane*] encouraged the animosity [between Crawford and Davis], first of all to control them, second of all to make what they thought was more onscreen tension, and that really hasn't changed a lot."<sup>[13]</sup> Melanie McFarland of *Salon* wrote that the series shows "just how brutal the Hollywood system was on some of the greatest talents in its firmament" and that it "cuts to the root of why collaborating and delighting in the fall of the mighty is eternally marketable."<sup>[16]</sup> The Crawford-Davis feud was also documented in Shaun Considine's 1989 book *Bette and Joan: The Divine Feud*.<sup>[17]</sup>

## Casting

Jessica Lange and Susan Sarandon were attached to star as Joan Crawford and Bette Davis. Alfred Molina, Stanley Tucci, Judy Davis, and Dominic Burgess were also a part of the cast, in the roles of Robert Aldrich, Jack L. Warner, Hedda Hopper, and Victor Buono, respectively.<sup>[14]</sup>

In August 2016, Catherine Zeta-Jones and Sarah Paulson joined the cast playing Olivia de Havilland and Geraldine Page, respectively.<sup>[18][19][20][21]</sup>

In September 2016, it was reported that *American Horror Story* executive producer Tim Minear would be co-showrunning the series with Murphy. Jackie Hoffman joined the cast as Mamacita, Crawford's housekeeper.<sup>[22]</sup> In November 2016, Molly Price, Kathy Bates and Alison Wright joined the cast of the series, in the roles of Harriet Foster, Joan Blondell, and Pauline Jameson.<sup>[23][24][25]</sup> In January 2017, it was announced Kiernan Shipka was cast in the series as Davis's daughter, Barbara ("B.D.") Sherry.<sup>[26]</sup>

Sarandon admitted to initially being "overwhelmed and terrified" about the prospect of portraying Davis accurately. She said, "She's so big and she really was so big, so I tried not to make her a caricature or someone a female impersonator would do ... That was my fear, that she would just be kind of one-dimensional."<sup>[13]</sup> Lange said her performance was informed by her view that Crawford's "brutal childhood" was masked by the "beautiful, impenetrable veneer of this great, gorgeous movie star ... So she was always on, which is a tremendous burden in

and of itself, but always there was this thing lurking underneath of being this poverty-stricken, abused, unloved, abandoned young child and woman."<sup>[13]</sup> Both Sarandon and Lange researched their roles by reading books by and about Davis and Crawford, and watching and listening to TV performances and recordings.<sup>[12][26]</sup>

## Marketing

Murphy gave several interviews about *Bette and Joan* during the 2017 Winter TCA Press Tour.<sup>[27]</sup> The show's first teaser trailer was released on January 19, 2017, and the second the following day.<sup>[28]</sup> That same week, Lange and Sarandon appeared on the cover of *Entertainment Weekly* as Crawford and Davis.<sup>[29]</sup> FX released another teaser on January 23, two on February 5, one on February 7, and one on February 8.<sup>[30][31][32][33][34]</sup> A short commercial for the show also aired during Super Bowl LI.<sup>[35]</sup> Before the show's premiere, FX held screenings of the pilot episode at several gay bars across the United States.<sup>[36]</sup> *Bette and Joan* had a red carpet premiere at the Chinese Theatre in Los Angeles on March 1, 2017.<sup>[37]</sup>

## Broadcast

The first season of 8 episodes, *Bette and Joan*, premiered on March 5, 2017.<sup>[38]</sup> The series is set to premiere on BBC Two in the United Kingdom in late 2017.<sup>[39]</sup>

## Reception

### Critical response

The first season of *Feud* has received highly positive reviews, with major praise for Sarandon's and Lange's performances. On review aggregator Rotten Tomatoes, the first season has an approval rating of 89% based on 75 reviews, with an average rating of 8.1/10. The site's critical consensus reads, "While campily and sweetly indulgent, *Feud: Bette and Joan* provides poignant understanding of humanity, sorrow, and pain while breezily feeding inquisitive gossip-starved minds."<sup>[40]</sup> On Metacritic, the season has a score of 81 out of 100, based on 44 critics, indicating "universal acclaim".<sup>[41]</sup>

Melanie McFarland of *Salon* called the writing "creatively wicked" and the series "outrageously fantastic", praising Lange and Sarandon for their performances and for "tempering their decadent rages and vengeful spats with a gutting sense of loneliness that tempers its lightness in solemnity."<sup>[16]</sup> Verne Gay of *Newsday* wrote that the series is "Full of joy, humor, brilliant writing and performances, and a deep unabiding love for what really makes Hollywood great—the women."<sup>[42]</sup> *People* called the series "bitter, biting and entertaining".<sup>[43]</sup> *The Atlantic's* Spencer Kornhaber described the first few episodes as "deft and satisfying" but suggested that "maybe six installments, rather than eight, were all this tale needed".<sup>[44]</sup> Alan Sepinwall of *Uproxx* wrote that the series is "big and it's catty, but it's also smart and elegant, with the old Hollywood setting toning down some of Murphy's more scattershot creative impulses."<sup>[45]</sup> Emily Nussbaum, in *The New Yorker*, praised Murphy's ambition and lauded both stars, saying of the series, "Beneath the zingers and the poolside muumuus, the show's stark theme is how skillfully patriarchy screws with women's heads—mostly by building a home in there."<sup>[46]</sup>

Not all reviews were positive. Sonia Saraiya of *Variety* compared *Bette and Joan* unfavorably to Murphy's *The People v. O. J. Simpson: American Crime Story*, writing that *Feud* is "neither as brilliantly campy and hateful as *What Ever Happened to Baby Jane?* nor as contextualizing and profound as *People v. O. J. Simpson*."<sup>[15]</sup> David Weigand of the *San Francisco Chronicle* gave the series a mixed review, criticizing the script and Lange's performance, but praising Sarandon's, writing: "Lange is always interesting, but she's only occasionally convincing here as Crawford. The voice is too high, for one thing. Sarandon fares better, as much good as that does with such a lousy script."<sup>[47]</sup> *The Guardian* also criticized the series for being "lightweight", noting, "At just eight episodes,

there's almost too much to cover and at times, one craves a little more depth to certain moments." They singled out Lange's performance, however, writing, "Lange in particular moves past just an easy impression to something with far more weight. In a reversal of fortune that would make Crawford cackle in her grave, it's likely that she'll be the one up for awards at the end of the year rather than her co-star."<sup>[48]</sup>

## Accolades

Association	Category	Nominated artist/work	Result
69th Primetime Emmy Awards <sup>[49]</sup>	Outstanding Limited Series	<i>Feud: Bette and Joan</i>	Pending
	Outstanding Lead Actress in a Limited Series or Movie	Jessica Lange	Pending
		Susan Sarandon	Pending
	Outstanding Supporting Actor in a Limited Series or Movie	Alfred Molina	Pending
		Stanley Tucci	Pending
	Outstanding Supporting Actress in a Limited Series or Movie	Judy Davis	Pending
		Jackie Hoffman	Pending
Outstanding Directing for a Limited Series, Movie, or Dramatic Special	Ryan Murphy (for "And the Winner Is... (The Oscars of 1963)")	Pending	
Outstanding Writing for a Limited Series, Movie, or Dramatic Special	Jaffe Cohen, Ryan Murphy, and Michael Zam (for "Pilot")	Pending	
	Ryan Murphy (for "And the Winner Is... (The Oscars of 1963)")	Pending	
69th Primetime Creative Arts Emmy Awards	Outstanding Casting for a Limited Series, Movie, or Special	Eric Dawson and Robert J. Ulrich	Nominated
	Outstanding Costumes for a Period/Fantasy Series, Limited Series, or Movie	Lou Eyrich, Hannah Jacobs, Katie Saunders(for "And the Winner Is... (The Oscars of 1963)")	Nominated
	Outstanding Hairstyling for a Limited Series or Movie	Chris Clark, Ralph Michael Abalos, Wendy Southard, Helena Cepeda	Won
	Outstanding Main Title Design	Ryan Murphy, Alexis Martin Woodall, Kyle Cooper, Nadia Tzuo and Margherita Premuroso	Nominated
	Outstanding Makeup for a Limited Series or Movie (Non-Prosthetic)	Eryn Krueger Mekash, Robin Beauschense, Tym Buacharem, Kim Ayers, Becky Cotton, David Williams	Won
	Outstanding Main Title Theme Music	Mac Quayle	Nominated
	Outstanding Music Composition for a Limited Series, Movie, or Special	Mac Quayle(for "Pilot")	Nominated
	Outstanding Production Design for a Narrative Contemporary or Fantasy Program (One Hour or More)	Judy Becker, Jamie McCall and Florencia Martin	Nominated
	Outstanding Short Form Nonfiction or Reality Series	Feud: Bette and Joan: Inside Look	Nominated
33rd TCA Awards <sup>[50]</sup>	Outstanding Achievement in Movies, Miniseries and Specials	<i>Feud: Bette and Joan</i>	Nominated
	Individual Achievement in Drama	Jessica Lange	Nominated
		Susan Sarandon	Nominated

## Ratings

The first episode drew 2.26 million live-plus-same-day viewers, which Deadline.com characterized as "solid" and made it the most watched program on FX that week. In comparison, the premiere of *The People v. O. J. Simpson* attracted 5.1 million viewers in 2016, and the FX limited series *Fargo* got 2.66 million in 2014.<sup>[3][51]</sup> The premiere earned 3.8 million viewers in the Nielsen live-plus-three-days ratings, and 5.17 million viewers total when including two encore broadcasts, making it the highest rated new series debut on FX since *The People v. O. J. Simpson*.<sup>[52][53]</sup>

No.	Title	Air date	Rating/share (18–49)	Viewers (millions)	DVR (18–49)	DVR viewers (millions)	Total (18–49)	Total viewers (millions)
1	"Pilot"	March 5, 2017	0.5	2.26 <sup>[3]</sup>	0.4	1.54	0.9	3.79 <sup>[54]</sup>
2	"The Other Woman"	March 12, 2017	0.3	1.32 <sup>[4]</sup>	0.4	TBD	0.7	2.78 <sup>[55]</sup>
3	"Mommie Dearest"	March 19, 2017	0.3	1.08 <sup>[5]</sup>	0.4	TBD	0.7	2.54 <sup>[56]</sup>
4	"More, or Less"	March 26, 2017	0.3	1.21 <sup>[6]</sup>	0.3	TBD	0.6	2.54
5	"And the Winner is... (The Oscars of 1963)"	April 2, 2017	0.4	1.36 <sup>[7]</sup>	0.4	TBD	0.8	2.76
6	"Hagsploitation"	April 9, 2017	0.3	1.06 <sup>[8]</sup>	TBD	TBD	TBD	TBD
7	"Abandoned!"	April 16, 2017	0.4	1.31 <sup>[9]</sup>	TBD	TBD	TBD	TBD
8	"You Mean All This Time We Could Have Been Friends?"	April 23, 2017	0.3	1.30 <sup>[10]</sup>	TBD	TBD	TBD	TBD

## Controversy

On June 30, 2017, a day before her 101st birthday, actress Olivia de Havilland filed a lawsuit against the series for inaccurately portraying her and using her likeness without permission in *Feud: Bette and Joan*.<sup>[57]</sup> The lawsuit states that the pseudo-documentary-style of the series leads viewers to believe that the statements made by the actress portraying de Havilland in the show are accurate, but that in fact de Havilland had not said such things in real life.<sup>[58]</sup>

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## External links

- Official website (<http://www.fxnetworks.com/shows/feud>)
- *Feud* (<http://www.imdb.com/title/tt1984119/>) on IMDb

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# **EXHIBIT 7**



MAY 05, 2016

11:00am PT by Lesley Goldberg

# Ryan Murphy Anthology 'Feud,' Starring Jessica Lange and Susan Sarandon, Set at FX



Getty Images

Clockwise from top left: Ryan Murphy, Jessica Lange, Brad Pitt and Susan Sarandon

## IN THIS STORY



FX

Feud



## Brad Pitt will serve as an executive producer on the project, season one of which will center on the rift between Bette Davis and Joan Crawford. Alfred Molina, Stanley Tucci, Judy Davis and Dominic Burgess co-star.

Ryan Murphy is adding yet another star-studded anthology to his résumé.

The prolific producer has scored a straight-to-series order for *Feud*, an anthology — as its title suggests — about famous feuds, *The Hollywood Reporter* has learned.

Produced by Fox 21 Television Studios, the eight-episode first season revolves around the legendary rift between Joan Crawford and Bette Davis that occurred during the making of 1962 feature film *What Ever Happened to Baby Jane?* The rivalry between the two stars was paramount to the movie's popularity at the time. (The pic scored five Oscar nominations, including one for Davis.)

### READ MORE

[Ryan Murphy's Professional Highs and Personal Lows: "I Don't Want to Be That Person Anymore"](#)

*American Horror Story* alum Jessica Lange will reteam with Murphy and star as Crawford, while Susan Sarandon will play Davis. The pilot is based in part on the script *Best Actress* by Jaffe Cohen and Michael Zam, which Murphy purchased. Murphy will executive produce alongside Plan B Entertainment's Brad Pitt and Dede Gardner. Alfred Molina co-stars as the film's director, Robert Aldrich; Stanley Tucci is set as studio titan Jack Warner; Judy Davis will play gossip columnist Hedda Hopper; and Dominic Burgess is set as Crawford and Davis' co-star, Victor Buono. Murphy will direct several episodes. Production begins this fall for a 2017 debut on FX. Lange and Sarandon also will be credited as producers.

Crawford and Davis, who played two aging sisters in the movie, were both aware that *Baby Jane* was key to the success of their respective careers and developed tension on the set that subsequently developed into a lifelong feud. Crawford went on

to accept the Oscar for eventual winner Anne Bancroft despite the fact that the win meant her co-star, Davis, had lost. Their rift was documented in iUniverse's 2000 book *Bette and Joan: The Divine Feud* by Shaun Considine.

#### READ MORE

[Ryan Murphy Launches Foundation to Tackle Hollywood's Diversity Problem \(Exclusive\)](#)

*Feud* marks Murphy's third series at FX and fourth overall — all of them anthologies. For FX, the *Glee* grad has *American Horror Story* (whose [premise](#) and leading lady for [season six](#) are both yet to be determined) and critical darling *American Crime Story*, whose freshman season focused on the O.J. Simpson trial. [Season two](#) of the latter, which has yet to be formally announced, will focus on Hurricane Katrina. Additionally, he has Fox drama *Scream Queens* set to [return](#) for the 2016-17 broadcast season, with season two taking place at a hospital with its [core cast all returning](#).

"Ryan keeps reinventing TV," said FX Networks CEO John Landgraf. "*Nip/Tuck* brilliantly extended the boundaries of ad-supported television. *Glee* reimagined the television musical. *American Horror Story* pioneered the modern anthological series, which has rapidly transformed the television landscape and been widely copied. *The People v. O.J. Simpson: American Crime Story* was recognized by many as the best and most talked-about new show this year. And all of those shows have been award-winning ratings hits. *Feud* adds a third and equally ambitious franchise to Ryan's unprecedented slate of FX anthological limited series and marks our third such collaboration with studio partner 20th Century Fox Television/Fox 21. The series will offer a seductive, insightful look at what lies behind legendary personality conflicts."

Murphy, who recently [launched a foundation](#) to tackle Hollywood's diversity problem, is also reteaming with Gwyneth Paltrow to prep a TV version of musical dramedy *One Hit Wonders*, though a network is not yet attached.

For FX, *Feud* joins a drama roster that also includes *The Americans*, fellow anthology *Fargo*, *The Strain*, *Taboo* and *Tyrant*. On the pilot side, the cabler is readying Noah Hawley's *X-Men* take *Legion*, which is heating up toward a series pickup, and John Singleton drama *Snowfall*.

Murphy is repped by CAA; Lange is with Untitled and Katz Golden; Sarandon is with UTA and Del Shaw; Molina (who co-starred in Murphy's *The Normal Heart*) is with WME and Hyler Management; Tucci (*The Hunger Games*) is with CAA, Anonymous Content and Theodore L. Blumberg; Davis (*To Rome With Love*) is with ICM and Shanahan Management; and Burgess (*Batman Begins*) is with Stone Manners Salners and Muse Management.

FX FEUD

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# **EXHIBIT 8**



# ‘Feud’ Grabs FX’s Highest Series Debut Ratings Since ‘People v. O.J. Simpson’

*Cynthia Littleton*

Managing Editor: Television

[@Variety Cynthia](#)



MARCH 10, 2017 | 02:29PM PT

The debut of “Feud: Bette and Joan” grabbed 3.8 million viewers in Nielsen’s L3 ratings, making it the highest new series premiere on FX since last year’s “The People v. O.J. Simpson: American Crime Story.”

“Feud” delivered 5.17 million viewers in L3 in total with two encore telecasts factored in. That compared to 12 million for the premiere and two repeats for “People v. O.J. Simpson” on Feb. 2, 2016. Both shows come from the Ryan Murphy Productions shop.

“Feud’s” initial outing in L3 topped FX’s recent series premieres for “Legion” (3.27 million) and “Taboo” (3.43 million).

“Feud” stars Jessica Lange and Susan Sarandon in the behind-the-scenes story of the making of 1962’s “What Ever Happened to Baby Jane?” The anthology series is designed to focus on a famous rivalry each season. The next installment will be a look at the unhappy marriage of Britain’s Prince Charles and Princess Diana.

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## Feud: Bette and Joan coming to BBC Two

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Date: 09.06.2017 Last updated: 08.06.2017 at 00.01

Category: BBC Two; Drama; Commissioning; Casting

**BBC Two has acquired Feud: Bette and Joan, Ryan Murphy's eight-part series about the legendary rivalry between Hollywood icons Bette Davis and Joan Crawford. The series was acquired from 20th Century Fox Television Distribution and will air on BBC Two later in 2017.**

Starring Jessica Lange as Joan Crawford and Susan Sarandon as Bette Davis, Feud: Bette and Joan's stellar cast also features Catherine Zeta-Jones as Olivia de Havilland and Kathy Bates as Joan Blondell. The four Academy Award winners are joined by Judy Davis as Hollywood gossip columnist Hedda Hopper, Alfred Molina as director and producer Robert Aldrich, Stanley Tucci as Warner Bros. studio head Jack L. Warner, Jackie Hoffman as Mamacita, Crawford's housekeeper, and Alison Wright as Pauline, Aldrich's

**BBC Two viewers will relish this critically-acclaimed portrayal of Old Hollywood and a famously combustible yet poignant**

assistant. The series also stars Dominic Burgess as Crawford and Davis' co-star Victor Buono, Sarah Paulson as Geraldine Page, and Kiernan Shipka as Bette Davis' daughter, B.D.

Beginning with Davis and Crawford's collaboration on *What Ever Happened To Baby Jane?* and continuing long after the cameras stopped rolling, *Feud: Bette and Joan* explores with great style and wit how the two stars endured ageism, sexism and misogyny while struggling to hang on to success and fame in the twilight of their careers.

Patrick Holland, Controller of BBC Two, says: "Drama on BBC Two has to stand out for its authorship, unique vision and exceptional craft so I am delighted that Ryan Murphy's brilliantly realised series *Feud: Bette and Joan* is coming to the channel. It features some wonderful performances, a flawless recreation of period and a delicious unravelling of a personal drama that had a massive impact on modern cinema. *Feud* is a real treat."

Sue Deeks, BBC Head of Programme Acquisition, says: "BBC Two viewers will relish this critically-acclaimed portrayal of Old Hollywood and a famously combustible yet poignant relationship - it is a zesty cocktail of glamour, wit and grit."

David Smyth, Senior Vice President and Managing Director, Twentieth Century Fox Television Distribution (TCFTVD) said: "*Feud: Bette and Joan* is a whip-smart series with fantastic performances by two of today's greatest performers, which we're sure will captivate and delight audiences. BBC Two is the perfect home for our next series from creator Ryan Murphy, whose *The People vs O.J. Simpson: American Crime Story*, just won the BAFTA after airing last year on BBC Two."

Ryan Murphy serves as Executive Producer along with Executive Producers Tim Minear, Alexis Martin Woodall and Dede Gardner of Brad Pitt's Plan B Entertainment. The series is produced by Fox 21 Television Studios and distributed by 20th Century Fox Television Distribution.

GK

**relationship  
- it is a  
zesty  
cocktail of  
glamour,  
wit and  
grit."**

Sue Deeks,  
BBC Head of  
Programme  
Acquisition

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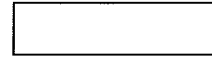
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# **EXHIBIT 10**



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## FEUD: Bette And Joan

# FEUD

## BETTE AND JOAN

[\(/shows/feud-bette-and-joan\)](/shows/feud-bette-and-joan)

### AWARDS & NOMINATIONS

2 Wins

18 Nominations

#### Outstanding Period/Fantasy Costumes for a Series, Limited Series, or Movie - 2017 [\(/awards/nominees-winners/2017/outstanding-costumes-for-a-period-fantasy-series-limited-series-or-movie\)](/awards/nominees-winners/2017/outstanding-costumes-for-a-period-fantasy-series-limited-series-or-movie)

##### **Nominee**

FEUD: Bette And Joan [\(/shows/feud-bette-and-joan\)](/shows/feud-bette-and-joan)

"And The Winner Is... (The Oscars Of 1963)"

FX Networks

Fox 21 Television Studios

Lou Eyrich [\(/bios/lou-eyrich\)](/bios/lou-eyrich), *Costume Designer*

Hannah Jacobs [\(/bios/hannah-jacobs\)](/bios/hannah-jacobs), *Assistant Costume Designer*

Katie Saunders [\(/bios/katie-saunders\)](/bios/katie-saunders), *Costume Supervisor*

#### Outstanding Directing for a Limited Series, Movie, or Dramatic Special - 2017 [\(/awards/nominees-winners/2017/outstanding-directing-for-a-miniseries-movie-or-a-dramatic-special\)](/awards/nominees-winners/2017/outstanding-directing-for-a-miniseries-movie-or-a-dramatic-special)

##### **Nominee**

FEUD: Bette And Joan [\(/shows/feud-bette-and-joan\)](/shows/feud-bette-and-joan)

"And The Winner Is... (The Oscars Of 1963)"

FX Networks

Fox 21 Television Studios

Ryan Murphy [\(/bios/ryan-murphy-0\)](/bios/ryan-murphy-0), *Directed by*

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# **EXHIBIT 11**



APRIL 01, 2017  
2:30pm PT by Scott Feinberg

# Emmys: Ryan Murphy on the Role the Oscars Play Throughout 'Feud' (Q&A)



Kurt Iswarienko/FX  
Susan Sarandon (left) as Bette Davis and Jessica Lange as Joan Crawford in 'Feud'

## IN THIS STORY



Primetime Emmy Awards



Feud



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The Emmy winner discusses the roots of his fascination with the Oscars; how he wound up writing to Bette Davis when he was 10 and interviewing her at 21; and the great effort and expense to which he and his backers went to re-create a 54-year-old Oscar night.

It's not often that a major Emmy contender stars two Oscar winners as two other Oscar winners and largely revolves around the Oscars. That, however, is precisely the case with **Ryan Murphy's** acclaimed limited series *Feud*, which stars **Jessica Lange** and **Susan Sarandon** as arch-rivals **Joan Crawford** and **Bette Davis**, respectively. FX will unveil the fifth of *Feud's* eight episodes Sunday night at 10 p.m. ET/PT, but Murphy, who knows how much I love the Oscars, gave me an early look at the episode and then chatted with me about the role that the Oscars play throughout his show and specifically in episode five, which takes place at the Academy Awards ceremony in 1963.

As you can read below, our conversation touches on the roots of Murphy's personal fascination with the Oscars; how Murphy wound up interviewing Davis when he was just 21; the great effort and expense to which he and his backers went to recreate a 54-year-old Oscar night; and the list goes on.

\* \* \*

**Are the Oscars something that you've always been interested in, or did they just happen to be a theme that runs throughout this story?**

For me, growing up in Indiana with cornfields and churches, I was always very intrigued by the Academy Awards — they were a big event. That was the one night of the year when all of the glittering movie stars got together, and I used to love that night because, as a child, it was a way to dream for me. It was like, "OK, well, maybe one day I can get out there. There is this exciting, glamorous world about things that I love — entertainment, movie stars, etc." So I was always interested in it, and I was specifically really always interested in the '63 Oscars, the year that Crawford was in collusion to take the

Academy Award from Davis. I grew up reading this book called *Inside Oscar* by **Mason Wiley** and **Damien Bona** that I'm sure you know of, and I later became friends with those guys, and that was always the chapter that I was drawn to the most, because I couldn't believe the depths to which Crawford went to campaign against Davis, and to take over the green room and to walk on stage and get that Oscar and take it home — and also the fact that Crawford herself dressed up as a silver Oscar was just insane. When we got the green light to do the series, I knew that that was the halfway-point of the show, and indeed it was in their feud, because after that came [the 1964 film] *Hush... Hush, Sweet Charlotte* escapades and then the decline of Crawford in the '70s. It was always the episode I was looking forward to the most and wanted to put the most time and money into getting right. I thought it was a great opportunity to really take people into that Academy Awards and do it with a lot of love and affection. Sometimes in entertainment, when people have done the Academy Awards — like, for example, in *The Bodyguard* — I just didn't believe it, it didn't feel authentic. So for months and months and months before we started doing this episode, I knew that I wanted to write and direct it, so I knew that I wanted to start researching it right away, and we did so we could make all the stuff and get it right. I wrote that Steadicam shot where you go backstage and I never wanted to take it out, even though it was incredibly expensive, because, to me, that was the whole part of the fun of the show: showing people what it's like when you win and you go backstage and you go into the press room and the green room, you know? I remember the first time I ever won an award, which I think was a Golden Globe back in 2004, that experience was like, "Oh, this is so bizarre to be backstage!" I'd never seen or felt this before, and I remember how jarring and exciting it was, and I kind of wanted to bring that feeling to the viewer through the episode. I just wanted to do a love letter to the Academy Awards and that whole joyous yet crippling idea of competition for awards that exists in Hollywood, which I've always been intrigued with.

**You've been to the Golden Globes and Emmys. Have you ever been to the Oscars?**

I went to the Oscars when I was a reporter. I was at the Oscars the year [1990] that **Kim Basinger** did the very famous "Why didn't we vote for *Do the Right Thing*?" I was back in the press room, so I had the experience of that. But obviously I've always been very interested in them.

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'Feud': A Closer Look at the 1963 Best Actress Oscar Race

**Other than *Inside Oscar*, what were the other resources that were most valuable to you in prepping episode five?**

Well, I got to meet and hang out with Davis for a four-hour period right before she died [in 1989]. The first thing she said to me when I walked into her house was, "Do you want to hold my Oscars?" and I said, "Yeah, I do." So she took me to them and told me a story that I always wanted to use in a script, and I got to use it in this one: One of them was worn a little bit, and I said, "Why is the gold-leaf a little tarnished?" And she said, "Oh, I hold that one in bed at night, it's like my pet." And I didn't know if she was kidding or not. But then she told me the story that she loved looking at those Oscars because it reminded her of a time and a night and a moment when she felt universally loved by the entire world, and I was very moved by that. Then we talked a lot about her life, and one of the things she talked about was Joan Crawford and how devastated she was when she lost [the best actress of 1962] Academy Award, because if she would have won she would have made history as the first person, up to that point, with three, but more than that she felt that it would have given her maybe another five years of opportunity, that she would have been seen as a modern, current actress, and not somebody who was an old-timer from the '30s and '40s. And she told me that she thought for sure she was going to win it — that, as she went into the night, everybody told her she was going to win it — so when she was backstage she was just sort of preening, ready to go on, pleating her skirt, and then when she heard "Anne Bancroft" [the winner, for her performance in *The Miracle Worker*] she said it felt like she got punched in the gut, and then she looked over and there was Joan Crawford walking by her to go onstage and accept it, and she couldn't believe it. It was one of the most devastating experiences of her life. She thought that if she would have won, she would have gotten a lot more prestige projects in the '60s — for example, she thought that for sure she could have gotten [the female lead in the 1966 film] *Who's Afraid of Virginia Woolf?* instead of **Elizabeth Taylor**. And she felt that Crawford was insane for doing what she did, because if Davis had won — they were both profit-participants in the movie — then the movie would have made more money and Crawford would have been more rich. So I always thought about all of those things: what a bitch Crawford was, how could she do it, how stupid, and blah-blah-blah. But then I felt, from the writing perspective, that my job, along with capturing the spectacle of the show and the production value, was to really understand how badly somebody must be in pain to have campaigned and gone to the lengths that she did — to



campaign against Davis, and to call people to accept on their behalf, and to take over the green room. There were a lot of very deep self-esteem issues going on there, and Jessica and I worked a lot on that and talked a lot about that.

**What was it that led you to Davis' house? Was that for a story that you were reporting?**

I started writing her fan letters when I was 10 years old because she really reminded me of my grandmother. I only wrote two fan letters in my whole life — one was to Bette Davis and the other was to **Ron Palillo**, who played Horshack on *Welcome Back, Kotter* — and Davis was the one who answered. (*Laughs.*) She and I had a very sweet correspondence, and then when I became a teenager and in my very early twenties when I was a journalist, I kept writing that I wanted to do an interview with her. She had a wonderful assistant named **Kathryn Sermak** who eventually wrote me and said, "I think Bette's at the end and now would be a great time if you want to come out. I'll give you 20 minutes with her." So it was sort of a culmination of 10 or 11 years — and we got along so well, and her energy was good enough that afternoon, that we ended up talking for four hours!

**This morning I watched on YouTube the clip of the actual best actress presentation at the Oscars in 1963, and I was amazed how much you guys nailed it in your version, from the costumes to the hair to the whole mise en scene. Most *Feud* viewers won't remember those details, so why was it still important that they be accurate?**

Well, to me, if you're going to do it, do it right. So very early in the process, we contacted the auditorium in Santa Monica where it actually happened [the Santa Monica Civic Auditorium], and they graciously said, "Yes, we'll give you a window to shoot it," so we were overjoyed. And then we went there on a scout and my heart kinda sank because everything had been changed — the exterior, the trees, the grid, the building, the landscaping. And then we went inside and the auditorium was completely changed — all the seats had been changed out, the auditorium stage had been reconfigured a little bit. Then we thought, "Well, let's do it somewhere else," but I said, "No, I want to do it where it happened, and if that's not here then we're just gonna build it." So what we did was we spent months and months with a research team brilliantly overseen by our AD **Leo Bauer** and my production heads — **Nelson Cragg**, the DP, **Lou Eyrich**, the costumer, and **Judy Becker**, the production designer. We pulled every possible photograph to answer every possible question — like, "What

did the program look like?" "What direction were the toothpicks in the green room that Joan Crawford brought in?" "What were the dresses like? The hair? The extras? The people in the audience?" On and on and on. And then we just built it all — we brought in actual trees that matched. And what we couldn't build? We CGI'd a lot of stuff so that it looked exactly like the newsreel photographs of the star arrivals, we rebuilt a lot of the auditorium and used special effects to make it look the same, we rebuilt all of the dresses that those actresses wore — Crawford wore a silver-beaded **Edith Head** dress that weighed 50 pounds, and we copied it, and Jessica pulled her back out three times wearing it, it was so unbelievably heavy! We copied Bette's clothes, Olivia's [**Olivia de Havilland's**] — that was important to us. We brought in hundreds of extras starting at three or four in the morning and we had, like, 30 makeup and hair and costume stations so that we could get the period look right, even though you see them only fleetingly. We made all of those Academy Awards by hand —

#### READ MORE

['Feud': Ryan Murphy on Aging in Hollywood, Sexuality and the Sadness of "Lost Potential"](#)

#### Was there cooperation from the Academy?

No. I've tried to get stuff before from the Academy — film clips, et cetera — and they're never cooperative. They shouldn't be, it's their trademark. They didn't say "yes" and they didn't say "no." You know, **Dede Gardner**, one of our executive producers, has two Academy Awards, so I think they knew that we were going to be fair and respectful, which we were. But when we made all of the Academy Awards, we obviously switched them up and made tiny little changes so that they weren't authentic Oscars, and then when we were done we destroyed them all, so we were very respectful of that. The big heartbreak for me was that after I wrote that Steadicam shot, we went backstage and found that only 20 percent of what used to be there was remaining — it had all been ripped out and reconfigured and we were like, "F—! What are we gonna do?" We rebuilt all of that backstage stuff — a great portion of it, 80 percent of it, I think — for that Steadicam shot. And then we worked and rehearsed for days and weeks. Our ADs broke their backs hiring the right extras so that everybody knew when to move; that shot was very choreographed by Nelson Cragg, our DP, so that when Joan would turn a corner there would be a lighting change. We slavishly found original photographs, copied them when we could. And then we rehearsed it and then we thought, "OK, we're gonna give a whole day to doing this, even if Jessica is probably going to

have to have a chiropractor standing by because of that dress. We thought we would have 15 runs at it and hopefully it would work out; then when we shot it, take four was perfect when we looked at it on the playback — everybody in the auditorium cheered because it was so perfect — and I was like, "Well, we kind of have it, but let's just do one more," and we did one more, and somebody bumped into something, so I was like, "We have it. It's perfect. Let's use take four." And that's what we have in the cut.

**Is that tracking shot actually a continuous shot, or is it somehow stitched together?**

No, it's one shot. Two critics wrote that there's a hidden cut in there, and it's like, there is *no* hidden cut in there — there's not — and I don't know why somebody would say that. It's one continuous take and it was always designed to be one continuous take. There's no buried cut in there. There's no optical trick. It's all one take. It's all purely caught on camera. Nothing was maneuvered. I'm proud of it because we didn't have to do any special effects work at all. Sometimes you'll do a shot like that and one of the extras will look into the lens and then you'll have to correct the eyeball or something. With this, everybody approached it with so much love and care that we didn't change a frame with special effects. What you see is what you get. There is no cut. It's all one continuous move.

**To what degree did you allow yourself to just imagine how people would have handled certain situations? Like, is there actually any reason to believe that Crawford colluded with Hedda Hopper to lobby Academy members against Davis, or is that just a fairly safe assumption?**

Well, there's research about it. At that point in her life, Hedda Hopper really was not that big of a fan of Davis. I think she always thought that Davis was an outsider, an East Coast snob who sort of looked down upon the town, and Hedda was a company town kind of gal. Hedda, very famously, would lobby for people to win Academy Awards. She really lobbied for Crawford to win for *Mildred Pierce*, and she famously wrote articles defending Crawford after the "box-office poison" label, which almost single-handedly helped pull her up from that bad public relations thing. But I know that they were friends at that time. And Davis actually told me that, years later, she found out a lot of the stuff was true — people would tell her, "You know that Hedda and Joan called me, right? And you know that they were actively working against you?" Davis had no idea at all that this was happening until later. I think what they [Hopper and Crawford] did, from what Bette told me, was very much a

good-cop/bad-cop thing: Crawford would never say anything bad about her, but she would always sort of fluff up **Anne Bancroft** and **Geraldine Page**, the obvious choices if not Bette; and then Hedda would say bad things behind the scenes. So a lot of that came from my interview with Bette — that was what she heard and what was always in her mind, that those two were in cahoots against her. And then other things were also interesting. Crawford supposedly wrote letters to Bancroft and Page thanking them for them agreeing to let her come see them. It's in several books that Crawford would say how much Bancroft meant to her because Bancroft told her that she thought her performance in *Baby Jane* was good and that it is hard to be the straight-man and that she held that movie together. I liked the kindness of Page and Bancroft, you know? The studio system was over, that sort of way of being an actor or an actress in town was over, these [Page and Bancroft] were stage-trained professionals, and I liked their approach to it. Instead of those women — and Olivia de Havilland — saying, "Oh, my God, you're so awful for doing this," they understood, as only an actress could, that this person was reacting out of pain and sadness and feeling excluded. But we did research all that stuff, and some of it was from what Bette told me — which, of course, I ate up. I couldn't get enough of that.

**READ MORE**

'Feud' Showrunner on Balancing Fact vs. Fiction and the Drama's Campy Tone

**Of all of the principal characters, the only one who's still around is Olivia de Havilland, who, if you can believe it, I occasionally *email* with. Did you consult her or anyone else who actually lived through this?**

No. I didn't write Olivia because I didn't want to be disrespectful and ask her, "Did this happen? Did that happen? What was your take on that?" I tried to base a lot of that stuff on what Davis had told me, which was that Olivia was presenting best picture that year, and Olivia was a friend — a friend she would later tear into in *Hush... Hush, Sweet Charlotte* — and if you look at the Olivia scenes, she's always supportive, always like Switzerland, not saying bad things about Joan, not saying good things about Bette's ambition other than, "I think you're going to win," which she did say on the red carpet: "Bette Davis is the best and she should be the first to win three. The industry owes her this." Those real-life things that she said were our jumping-off points and we would use them verbatim in the show when we had them, the actual quotes that de Havilland gave to the press that evening. But no, I

relied much more on my own Davis reporting. I didn't want to intrude on Ms. de Havilland.

**Lastly, did the subtextual stuff ever get weird on this one, in the sense that Jessica, like Bette, has two Oscars and Susan, like Joan, has one, and they're now both in the running for an Emmy nomination. I mean, what would happen if, in a very crowded year of great stuff, one of them got nominated and the other didn't, as happened in 1963?**

Well, I think it is a very meta thing that's happening with these shows — you know, *Feud*, particularly, since you have movie stars playing movie stars. We never talked about it on the set — we never talked about it, period — because I don't think Jessica and Susan are that kind of women; they were very supportive of each other during the shoot and they spent a lot of time helping each other and, you know, they're both producers of the show. So I think that their viewpoint would be very different than Joan and Bette's. I understand it's human nature to say, "Oh, it's a replay of that scenario," but I don't know, I think there's room for everybody. Jessica and Susan are such pros that I think if both of them got nominated they'd feel great, and if one of them won and the other one didn't they would look at it as a mutual victory — and that, to me, is the most important thing, and that is why I'm so proud to be doing the show, because I don't think that Bette and Joan would have ever gotten there, but I'm glad that Susan and Jessica can, if that makes any sense. I think there's been so much progress, in terms of that idea of women in Hollywood, and I think all of us in Hollywood who are doing female-driven material that, as you know, is so hard to get on the air, are just always fans of each other and root for any success we can get so that more pieces of female-driven material can get made.

**Will there be additional Oscars references after episode five?**

Our show ends at the Academy Awards in 1978, where they did the Crawford "In Memoriam" segment. So this is a show that loves the Academy Awards, I'll tell you that.

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'Feud': 7 Ways Bette Davis Defied and Defined Hollywood

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# **EXHIBIT 12**



**Ryan Murphy**

@MrRPMurphy

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Thrilled that Oscar-winner Catherine Zeta-Jones is joining FEUD as Oscar-winner Olivia de Havilland.

1:03 PM - 16 Aug 2016

438 Retweets 1,562 Likes



125

438

1.6K



# **EXHIBIT 13**



MARCH 05, 2017

8:00pm PT by Lesley Goldberg

## Why FX's 'Feud' Used the C-Word in Its Premiere



Kurt Iswarienko/FX



Showrunner Tim Minear tells THR why the Ryan Murphy anthology used a word that is rarely heard on ad-supported television.

**[This story contains spoilers from the series premiere of FX's *Feud*.]**

FX's *Feud* just used a word that is rarely heard on television, let alone ad-supported basic cable.

*Feud: Bette and Joan*, from prolific producer Ryan Murphy, explores the famed behind-the-scenes clash between Hollywood stars Joan Crawford (Jessica Lange) and Bette Davis (Susan Sarandon). During Sunday's series debut, Stanley Tucci's studio chief Jack Warner — in a heated discussion with

Alfred Molina's Robert Aldrich — angrily called Davis a "cunt." It came in a scene during which Aldrich was attempting to convince Warner and his studio to distribute *What Ever Happened to Baby Jane?* starring Davis, the woman who famously sued Warner Bros. to get out of her deal.

"We felt that it wasn't gratuitous," *Feud* showrunner Tim Minear tells *The Hollywood Reporter*. "It was gratuitous coming from the mouth of the character but it wasn't gratuitous in terms of the story that we're telling. One well-placed epithet like that is like a bracing, toss of cold water in the audience's face and it says something. Not if you're dropping it every five seconds. So that's why it's there; it's there because that's the ugly soul that we're exposing a little bit."

#### READ MORE

[Fisting, Anal Sex, Penis Pictures: Broadcast TV's Ratings Grab Gets Raunchy](#)

The c-word is rarely heard on television (though it is more common on premium television and streaming, where viewers pay to receive services like HBO and Netflix). Basic cable network FX does not face the same scrutiny from the FCC, which governs language on broadcast television networks and has a [strict rules](#) about obscene speech. Broadcast networks are prohibited from using language considered profane — words that are "so highly offensive that their mere utterance in the context presented may, in legal terms, amount to a nuisance."

Of course, *Feud's* 10 p.m. time slot was likely a factor in getting the "c-word" through on FX. (FX declined to comment for this story.) Even though FX operates outside of the FCC's standards, the broadcast bar is more relaxed for programming airing after 10 p.m.

Minear noted that producers "went back and forth" about whether or not to use the word and once they settled on moving forward with it, there was a negotiation with the network, with Murphy handling that directly. "They trust him," Minear said, adding that producers "try not to exploit the freedoms that we have."

For its part, FX has been more willing to push the envelope where the story dictates it. Last season, another Murphy anthology — Emmy darling *People v. O.J. Simpson: American Crime Story* — featured Sarah Paulson's Marcia Clark calling

Courtney B. Vance's Johnnie Cochran a "motherf—er." Sunday's *Feud* debut also debuted with a TV MA-L rating, signaling viewers that the hour contained strong/coarse language.

**READ MORE**

['Feud' Showrunner on Balancing Fact vs. Fiction and the Drama's Campy Tone](#)

As for the liberties *Feud* took with the scene in question, Minear told *THR* that producers "imagined" that is how the exchange between Aldrich and Warner went. "That's how we imagined it would have gone. But it probably went something like that because Warner was definitely not very enthusiastic about picking up this particular project, especially with these women in it."

It's also worth noting that *Feud* was not the first show to feature the "c-word." Other shows to have muttered it include HBO's *Sex and the City* and *The Larry Sanders Show*, while NBC's *30 Rock* featured an episode in season one titled "The C Word," though it was never directly mentioned onscreen.

Meanwhile, representatives from conservative watchdog group the Parents Television Council — informed of the word's use before the episode's broadcast — were unsurprisingly not happy with FX.

"That FX would use such severe dialogue demonstrates that the network has no standards.... If one FX employee used the 'c-word' term to describe a female co-worker, that employee would be summarily fired," PTC president Tim Winter tells *THR*. "It is indeed ironic that one division of News Corp. would employ such vile dialogue about a woman as 'entertainment' while another division of News Corp. [Fox News] is mired in disgraceful controversy because of allegations of wanton sexual harassment. It could increase potential liability for News Corp. should female employees allege a hostile work environment."

*Amber Dowling contributed to this report.*

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['Feud: Bette and Joan': TV Review](#)

FEUD

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Aol.com



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# **EXHIBIT 14**



FX  
**FEUD: BETTE AND JOAN**

Episodes are currently not available. Please check out our [video extras](#).

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# FEUD: BETTE AND JOAN | SEASON 1 | FX

38 videos • 50,672 views • Last updated on May 15, 2017



FX Networks

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About:  
FEUD: Bette and Joan, the first installment of the new FX anthology series from Ryan Murphy, tells the story of the legendary rivalry between Joan Crawford

- 1 FEUD: Bette and Joan | Inside Season 1: Looking the Part | FX  
FX Networks 3:48
  - 2 FEUD: Bette and Joan | Inside Season 1: Fashion | FX  
FX Networks 3:05
  - 3 FEUD: Bette and Joan | Inside Season 1: Making a Feud | FX  
FX Networks 3:46
  - 4 FEUD: Bette and Joan | Inside Season 1: Stars Aligned | FX  
FX Networks 3:26
  - 5 FEUD: Bette and Joan | Inside Season 1: The Directors | FX  
FX Networks 3:22
  - 6 FEUD: Bette and Joan | Inside Season 1: Jessica Lange as Joan Crawford | FX  
FX Networks 3:09
- FEUD: Bette and Joan | Inside Season 1: Susan Sarandon as Bette Davis |

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# 4 - Stars

0:00:05

0:00:05





5 - CastSpotlight

CATHERINE ZETA-JONES

0:00:15

0:00:15





6 - NakedRancor

0:00:06

0:01:24





7 - Win\_5S Mar5



0:00:05





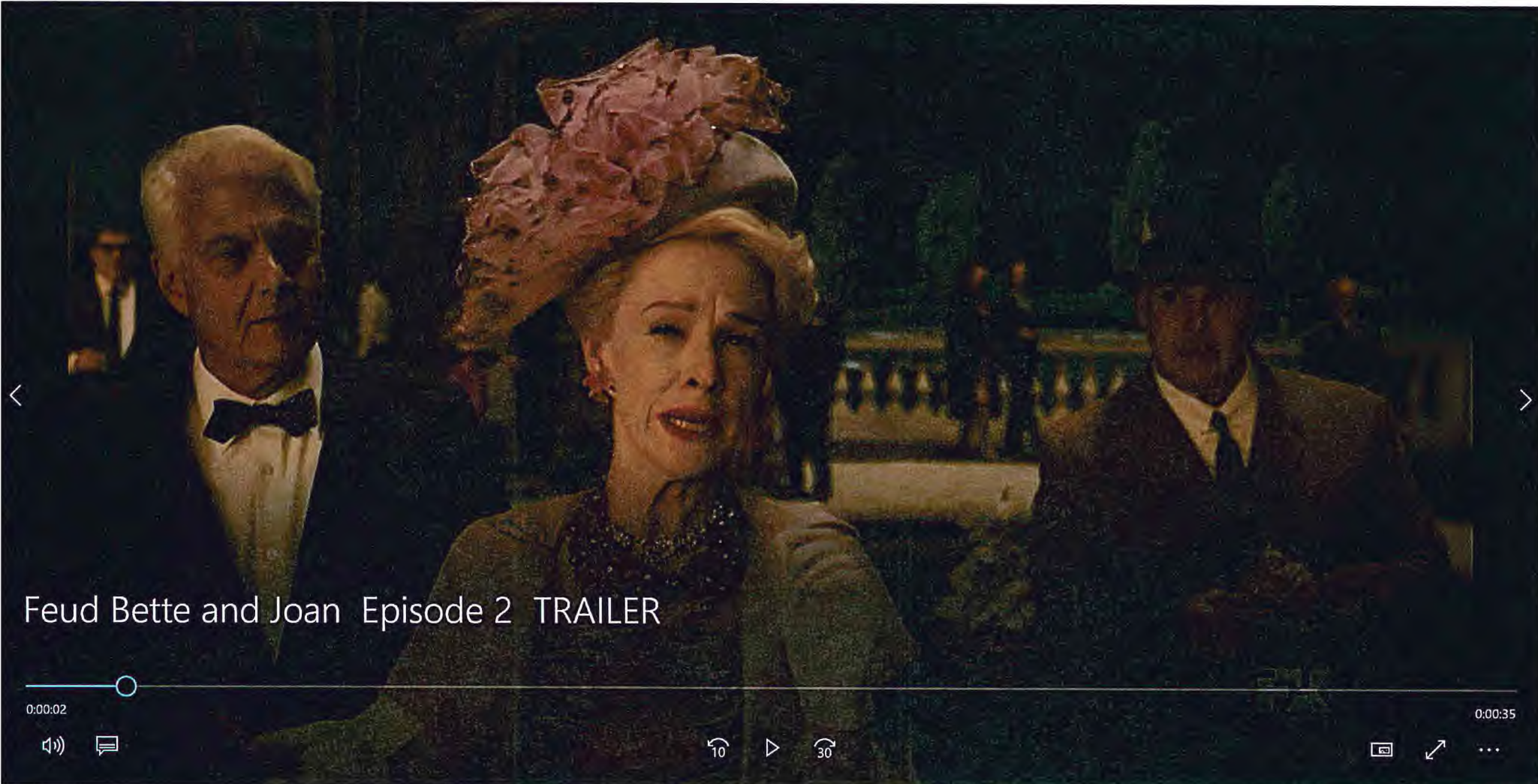
9 - CastMarquee

CATHERINE ZETA-JONES

0:00:15

0:00:15





Feud Bette and Joan Episode 2 TRAILER

0:00:02

0:00:35





Feud Bette and Joan Episode 3 TRAILER

0:00:04

0:00:33





Feud Bette and Joan Episode 4 TRAILER

0:00:33

0:00:04





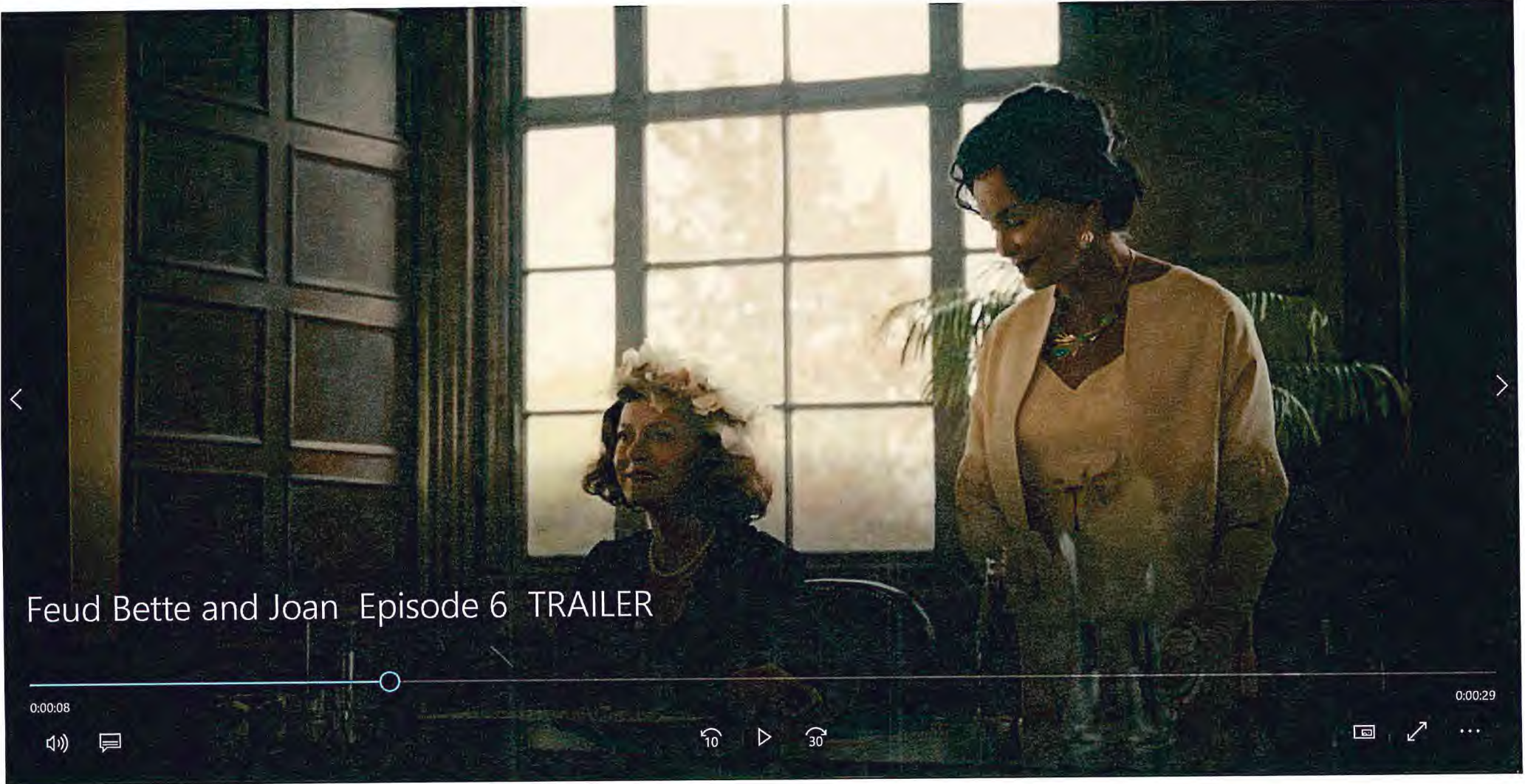


Feud Bette and Joan Episode 5 TRAILER

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0:00:19

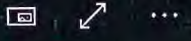


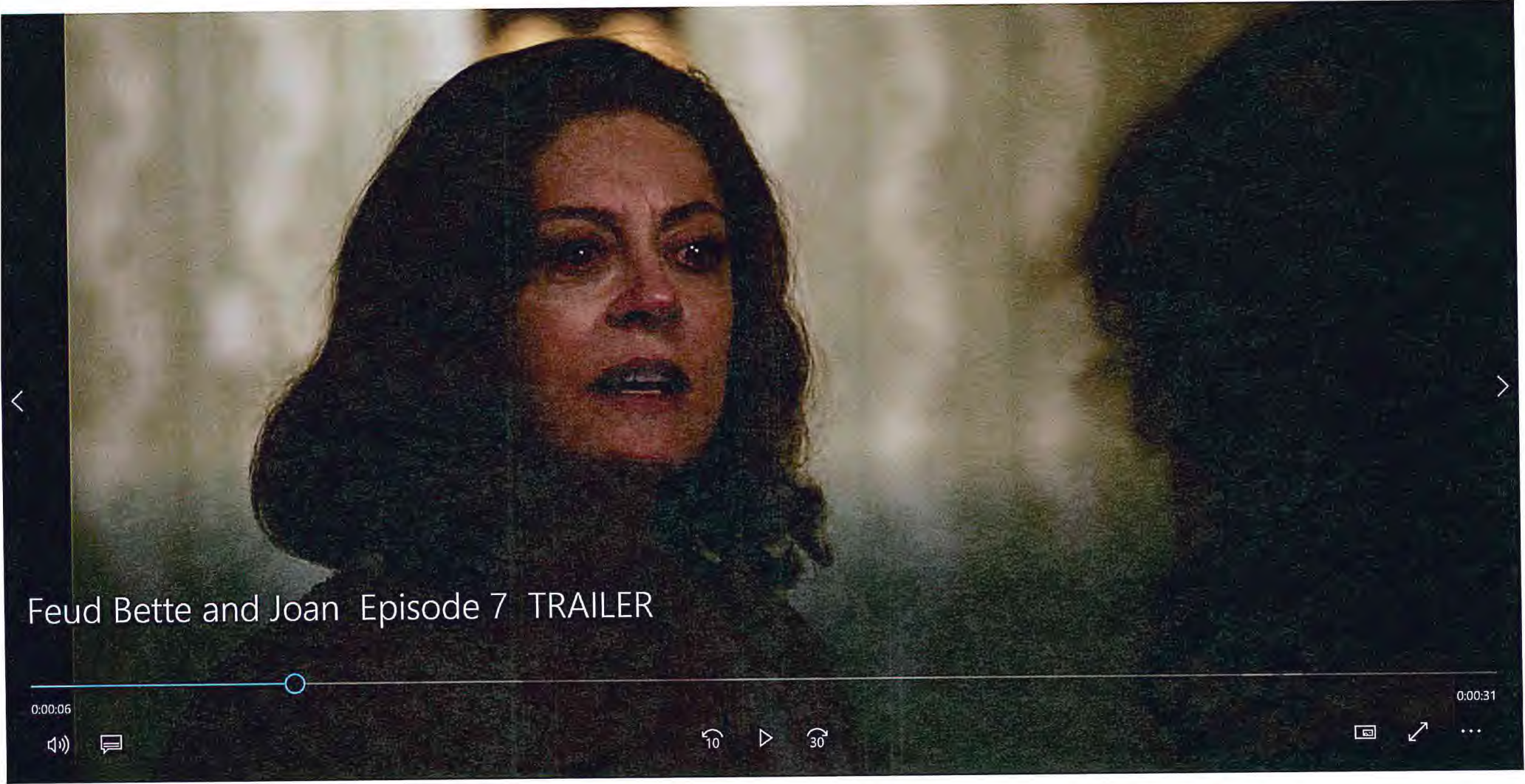


Feud Bette and Joan Episode 6 TRAILER

0:00:08

0:00:29





Feud Bette and Joan Episode 7 TRAILER

0:00:06

0:00:31

Volume icon, Subtitles icon, 10s rewind icon, Play/Pause icon, 30s fast forward icon, Full screen icon, Share icon, and More options icon.



Feud Bette and Joan Episode 8 TRAILER

0:00:03

0:00:34





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# FEUD: BETTE AND JOAN

**FX FEUD: BETTE AND JOAN**  
Clip Name: "WORLD PREMIERE FEUD:  
Bette and Joan - Season 1" Sn. 1



DETAILS WATCH WITH FANS

Aired on 03 / 14 / 2017

The creators and stars of this new FX anthology series discuss the legendary rivalry between Joan Crawford and Bette Davis and reveal how the series explores ageism and misogyny in Hollywood during the 1960s.

05:02 TV-14

About The Show

See All Cast / Crew

# **EXHIBIT 15**



FEUD: BETTE AND JOAN

EPISODES CAST/CREW EXTRAS

Back



LATEST  
Inside Look: Fashion of Feud



Inside Look: Looking the Part  
03:47



Inside Look: Making a Feud  
03:45



Inside Look: Stars Aligned  
03:25



Inside Look: The Directors  
03:21



Inside Look: Susan Sarandon as Bette Davis  
03:48



Inside Look: Jessica Lange as Joan Crawford  
03:08



Inside Look: Main Title Sequence  
02:54

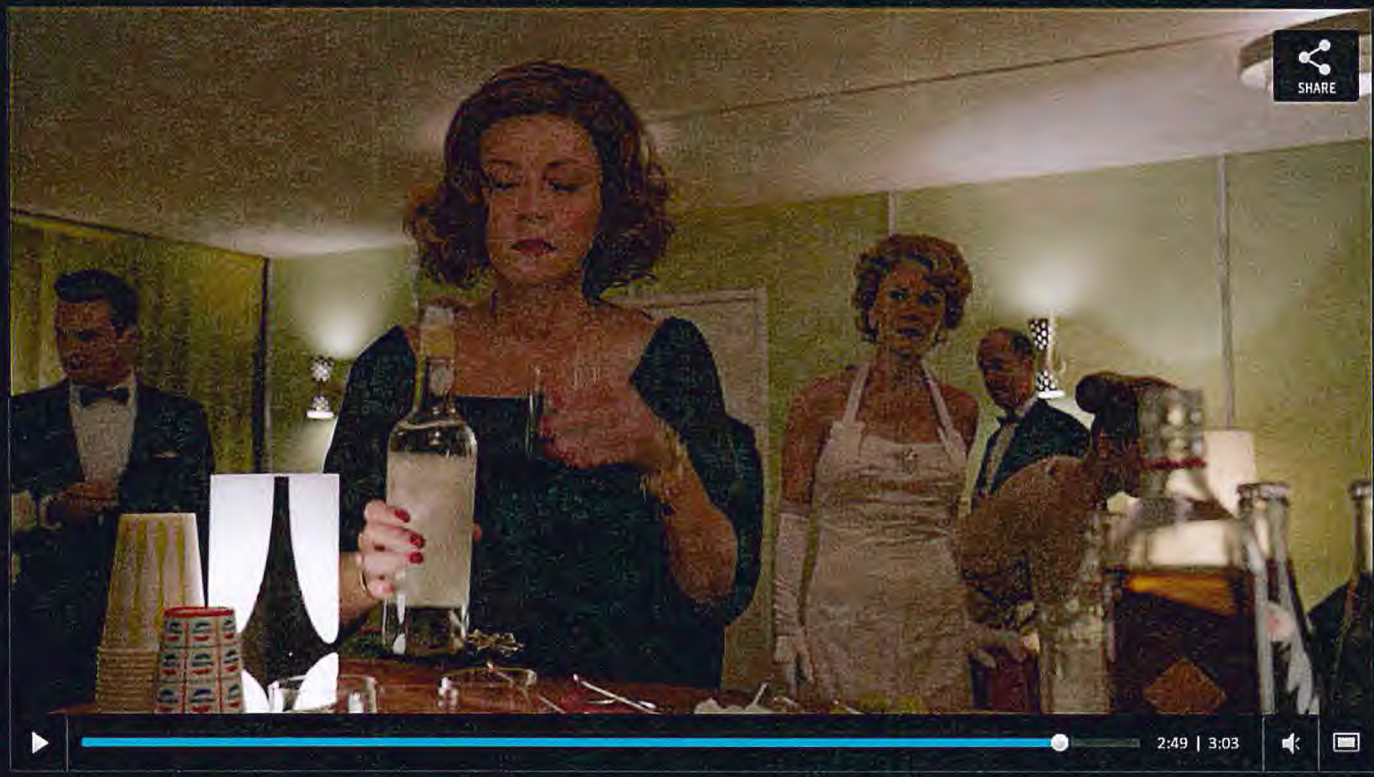


First Look: FEUD: Bette and Joan  
03:38



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2:49 | 3:03

**FX FEUD: BETTE AND JOAN**  
Clip Name: "Inside Look: Fashion of Feud"  
Sn. 1





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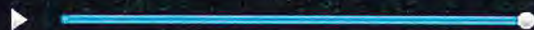
FXNOW



**FX** FEUD: BETTE AND JOAN  
Clip Name: "Inside Look: Jessica Lange as  
Joan Crawford" Sn. 1



 CATHERINE ZETA-JONES  
"OLIVIA DE HAVILLAND"



1:40 | 3:47



**FX** FEUD: BETTE AND JOAN  
Clip Name: "Inside Look: Looking the Part"  
Sn. 1



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3:30 | 3:45



**FEUD: BETTE AND JOAN**

Clip Name: "Inside Look: Making a Feud" Sn.

1



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CATHERINE ZETA-JONES  
"OLIVIA DE HAVILLAND"



0:25 | 3:25



FEUD: BETTE AND JOAN

Clip Name: "Inside Look: Stars Aligned" Sn. 1





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FPS 23.976 SHUTTER 180.0 EI 800 WB 4300 CC +0



STX

D

PGH

EVP

LOOK

BAT 26.6V REC CLIP D085 C008 REMAIN 42 MIN



3:29 | 3:48



**FX FEUD: BETTE AND JOAN**  
Clip Name: "Inside Look: Susan Sarandon as Bette Davis" Sn. 1



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 **CATHERINE ZETA-JONES**  
"OLIVIA DE HAVILLAND"



**FX FEUD: BETTE AND JOAN**  
Clip Name: "Inside Look: The Directors" Sn. 1

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# **EXHIBIT 16**



Catherine Zeta-Jones on Michael and Kirk Douglas

112,287 views

959 likes 27 comments SHARE

Jimmy Kimmel Live  
Published on Mar 1, 2017

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Catherine Zeta-Jones Reveals What Kirk Douglas Really Thought of Joan Crawford

0:00:05

0:02:49



## Catherine Zeta-Jones Talks Playing Hollywood Legend Olivia de Havilland in 'Feud: Bette and Joan'

A. Bottinick (<https://www.tvinsider.com/author/aubry-darminio/>) April 02, 2017 12:00 pm



Kurt Iswarienko/FX  
Catherine Zeta-Jones as Olivia de Havilland

Look past Catherine Zeta-Jones's perfect skin. Ignore her sultry voice, which can also carry a tune. Forget she has legs that could make a Rockette resentful. Disregard her wealth (she and husband Michael Douglas are reportedly worth \$220 million). And the best way left to describe the actress becomes what she's like as a woman—which is a freight train. In just two decades, the unstoppable Zeta-Jones has barreled through Hollywood (making over 20 movies and winning the 2003 Best Supporting Actress Oscar for *Chicago*) and Broadway (winning a Tony in 2010 for *A Little Night Music*).

Now the 47-year-old is laying tracks in television, playing another real-life film doyenne, Olivia de Havilland, in superproducer Ryan Murphy's hit *Feud: Bette and Joan*. The drama chronicles the longtime rivalry between actresses Bette Davis (Susan Sarandon) and Joan Crawford (Jessica Lange), which escalated during the making of their surprise smash *What Ever Happened to Baby Jane?* in 1962. De Havilland—best known for her iconic roles in classics like *Gone With the Wind*, *The Heiress* and *The Snake Pit*—had moved to France by the 1960s but remained Davis's closest confidante and, as depicted in the April 2 episode of *Feud*, her escort to the 1963 Oscars. Davis was nominated that year for her work in *Baby Jane*; Crawford was not. It served to further the rift in Davis and Crawford's already strained relationship.

But *Feud* is about more than just a fight. "It looks at how women are portrayed as bitches for being tough and ambitious," Zeta-Jones says. "The show gives insight into how people love a catfight, and Bette and Joan's was used to publicize the movie. As well as how a plethora of actresses at the time were pawns in the studio bosses' game, and when a woman turned a certain age, you were put out to pasture."

It was Murphy's reputation for depicting complicated women with sensitivity that made Zeta-Jones set up a meeting with him in the first place, not knowing it would lead to this supporting but pivotal role in *Feud*. "I don't live in Los Angeles," the New York City-based actress notes. "I never just bump into people. He graciously had me over to his office. We were chatting and he went, 'Oh, you have to play Olivia de Havilland.' I said, 'Sign me up.'"

She arranged a chin-wag with de Havilland in Europe last summer, but the older actress (who turns 101 in July) had to cancel due to the terror attack in Nice. And though Zeta-Jones admits to being disappointed, she had other, closer-to-home ways of researching the role: Her father-in-law, acting icon Kirk Douglas (another centenarian), and mother-in-law, Anne Buydens, not only worked in Hollywood during that time period, but they also knew the real Olivia, Bette and Joan. "I know from Kirk that Bette was everything that Susan portrays her as. She was ballsy. She was a real broad," Zeta-Jones says. "She and Olivia—whose surname alone suggests she has a kind of royalty to her—were a strange mix." Not that de Havilland wasn't gutsy: The two-time Oscar winner's suit against Warner Bros. (the studio behind *Baby Jane*, incidentally) over unfair work practices resulted in a law protecting actors from exploitation.

"The studio system was a nightmare for men, but especially for women. Olivia went up against it and won," Zeta-Jones says. "I wanted to be in television to play this type of interesting female. They're multifaceted. They're deeper. They're more mature. They have history. They have issues. And they have joy."

8/15/2017

Catherine Zeta-Jones Talks Playing Hollywood Legend Olivia de Havilland in 'Feud: Bette and Joan' – TV Insider

***Feud: Bette and Joan, Sundays, 10/9c, FX***

# **EXHIBIT 17**



Catherine Zeta-Jones

@CatherineZetaJones

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Catherine Zeta-Jones

1 March · 🌐

Wonderful time on Jimmy Kimmel Live last night. If you missed it, take a look! #Kimmel



Catherine Zeta-Jones on Michael and Kirk Douglas

Catherine talks about her husband Michael Douglas, her father-in-law Kirk Douglas and her role as Hollywood legend Olivia de Havilland in the new FX show 'Fe...

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Catherine Zeta-Jones  
28 February · 🌐

As Olivia de Havilland in FEUD: Bette and Joan. The opportunity to work with such exceptional women, and the amazing Ryan Murphy, who celebrates working with women, was a dream come true. #FeudFX



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Catherine Zeta-Jones  
@CatherineZetaJones

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Catherine Zeta-Jones shared FEUD: Bette and Joan's video.  
26 February · 🌐

One week away!! Love that you all can see Ryan Murphy's FEUD: Bette and Joan on FX Networks on March 5th.



109,695 Views

FEUD: Bette and Joan  
25 February · 🌐

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Who will win? FEUD: Bette and Joan premieres March 5th on FX Networks.

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Catherine Zeta-Jones and 196 others

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Catherine Zeta-Jones

@CatherineZetaJones

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when you're not camera ready at all, I can only imagine if you were, you're a true beauty.

Like · Reply · 4 · 7 February at 16:06

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Catherine Zeta-Jones shared FEUD: Bette and Joan's video.

6 February · 🌐

Can't wait for you all to see the premiere on March 5th! #FeudFX



810,637 Views

FEUD: Bette and Joan

5 February · 🌐

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Jessica Lange is Joan Crawford. Susan Sarandon is Bette Davis. Prepare for a FEUD of biblical proportions 3/5 on FX Networks.

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catherinezetajones

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February 26, 2017

**catherinezetajones** One week away!!  
Can't wait for you all to see Ryan  
Murphy's @feudfx on March 5th on FX.  
#FeudFX

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**roberto\_love\_10** 🗣️👍🎬📷👉👈📧🖋️

**vanes\_rocks** I'm so excited for this show!!!  
😊

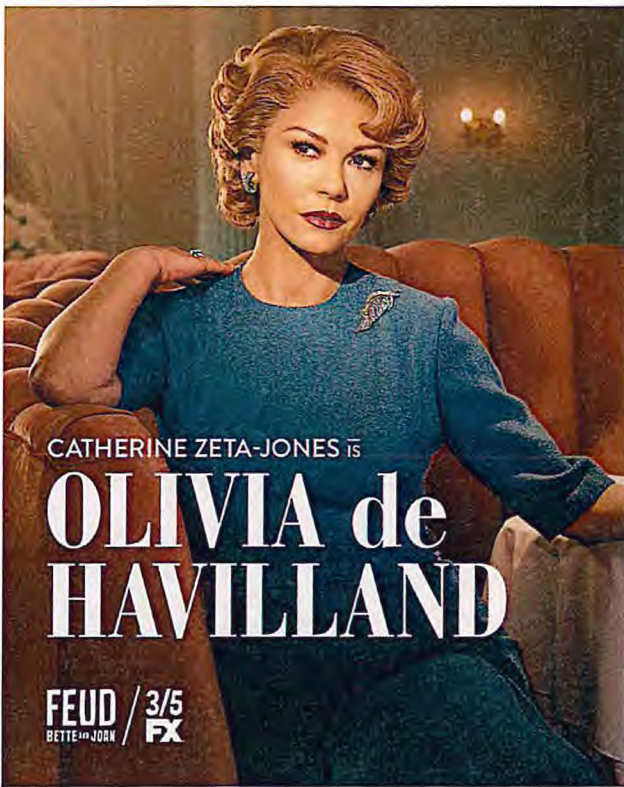
**natalie\_keshing** What a phenomenal role  
Catherine. To be a part of the cast in  
"Whatever happened to baby Jones"

64,471 views

FEBRUARY 26

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catherinezetajones

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**catherinezetajones** As Olivia de Havilland in @feudfx. The opportunity to work with such exceptional women, and the amazing Ryan Murphy, who celebrates working with women, was a dream come true. #FeudFX

Load more comments

**lisagabrieletv** A "Feud" needs to be about Olivia and Joan Fontaine!! Pitch it, C, it would be a hell of a story.

**kimluciano87** 🙄🙄🙄🙄🙄🙄🙄🙄

11,489 likes

FEBRUARY 28

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# Video



fxnetworks



1,644 views

fxnetworks #Repost @feudfx





**FXNetworks** @FXNetworks · Feb 14

They hated each other. They needed each other. Watch the OFFICIAL TRAILER for FEUD: Bette and Joan. Premieres 3/5 only on FX. #FeudFX



6

56

115



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**feudfx** Who will win? FEUD: Bette and Joan premieres March 5th on @fxnetworks. #FeudFX

**peytonmunera** ❤️❤️❤️❤️

**macklllove** Ugh my babes

**grace\_kelly.grimaldi** @helenmirrengirl  
FUCK 🤔🤔🤔🤔🤔🤔🤔🤔🤔

**pacocorbe\_** Need this right nowwww  
my two queens and Ryannnn

**rxsangel** @catherinezetajones !!!!!!!

**10,579 views**

FEBRUARY 25

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Photo



feudfx



2,458 likes

feudfx "Feuds are never about hate. Feuds are about pain." - Olivia de Havilland





feudfx

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We live for the glitz and glamour, dear. #FeudFX continues TONIGHT on @fxnetworks at 10pm. @susansarandon @catherinezetajones

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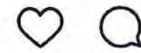
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illmatic.af @geejamisfit can't wait

illmatic.af @madonnas horror story



7,366 views

APRIL 2

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CATHERINE ZETA-JONES IS

# OLIVIA de HAVILLAND

**FEUD** / 3/5  
BETTE AND JOAN **FX**



feudfx

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feudfx The glamorous friend with a feud of her own. Catherine Zeta-Jones is Olivia de Havilland. #FeudFX

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juneloos @olivia\_de\_havilland she has! Catherine said in an interview she spoke to Olivia!

bgh27 @ruthmaryxx

wifi.clr And sarah paulson? 😊😊

coelhobe A season about Olivia and gerald Sister Joan would be astonishing!!!!

oliviadehavilland\_centenarian @juneloos oh awesome! Thank you for letting me know :)

juneloos @olivia\_de\_havilland you're welcome! Xoxo

martinspr Looking forward to watch what



1,699 likes

FEBRUARY 28

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FEUD: Bette and Joan

@FeudFX

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FEUD: Bette and Joan

6 March ·

"Feuds are never about hate. Feuds are about pain." - Olivia de Havilland



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3.6k

Top comments



**FEUD: Bette and Joan** @FeudFX · Apr 2

Oh, all the press and flashing lights. We're ready for our close-up. 🤩 📷

#FeudFX continues TONIGHT on @FXNetworks at 10pm.



6

179

425

# **EXHIBIT 18**



Actresses, Favorite of the Month - May 2015

## Warners Sues Bette Davis, loses yet saves her career

May 16, 2015 11:31 am



Bette Davis was a true actress who's passion was to be the best she could be. She also knew that getting ahead in her career meant being offered good scripts with talented directors. However, back in the studio era of Hollywood, actors had very little control about what films they could star in. Bette was very unhappy about the films that she was being offered during her time at Warner Brothers, so, in 1936 she left in protest and went to England on a two film deal.

The studio, however, procured an injunction against her for having left the States to do that film in England. She fought back by taking them to court. **Unfortunately, she lost the battle — yet,**

**all the more remarkably, rather than being blackballed by the studio people, from then on she started getting the kind of parts she yearned for and that, indeed, made her career.**

Davis is quoted as saying:

*"I knew that, if I continued to appear in any more mediocre pictures, I would have no career left worth fighting for."*

**In a letter to Jack Warner on June 21, 1936, as reprinted in the book "Inside Warner Brothers (1935-1951)" by Rudy Behlmer, Bette writes:**

*I would be willing to take less money, if in consideration of this, you would give me my "rights." You have asked me to be level headed in this matter. I feel I am extremely and hope you can agree that I am. I am more than anxious to work for you again, but not as things stand. I would be unable to do just to my work at all – as I would feel I was coming back – not entitled to the things I sincerely believe I deserve.*

*As a happy person I can work like Hell – as an unhappy one, I make myself and everyone around me unhappy. Also I know and you do too – in a business where you have a fickle public to depend on, the money should be made when you mean something, not when the public has had time to tell you go "go to hell." ...*

*Bette*

**The book's author, Rudy Behlmer wrote:**

***Following this letter Bette Davis refused to report to work for the film "God's Country and the Woman" (1936) and was suspended by the studio. She then went to England. In september Warner Brothers sued her for breach of contract. She lost the court case and returned to work in "Marked Woman" (1937) in November. "The Little Foxes" (1941), her one film away from Warners from 1934 until the end of her contract in 1949, was a special deal arranged by the studio with Samuel Goldwyn in exchange for Gary Cooper to star in Sargeant York.***

**By the way, the film Bette refused to do, "God's Country and the Woman" was made. It starred George Brent and Beverly Roberts. It's one most significant feature was that it was **the first full length technicolor film that Warner Brothers ever made.** It obviously isn't remembered well, so, in my opinion, Bette did the right thing by refusing the part. You can learn some more about this film by going to [IMDB.com](http://IMDB.com)**

**FROM WIKIPEDIA – the story is detailed below:**

*Convinced that her career was being damaged by a succession of mediocre films, Davis accepted an offer in 1936 to appear in two films in Britain. Knowing that she was breaching her contract with Warner Bros., she fled to Canada to avoid legal papers being served upon her. Eventually, Davis brought her case to court in Britain, hoping to get out of her contract with Warner Bros. She later recalled the opening statement of the barrister, Sir Patrick Hastings, who represented Warner Bros. Hastings urged the court to “come to the conclusion that this is rather a naughty young lady and that what she wants is more money.” He mocked Davis’s description of her contract as “slavery” by stating, incorrectly, that she was being paid \$1,350 per week. He remarked, “if anybody wants to put me into perpetual servitude on the basis of that remuneration, I shall prepare to consider it.” The British press offered little support to Davis, and portrayed her as overpaid and ungrateful.*

*Davis explained her viewpoint to a journalist, saying “I knew that, if I continued to appear in any more mediocre pictures, I would have no career left worth fighting for.” Davis’s counsel presented her complaints—that she could be suspended without pay for refusing a part, with the period of suspension added to her contract, that she could be called upon to play any part within her abilities regardless of her personal beliefs, that she could be required to support a political party against her beliefs, and that her image and likeness could be displayed in any manner deemed applicable by the studio. Jack Warner testified, and was asked, “Whatever part you choose to call upon her to play, if she thinks she can play it, whether it is distasteful and cheap, she has to play it?” Warner replied, “Yes, she must play it.” The case, decided by Branson J. in the English High Court, was reported as *Warner Bros. Studios Incorporated v. Nelson* in [1937] 1 KB 209. Davis lost the case and returned to Hollywood, in debt and without income, to resume her career. Olivia de Havilland mounted a similar case in 1943 and won.*

**Watch Ms.Davis talk about her legal case in an interview on the Dick Cavett Show in 1971.**

## Bette Davis talks about suing Warner Brothers

sources: YouTube.com and Wikipedia.com and



### Lynn

Lynn has an avid interest in the entertainment industry from classic movies to all things in today's Hollywood. With a background in art, she enjoys creating in Photoshop, running web sites and finds the internet an exciting place to be. Lynn lives in the LA area and attends as many Hollywood related events as she can. She has covered events in the LA area; read all about it at <http://lynnpdexclusives.com>.



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# **EXHIBIT 19**



#MEDIA INDUSTRY NEWS

AUGUST 23, 2007 / 8:13 PM / 10 YEARS AGO

## De Havilland lawsuit resonates through Hollywood

Matthew Belloni



LOS ANGELES (Hollywood Reporter, ESQ.) - If newly emancipated Hollywood talent agent Ed Limato brings his exclusive Oscar party to his new home at the William Morris Agency, he should reserve a spot for an unlikely guest of honor: 91-year-old actress Olivia de Havilland.

ADVERTISEMENT

Sixty-four years ago Thursday, de Havilland and her lawyers filed the lawsuit that led to the “seven-year rule” for personal services contracts, helping bring down the old studio system and bestowing unprecedented power on talent and, ironically, agencies like the one Limato successfully sued to escape.

California's seven-year rule, also known as Labor Code Section 2855, is such an accepted tenet of entertainment law that it's hard to imagine the business before it existed. De Havilland, who received her first Academy Award nomination for 1939's "Gone With the Wind" and went on to win best actress twice, sued Warner Bros. when the studio repeatedly extended her contract after "suspending" her for rejecting the roles it suggested. It was an uphill battle (Bette Davis lost a similar case in the 1930s), but the California Court of Appeal ruled in 1944 that de Havilland was not bound to perform services beyond seven years from the start of her contract. The case became state law, significantly shifting negotiation power from studios to talent and allowing agents like MCA's Lew Wasserman to usher in the era of top-dollar star salaries and the commissions and packaging fees that can make agenting such a lucrative business.

Today, film and television lawyers say the seven-year rule is such a given in negotiations that serious disputes rarely arise. Still, the law remains a sharp arrow in the quiver of disgruntled talent, especially in the music industry, where such artists as Courtney Love and Smashing Pumpkins have cited the rule in challenging open-ended deals that require delivery of several albums (though the record labels lobbied for and received a de facto exception allowing them to recover damages from artists for undelivered albums on deals voided by the rule).

The Limato arbitration brought the seven-year rule full circle. During his 32-year, two-stint association with International Creative Management, Limato had made superstars of such free-agent clients as Denzel Washington, Mel Gibson and Steve Martin. Limato's own deal, ICM argued, was different than de Havilland's contract with Warners because Limato could have left but chose to renegotiate and amend his agreement several times since 1996, most recently in 2006. That deal ended in June and provided for a three-year "consultancy" and a promise not to compete with ICM during that time. Did the renegotiations restart the seven-year clock? Relying in part on a recent case involving boxer Oscar De La Hoya, veteran entertainment arbitrator Diane Wayne said no, freeing Limato and, adding insult to injury, requiring ICM to pay his attorneys' fees.

"They had locked Ed up and thought they had done it in a way that skirted the rule," says Limato's lead litigator, George Hedges. "I think every (agency) is taking a beat now, looking at their practices."

Hedges says the Limato case shows the seven-year rule lurks anywhere in the business where talent -- be they actors, directors, agents or executives -- sign successive options to perform unique services without a reasonable window of time between deals. That's reason enough for nervous business affairs executives to double-check their deal files.

De Havilland now lives in France and hasn't acted since 1988. But her efforts more than six decades ago resonate today.

Reuters/Hollywood Reporter

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BOOK REVIEW | OPEN BOOK

# Populism's Origin Story

By JOHN WILLIAMS JUNE 24, 2016

Populism got its formal name in this country in the 1890s, when struggling farmers and other laborers formed the People's Party. For decades, histories — like John Hicks's "The Populist Revolt" (1931) — told the story as a straightforward case of the working class seeking economic justice.

But in 1955, Richard Hofstadter published "The Age of Reform," which "examines, criticizes and replaces some of the most popular stereotypes of recent American history," as D.W. Brogan wrote in the Book Review. One of those stereotypes, according to Hofstadter, was the motive of the original populist movement. Farmers, he argued, were not just hurting economically but were having trouble adapting to a changing world, and lashed out at their change in status as much as at unfairness. Brogan said that Hofstadter "acutely suggests" that "McCarthyism has deep rural roots."

In "Democratic Promise" (1977), Lawrence Goodwyn made a case for the noble side of populism, but also acknowledged its missteps. Alden Whitman wrote in The Times: "Although many populists understood that black farmers 'are in the ditch just like we are,' populism as a whole could not escape the prevailing white supremacy value system of its era."

In writing about Michael Kazin's "The Populist Persuasion" for the Book Review in 1995, David Oshinsky noted that populism moved "sharply to the right" after World War II. "In this new age of mass advertising and material abundance," Oshinsky wrote, "most workers came to view themselves as consumers and

taxpayers, not as members of an exploited class, and seemed less concerned by the power of big business, which provided them with good jobs, than by the growth of big government.” Oshinsky’s conclusion still echoes: “For those in power today, the message should be clear: Populism is a deep, enduring impulse with a very fickle past.”

### **Quotable**

“It was called ‘Just Me and My Dog.’ It was this thinly veiled critique of my parents for not letting me get a dog.” — Yaa Gyasi, author of “Homegoing,” on the first story she wrote, when she was 7, in an interview with Powell’s Books

### **Among the French**

The actress Olivia de Havilland is approaching her 100th birthday and to celebrate, the publisher Crown Archetype has reissued her 1962 memoir, “Every Frenchman Has One.” De Havilland has lived in Paris since the 1950s, and in this brief and breezy book she writes things like: “Of course the thing that staggers you when you first come to France is the fact that all the French speak French — even the children.” In a new interview in the book, de Havilland cites the lessons she’s learned from Parisian women: “The importance of tact, restraint, subtlety, and the avoidance of banality,” and the tenets of what she calls the “Paris principle”: “1. Discretion 2. Discretion 3. Discretion.”

A version of this article appears in print on June 26, 2016, on Page BR4 of the Sunday Book Review with the headline: Populism’s Origin Story.

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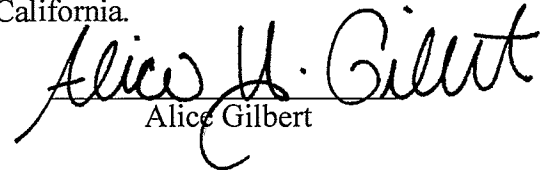
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Aaron Wais, Esq.  
Robert Rotstein, Esq.  
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Los Angeles, CA 90064  
  
*Attorneys for FX Networks, LLC and Pacific  
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Alice Gilbert