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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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MISSY CHASE LAPINE, and THE SNEAKY	:	ECF CASE
CHEF, Inc.,	:	
	:	Civil Action No.: 08-CV-00128 (LTS)
Plaintiffs,	:	
	:	
v.	:	
	:	<b>DECLARATION OF PLAINTIFF MISSY</b>
JESSICA SEINFELD, JERRY SEINFELD,	:	<b>CHASE LAPINE IN OPPOSITION TO</b>
HARPERCOLLINS PUBLISHERS, INC., and	:	<b>ALL DEFENDANTS' CONVERTED</b>
DEPARTURE PRODUCTIONS, LLC,	:	<b>MOTIONS FOR SUMMARY</b>
	:	<b>JUDGMENT</b>
Defendants.	:	
	:	
	:	
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I, Missy Chase Lapine, hereby declare:

1. I am a Plaintiff in the above captioned case. I have personal knowledge of the facts stated herein, and if called to testify, I could and would competently testify thereto. I submit this declaration in opposition to both Defendant Jessica Seinfeld's converted motion for summary judgment and Defendant Jerry Seinfeld's converted motion for summary judgment.

2. I developed an interest in food and nutrition as a college tennis player. I viewed food, nutrition, and health as a cornerstone of my competitive edge and success. This made me an amateur food and nutrition enthusiast.

3. In about 1990 I began work for Hachette, a magazine publisher. I worked in advertising sales for *Elle* and *Elle Décor* magazines.

4. I moved to the advertising sales department of *Gourmet* magazine in about 1995. This job enabled me to take nutrition and cooking classes.

5. I became publisher of *Eating Well* magazine in about 1996. I was in charge of marketing and circulation. I worked closely with the editors and maintained my passion for food and nutrition. I stayed at *Eating Well* until my first daughter was born in April 1998.

6. As a result of pursuing my passion for food, I became certified in the master techniques of healthy cooking and was trained in classical cooking techniques by the Institute of Culinary Education (now "I.C.E." f/k/a "Peter Kumps") in their intro level, six week course. I received a certification in the master techniques of healthy cooking from one of New York's finest culinary schools, the New School Culinary Arts, NY. I am a member of *Parenting Magazine*'s team of experts, the "Mom Squad," a panel of 10

high-profile experts who will be featured regularly in the industry-leading magazine. I served on the Culinary Arts Faculty of The New School Culinary Arts, in New York City.

7. In August 1998, when my daughter was four months old, she contracted an infection. She required special care and special hygiene products to help her fight it and prevent a recurrence.

8. I recognized that other parents could be experiencing the same problems and they required solutions. In response, I created a line of baby safe bath products. The business was called *Baby Spa*. I sold its line of products to one thousand stores worldwide, including mainstream outlets like Bloomingdales.

9. My second daughter was born July, 2000. As a baby and toddler, she had an extreme sensitivity to food – many allergies and a significant gag reflex. I was forced to focus on food. I had to be vigilant with her meals, to ensure she got the nutrition she needed. I started getting creative. My first inspiration occurred during an endless struggle to get her to take medicine without a fight. I mixed it and hid it in food. It occurred to me that I could extend this idea to hiding better ingredients in “regular” meals. At the same time, her discomfort eating solid food lead me to make a variety of smoothies, and what I eventually called “breakfast ice cream”. I started hiding ingredients in those meals, specifically geared to what my daughter needed. For example, I added avocado because she was underweight. I added acidophilus powder to help her with digestion. I added wheat germ for fiber. Yogurt was a favorite ingredient, and of course vegetables. My success led to looking for even more possibilities. Baby food became a convenient ingredient to increase nutritional value of meals. White bean

puree in macaroni and cheese was one of the first recipes I made at this time that eventually ended up in *The Sneaky Chef*.

10. My food experimenting continued for years.

11. Because *Baby Spa* grew from coping with my first daughter's aliment, in 2005 I decided to write a book based on what I learned and developed struggling through my second daughter's difficulty with food. I recognized that many parents would benefit from this knowledge when dealing with their own food issues and their picky eaters.

12. My goal was to write a book that offered parents a way to get vegetables into their children with minimal effort, minimal disruption to the family's cooking and kitchen routine, and with no fight from their children over eating vegetables.

13. To achieve my goal and make the concept work for most parents, I decided that the book had to convey a working knowledge of hiding vegetable purees in regular food that children like. I had learned or invented many other ways to increase the nutritional value of a meal. Originally, I was going to explain all the random ways of hiding a myriad of ingredients that I developed over the years. But that was too complicated and disjointed. Pureeing became the central focus, to keep the concept simple and understandable, and to make the book attractive and sellable.

14. Most of the other methods I learned are included in *The Sneaky Chef*, in Chapter 5, starting at page 63. Most are minor useful techniques that parents can take or leave, depending on their time, energy, and desire to experiment in their own kitchens. *The Sneaky Chef* is about hiding pureed vegetables in children's favorite food. Pureeing is the hero of the story.

## Creating and Proposing *The Sneaky Chef*

15. Having never sold a book before, I read up on the process and hired a professional to help me create a proposal to send to publishers. It contained the following sections:

- Overview
- About the Author
- Promotion
- Market Analysis
- The Competition
- Chapter Summaries
- Icons/artwork
- Sample Chapters – including Chapter One (Introduction), Chapter Four (Methods), Chapter Five (All Make-Ahead Purees and 29 Recipes).

A true and correct copy of my book proposal is attached hereto as Exhibit 1.

16. I worked on my book full time for two years. I devoted my energy, time, and money, conducting numerous taste tests, focus groups and interviews, and consulting extensively with leading nutritionists, pediatricians and chefs. I succeeded in my effort to combine healthy ingredients, primarily purees of vegetables that children typically resist, such as spinach or cauliflower, with dishes that children typically crave, such as brownies, pizza and pancakes.

17. I had never seen the concept of pureeing as a basic method of hiding food. Others have chopped, minced, or grated and “hid”, but those vegetables are not really hidden, they are just in unexpected shapes or forms, and tossed or mixed into unexpected places. I was developing a way to hide vegetables without a trace and without inciting so much as a suspicion in children. I had never seen the method I codified – using make-ahead purees and hiding or camouflaging them based on color-coding, texture-coding, matching taste; and providing these recipes whose ingredients specify one puree from a

set of make-ahead purees. To the best of my knowledge, *The Sneaky Chef* is the first book to do this. It imparts that idea as I developed it, to achieve the goal I set for the book, and to benefit children and the parents who love and cook for them.

18. I prepared a manuscript of my book, *The Sneaky Chef*, and finished my book proposal.

19. About January or early February 2006 a friend of mine, who knew I was writing a book, informed me that she knew a vice president of HarperCollins, Debbie Stier. She told me that Ms. Stier would be willing to look at my proposal, and that she was expecting me to contact her. I did, and Ms. Stier invited me to send my book proposal. A true and correct copy of that email is attached hereto as Exhibit 2.

20. About February 6, 2006, I sent my 139-page book proposal, which included extensive chapters from *The Sneaky Chef* manuscript, to Debbie Stier. A true and correct copy of that proposal is attached hereto as Exhibit 1, and a true and correct copy of my cover letter is attached hereto as Exhibit 3. Debbie Stier gave the proposal to senior cookbook editor Harriet Bell. Four days later, she sent me a letter rejecting the proposal. A true and correct copy of that letter is attached hereto as Exhibit 4. I did not receive my proposal back from her.

21. I then hired a literary agent, Joelle Delbourgo. About early May 2006, through my agent, I again submitted my book proposal to HarperCollins, again including extensive chapters from *The Sneaky Chef* manuscript. On May 24, 2006, HarperCollins rejected the second proposal, stating that "the children's food segment of the market is a tough one to navigate during a particularly tough time in the cookbook category in general. The influence of the food network and the availability of recipes online have

really hurt this area. I'm sorry to say we'll be passing . . ." A true and correct copy of that email is attached hereto as Exhibit 5. To my knowledge, HarperCollins never return my proposal or *The Sneaky Chef* manuscript I sent them.

**Publishing the Book and Obtaining Copyright and Trademark Protection**

22. My agent set up an auction for my book in June 2006. HarperCollins passed on attending the auction. Five other publishers attended and bid, and we picked Running Press to be the publisher. On about August 1, 2006, I entered into a contract to publish *The Sneaky Chef*.

23. On or about April 2, 2007, Perseus, through its Running Press imprint, released *The Sneaky Chef*. Just prior to the release date, Parenting Magazine did a four page spread on the book. It was in Amazon's top 2000 before its release date.

24. On April 2, 2007, I appeared on the Today Show to launch the book and demonstrate to the nation my sneaky techniques and recipes. As a result *The Sneaky Chef* quickly rose to the top 10 of all books nationwide according to Amazon.com ranking system, and remained in the top 100 books for months. It remains in top 20 cookbooks nationwide.

25. Three weeks after publication, *The Sneaky Chef* appeared on the New York Times Best seller list for April 22, 2007. A true and correct copy of the list is attached hereto as Exhibit 6.

26. The reviews of *The Sneaky Chef* were extremely positive, with the culinary press and general media lauding my revolutionary approach to disguising healthy foods inside children's favorite dishes.

27. The Sneaky Chef, Inc. filed applications with the United States Patent and Trademark Office for trademark registration of the word trademark "Sneaky Chef" and the image trademark that appears on and in *The Sneaky Chef* and on my Web site. The Sneaky Chef, Inc. is the co-owner of all rights to the trademarks and is engaged, together with me, in developing and marketing books, DVDs and other products that are based on my methods and concepts and utilize the trademarks.

28. As part of a campaign to market and promote *The Sneaky Chef*, I appeared on the Today Show, Fox and Friends, and numerous other television programs. I appeared on numerous national and local radio programs. I was featured in national magazines such as Parenting and Women's Day and in numerous newspapers. I did a book tour throughout the country, which included bookstore and supermarket appearances and signings.

29. Four times I attempted to be a guest on Oprah. I was rejected each time. I was told by a representative of the show that they did not know what to do with the book. A true and correct copy of one such communication is attached as Exhibit 7.

30. During this book tour and marketing campaign, *The Sneaky Chef*, and "shooshing" chef drawing, trademarks became well known and famous. The public began to associate those trademarks with my ideas and work embodied in *The Sneaky Chef*. Word of mouth began to spread about my book and technique. The trademarks helped people identify my work.

31. I have since collaborated with the Alliance for a Healthier Generation, a partnership between the American Heart Association and the William J. Clinton Foundation, devoted to helping schools serve healthier lunches; and served on the



Children's Advisory Council of Morgan Stanley Children's Hospital of New York-Presbyterian, where my *Sneaky Chef* recipes are included in the pediatric patient menu and served to patients. *Sneaky Chef* exclusive prepared foods are also featured and sold at Whole Foods Market.

**Jessica Seinfeld Copies *The Sneaky Chef***

32. At the end of April or early May 2007 my publisher attended an annual book faire in Frankfurt. While there, he spoke to representatives from HarperCollins. *The Sneaky Chef* had just appeared on the New York Time Best Seller list, and according to my publisher the HarperCollins people "were freaking out over it."

33. In May 2007, while promoting and marketing *The Sneaky Chef* I learned that Jessica Seinfeld and her publisher, HarperCollins, were planning to publish *Deceptively Delicious*. In an eight-page promotional brochure my agent forwarded to me, I observed blatant similarities between the two books, including, among other things, its cover design and content. I immediately brought these similarities to the attention of my publisher. A true and correct copy of the promotional flyer is attached hereto as Exhibit 8.

34. After I brought this to the attention of my publisher, around July 9, 2007 Running Press sent a letter to Jessica Seinfeld's publisher complaining about blatant similarities between *The Sneaky Chef* and the plans for *Deceptively Delicious*. A true and correct copy of the letter is attached as Exhibit 9.

35. On or about July 31, 2007, Jessica Seinfeld's publisher sent Running Press a letter denying that Jessica Seinfeld copied, or was even influenced by, *The Sneaky Chef*, asserting that *Deceptively Delicious* was "entirely original to" Jessica Seinfeld, and

stating that “we do not believe it necessary or appropriate to make any changes to the design or content...” A true and correct copy of that letter is attached hereto as Exhibit 10.

### **Jessica Seinfeld’s Infringement**

36. In October 2007, *Deceptively Delicious* was published. As compared with its promotional flyer, it was published with only minor and insignificant modifications to the cover art and subtitle - the cover design was slightly altered by moving the pictured carrots from their original position (held in the female chef’s hand behind her back, exactly where the chef in *The Sneaky Chef* trademark holds her carrots) to a cutting board behind her back, and the subtitle was slightly changed from “Sneaky Secrets to Get Your Kids Eating Good Food” to “Simple Secrets to Get Your Kids Eating Good Food.”

37. Jessica Seinfeld appeared on Oprah the day her book was published. After the show aired, I received many emails from people I did not know – readers of my book who watched Oprah – saying that I had been stolen from, by Jessica Seinfeld. I saw similar messages appearing on Oprah’s message board.

38. I am aware of and viewed numerous statements that were made on the Internet and in print and television media that Jessica Seinfeld had plagiarized *The Sneaky Chef*.

39. I never accused Jessica Seinfeld of plagiarism prior filing this lawsuit. I never told anyone in the press that Jessica Seinfeld plagiarized *The Sneaky Chef*. I never said any of the things that Jerry Seinfeld accused me of during his appearances on *The Late Show*, and *E! News*.

40. I had an interview with the New York Times, shortly after Mrs. Seinfeld’s book came out. I did not accuse her of plagiarism during that interview. I was invited

back to the Today show on October 25, 2007 for another cooking segment. At the end of the segment, the host asked me about the “controversy”. Again I did not accuse Mrs. Seinfeld of plagiarism.

### **Jerry Seinfeld’s Television Appearances**

41. After my Today show appearance, a friend called me frantically, saying that on *E! News* that day she saw Jerry Seinfeld, and that he was really angry, “foaming at the mouth and attacking you.” Then I heard from someone about Jerry Seinfeld’s *Letterman* appearance. I started feeling scared. I thought, I made a huge mistake talking to any reporters, because now this billionaire is angry and attacking me everywhere.

42. I have never felt so frightened and vulnerable as the day my daughter, 7 years old, came home from school and asked, “Mom, what is an assassin?”, in reference to Jerry Seinfeld calling me an assassin.

43. I was shocked and injured to hear Jerry Seinfeld equate me with David Letterman’s dangerous well known criminal stalkers; state that I attacked his wife in the press; mischaracterize what I had said about the two books; state that I was making opportunistic and groundless accusations of plagiarism; misstate accusations that had been made by others against Jessica Seinfeld’s book, and attribute them to me; state that I created a controversy with the Seinfelds; state that I was a dangerous and potentially violent person; state that I was targeting the Seinfelds for public harassment because they were famous; and make me out to be an extortionist.

44. I do not suffer from any mental infirmity; I am not a celebrity stalker; I am not a violent or dangerous person; I did not and do not engage in extortion; I am not a liar; I did not, until the filing of this complaint, make any specific accusations against Jessica

Seinfeld; I did not make the accusations Jerry Seinfeld attributed to me; I did not fabricate accusations against Jessica Seinfeld to gain media attention, enrich myself or harass the Seinfelds; and I was not lying in wait for an opportunity to become embroiled in a controversy with any celebrity.

45. I am not a public figure.

**The Sneaky Chef: An Original Work of Authorship**

46. Prior to *The Sneaky Chef* I know of no book that expressed an approach to improving children's eating habits and nutrition that is based on sneaking pre-made pureed vegetables into the most popular children's food.

47. *The Sneaky Chef* is unique in that it ingeniously disguises the most important superfoods inside children's favorite meals. *The Sneaky Chef* gives parents a real-life solution to the age-old dilemma of how to get children to eat what is good for them. Some books do an excellent job at telling parents what to feed their children; *The Sneaky Chef* actually shows them how to do it.

48. Prior to *The Sneaky Chef*, there is no other book that I know of, including those publications presented by Defendants in this motion, that includes each element I assembled, discussed, and expressed in *The Sneaky Chef*. While many books offer ideas for healthy children's recipes, they do not attempt to camouflage the very ingredients that are rejected by kids.

49. Prior to *The Sneaky Chef*, there is no book I know of that explained how to include pureed vegetables in every meal. *The Sneaky Chef* goes further, by explaining the ease and wisdom of pureeing vegetables ahead of time, and using quick child favorite recipes that specifically call for the pre-made purees.

50. Prior to *The Sneaky Chef*, there was not a single more effortless plan for getting picky eaters to devour the food on their plate. There was also no book that specified the top-rated children's foods (those determined by research firms to be the hands-down kid favorites) and then cleverly transformed them into highly nutritious meals. Many books include some of these favorites, but there was no single book I know of that listed them all as comprehensively as *The Sneaky Chef*.

51. Prior to *The Sneaky Chef*, no author that I know of devoted a whole book (text and recipes) to the why and how of pureeing vegetables to hide in children's favorite food, or provided parents with a detailed plan for implementing the *sneaky* system.

52. My book expresses more than just hiding some healthy ingredients in a child's meal, using purees, or making use of the freezer. The following summarizes the principles of hiding pureed food that I expressed in *The Sneaky Chef*:

- “1. Similar colors and textures work well.
2. The healthy ingredient has to either enhance the overall original taste or add no taste of its own.
3. Sneak means don't taint. You can't affect the look or texture of the final product any more than the taste.
4. The added ingredient has to be good for you.” Ex. B at 69.

“The idea of sneaking is not entirely original to this book. We all heard Julie Andrews, in *Mary Poppins*, sing, ‘Just a spoonful of sugar makes the medicine go down.’ The concept has been around for a while. What I have done is take the germ of the idea of sneaking food and made it into an art.

Using my own kitchen as a testing laboratory, I came up with foolproof techniques for working the most nutrient-rich foods on the market into the top foods that kids are known to shovel in without an argument.” Ex. B at 28-29. “Whatever the product, it must meet three criteria. One, it has to have no real taste of its own. Two, it cannot leave too much of a gritty, leafy, or unusual feel or an off-taste in the mouth that will make it distinguishable from the main dish. (As we will see later, there are ways to deal with these effects if they do appear.) Kids are hyper-alert to any differences in their usual foods. In my lab test kitchen, I have also made sure that when these sneaky items are used, there are very few residual flecks of green and no lumpy, grainy, coarse, or harsh texture.

“When I tested these products over a period of five years, they had to pass a rigorous test of being bland in taste and virtually invisible in texture. Not only do kids seem to have an unnaturally strong sensitivity to these changes, but they are not in the least bit diplomatic about pointing out their objections. If the words aren’t derisive enough, they usually make a face. So bland-tasting foods are always chosen over highly pungent ones.” Ex. B at 69.

53. Prior to *The Sneaky Chef*, there was no cookbook I know of that made a goal of achieving peace at the family table. There was no cookbook I know of that presented sneaky techniques and loving deceit as a means to achieve that peace.

54. *The Sneaky Chef* also stands apart from prior cookbooks by addressing the need for fast and easy recipes that use accessible, everyday ingredients. All the recipes can be made in a half hour or less, and many of them take only a few minutes. They call for ingredients that can be found in any local supermarket; some of the prior healthy recipe books require seeking out new and unusual ingredients and require much more time in the kitchen.

55. The positive approach of *The Sneaky Chef* further distinguished it from the healthy cooking set in two ways. First, no food group is eliminated, an asset to most parents who don't wish to discourage their children from eating anything they actually like. Unlike some cookbooks, *The Sneaky Chef* does not require parents to take the radical and impractical step of eliminating all the sugar, dairy or meat from their kids' diets. Second, some prior books took a negative, disease-prevention approach, scaring parents away from feeding their children certain foods. *The Sneaky Chef* offers a more positive, nutrition-enhancement approach to eating well, assuming that parents are more concerned with present-day issues of increased mental concentration, more energy, stronger immunity and mood enhancement versus simply preventing osteoporosis and other diseases that won't occur until the adult years.

56. I chose to file suit to protect and enforce my legal rights, not as a publicity stunt or for attention.

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57. I am not and have never been a professional nutritionist or a professional chef.

I have never worked as a chef or nutritionist, nor received a salary as a chef or nutritionist.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed within the United States on October 24, 2008.

  
Missy Chase Lapine