

II.
PARTIES

2. Plaintiff ATHENA LUNDBERG is an individual residing in Sherman Oaks, California. The last four digits of her driver's license are 0134.

3. Plaintiff ROSIE JONES is an individual residing in Ashford, Middlesex, England.

4. Plaintiff TIFFANY TOTH is an individual residing in Santa Monica, California. The last four digits of her Driver's License are 7223 and the last four digits of her Social Security number are 8355.

5. Plaintiff SARA UNDERWOOD is an individual residing in Scappoose, Oregon. The last four digits of her Oregon Driver's License are 3893 and the last four digits of her Social Security Number are 5266.

6. Defendant TUMBLEWEED ENTERTAINMENT, LLC d/b/a DAKOTA'S DIXIE ROSE ABILENE is a sexually-oriented business doing business in Texas as a strip club at 8349 North Meadow Circle Dallas, Texas 75231. It may be served via its Registered Agent, Mr. Alkos Giagtzis, at 8349 North Meadow Circle Dallas, Texas 75231.

7. MINK MANAGEMENT CORPORATION d/b/a DAKOTA'S DIXIE ROSE SAN ANTONIO is a sexually-oriented business doing business in Texas as a strip club at 17680 I-35, Lytle, Texas 78052. It may be served via its Registered Agent, Mr. Alkos Giagtzis, at 8349 North Meadow Circle Dallas, Texas 75231.

8. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, if any of the Defendants above have been misidentified they are instructed to answer this suit in their correct legal names.

III.
JURISDICTION AND VENUE

9. Venue is proper in Dallas County, Texas pursuant to the mandatory venue provisions

contained in §15.017 of the Texas Civil Practice & Remedies Code in that Plaintiffs allege causes of action for Invasion of Privacy and all Defendants maintain a corporate domicile or a residence in Dallas County, Texas.

10. Pursuant to Tex. R. Civ. P. 47, Plaintiffs plead that these causes of action exceed \$1,000,000.00 in damages and are within the Court's jurisdictional limits.

IV. FACTS

11. Defendants are Texas-based, sexually-oriented businesses known as Dakota's Dixie Rose Abilene and Dakota's Dixie Rose San Antonio (collectively "The Clubs"). The Clubs serve food and alcohol in a sexually-charged environment where topless women perform for and interact with the business's clientele. The Clubs are a widely known strip clubs in their surrounding communities because they advertise regularly via the Internet, social media sites, radio, and billboards.

12. On many of the promotional materials used by The Clubs are pictures of all Plaintiffs that are doctored to make it appear that they are strippers working in The Clubs or that they endorse The Clubs. Moreover, the Plaintiffs' images are often photo-shopped into scenes depicting them as being present in the strip clubs and the new images are subsequently placed into Internet posts, social media posts, and web pages depicting the Plaintiffs the Clubs or at various events associated with the Clubs, thereby associating Plaintiffs with the strip club industry.

13. Sara Underwood first appeared in *Playboy* in the pictorial *The Girls of the Pac 10* in the October 2005 issue (she also graced the cover). Underwood was the Playmate of the Month in the July, 2006 issue of the magazine. She was named Playmate of the Year in 2007. Sara has been featured in many *Playboy* videos, and not only has appeared as herself in the films *The*

House Bunny (2008) and *Miss March* (2009) but also on episodes of such reality TV series as *Kendra* (2009), *The Girls Next Door* (2005) and *Bridget's Sexiest Beaches* (2009). Sara has also worked on television as a continuity announcer for the Blackbelt TV cable network and co-hosted five episodes of G4's *Attack of the Show* (2003).

14. Dixie Rose San Antonio misappropriated Ms. Underwood's Image and placed it on internet and social media posts in order to promote the club. The flyer features Ms. Underwood in a coat and a low cut shirt with the slogan "Dear Diary... Why won't anyone make eye contact with me?" The image of Ms. Underwood was deliberately positioned on the internet and social media posts to imply that she was a stripper working at the Club or that she endorsed the Club. The image was used without the permission of Ms. Underwood. The image was circulated via the Internet and social media on many occasions by Dixie Rose San Antonio.

15. Tiffany Toth is an extremely successful model that takes great pride in holding the prestigious title of a *Playboy* Playmate as well as *Playboy* Playmate of the Year. Ms. Toth was the *Playboy* Cyber Girl of the Week for the third week of November, 2005 and the *Playboy* Cyber Girl of the Month for May, 2006. She then went on to pose for three pictorials under *Playboy's* Fresh Faces. Moreover, she has not only been featured in such magazines as *Super Street Bike*, *Import Tuner*, *Sport Truck*, *Iron Man*, *Seventeen*, and *Maxim*, but also has posed for various catalogs. Ms. Toth has over 2 million Facebook followers (likes), over 300,000 Instagram followers, and over 100,000 Twitter followers.

16. Dixie Rose Abilene misappropriated Ms. Toth's Image and placed it on internet and social media posts in order to promote the club. The flyer features Ms. Toth in a sexually suggestive leprechaun costume promoting "Scarlet's Birthday Party" and the "St. Patty's Day Party" at the Club. The image of Ms. Toth was deliberately positioned on the internet and social

media posts to imply that she was a stripper working at the Club or that she endorsed the Club. The image was used without the permission of Ms. Toth. The image was circulated via the Internet and social media on many occasions by Dixie Rose Abilene.

17. Rosie Olivia Jones is a glamour model born in Middlesex who is regularly featured in many of the UK's top men's magazines. Rosie Jones started modelling at 17. She now models for many magazines including *Nuts*, *Front Army*, *Loaded* and *FHM*. She has 208,000 followers on Instagram, 206,000 followers on Twitter, and 1,064,000 followers on Facebook.

18. Dixie Rose Abilene misappropriated Ms. Jones's Image and placed it on internet and social media posts in order to promote the club. The flyer features Ms. Jones in a black bikini top with the slogan "Some Statistics: 100% of men didn't notice King Kong is on the picture." The image of Ms. Jones was deliberately positioned on the internet and social media posts to imply that she was a stripper working at the Club or that she endorsed the Club. The image was used without the permission of Ms. Jones. The image was circulated via the Internet and social media on many occasions by Dixie Rose Abilene.

19. Athena Lundberg was the *Playboy Magazine* Playmate of the Month in the January, 2006 issue of the famous men's magazine. She also had a part in the romantic comedy *Kissing Strangers*. She continues to have a successful modeling career and a strong social media presence.

20. Dixie Rose Abilene misappropriated Ms. Lundberg's Image and placed it on internet and social media posts in order to promote the club. The flyer features Ms. Lundberg in a black, sexually suggestive nun costume holding a ruler promoting the "Sinful Sunday" event at the Club. The image of Ms. Lundberg was deliberately positioned on the internet and social media posts to imply that she was a stripper working at the Club or that she endorsed the Club. The

image was used without the permission of Ms. Lundberg. The image was circulated via the Internet and social media on many occasions by Dixie Rose Abilene.

21. The Clubs' violations are rampant and ongoing. The Plaintiffs' Images have been used to promote the strip clubs in both San Antonio and Abilene via Instagram, Twitter, Facebook, Tumblr, and other social media sites as well as each club's website. All of the Images were used without the consent of the Plaintiffs depicted in the social media and internet posts. In addition, none of the Images are "stock images" obtained via websites such as Shutterstock.com or Istock.com and none of the images used were ever intended to promote sexually-oriented businesses.

22. None of the Plaintiffs consented to the Clubs' use of their Images. The Plaintiffs are all talented, highly successful models who earn substantial amounts of money by promoting and protecting their Images to various clients and take great pride in their reputation in their industry. It is common knowledge that any improper or unauthorized use of their images or likenesses will substantially injure their careers. Plaintiffs should be compensated for the financial damages suffered as a result of the Clubs' improper use of their Images.

23. The Plaintiffs are the owners of their Images and have all rights associated with their Images. The Plaintiffs have not given anyone permission to use their Images and did not consent to having their Images associated with the Defendant strip clubs. Pleading alternatively, even if Plaintiffs released any right associated with their Images, they did not release these rights to Defendants or to any third party for use in the promotion of The Clubs. None of the Plaintiffs consented to The Club's use of their Images.

24. Plaintiffs are all talented, highly successful models who earn substantial amounts of money by promoting their images and likenesses to various clients and take great pride in their

reputation in their industry. Their ability to control the who, what, when, where, and how related to the use of their Images is the reason the Plaintiffs are paid substantial amounts of money for the use of their Images. It is common knowledge that any improper or unauthorized use of their images or likenesses will substantially injure their careers. These Plaintiffs should be compensated for the financial damages suffered as a result of The Club's improper usages of their images and likenesses in an unauthorized manner.

V. CAUSES OF ACTION

A. OWNERSHIP OF IMAGE AND LIKENESS

25. All Plaintiffs have reviewed the imagery in question and have positively identified themselves as the models depicted in the doctored internet and social media posts used by Defendant DG's to market and promote DG's. Some of the photographs used to create the strip club internet and social media posts were taken professionally and a release was signed at the time of the photo shoot. However, no Plaintiff ever released her Right to Privacy, Publicity, or the right to any third party to sell her image to any third-party not a party to the original release without her permission.

26. Additionally, if any release was signed, it did not give any person rights to use the photographs into perpetuity. The industry standard varies, but a model rarely, if ever, signs a release of all rights into perpetuity for the use of her image. Moreover, if a release was signed, it did not include a release of the Plaintiffs' publicity rights and, in fact, several of the releases specifically stated that Plaintiffs retained their right to publicity. The right to a person's image and likeness is not copyrightable and, therefore, Plaintiffs are not asserting copyright claims. Based on these rights, Plaintiffs assert the Causes of Action described below.

B. INVASION OF PRIVACY--MISAPPROPRIATION

27. All Defendants appropriated the Plaintiffs' names or likenesses for the value associated with them. The appropriation was neither incidental nor for a newsworthy purpose; rather, the Images were appropriated by Defendants for their own benefit because of the commercial standing, reputation, and other values associated with the Plaintiffs' likenesses.

28. The Plaintiffs are well-known, successful, main-stream models who can all be easily identified in the images misappropriated by Defendants. All Defendants obtained an advantage or benefit by misappropriating Plaintiffs' Images. All Defendants knew that Plaintiffs' permission to use their Images was not given yet they chose to use the Images for their own pecuniary gain.

29. In the Plaintiffs' business the Plaintiffs' good reputation is essential in order to maximize earnings, book jobs, and establish a brand. All Plaintiffs have worked extremely hard for years in order to establish themselves as reliable, reputable, and professional models. As such, the Defendants' unauthorized use of their Images in promoting sexually-oriented businesses has caused them financial damages.

C. NEGLIGENCE AND *RESPONDEAT SUPERIOR*

30. At all times relevant to the allegations in this lawsuit, Defendants' employees and agents were in the course and scope of their employment or agency with Defendants. As such, all Defendants are liable for the conduct of their employees or agents under the theory of *Respondeat Superior* as that term is defined and understood under Texas Law.

31. Moreover, all Defendants promulgated policies and procedures concerning the misappropriation of Images. All Defendants negligently failed to enforce those policies, communicate them to their employees, or to supervise their employees to ensure that their own policies were not violated.

32. Pleading alternatively, all Defendants failed to promulgate policies and procedures concerning the misappropriation of Images, trademark and tradename infringement, and defamation and are, as such, liable to Plaintiffs for the harm that failure caused to Plaintiffs.

33. More specifically, all Defendants had a duty to all members of the public, namely to Plaintiffs, to refrain from the misappropriation of Images. All Defendants violated that duty by negligent hiring, screening, retaining, and training of their employees and agents. Plaintiffs suffered injuries and damages as a result of all Defendants' conduct.

D. THEFT

34. All Defendants unlawfully appropriated the Images of the Plaintiffs in addition to unlawfully obtaining the services of Plaintiffs pursuant to the Texas Civil Practices and Remedies Code 134.002(2) and various provisions of the Texas Penal Code. Plaintiffs suffered injuries and damages as a result of Defendants' conduct.

**VI.
EXEMPLARY DAMAGES**

35. The above-referenced acts and omissions by Defendants were more than momentary thoughtlessness or inadvertence. Rather, Defendants' conduct, when viewed from the standpoint of Defendants at the time of the acts or omissions, involved an extreme degree of risk, considering the probability of harm to Plaintiffs and others. Defendants had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others similarly situated. Accordingly, Defendants' conduct constitutes gross negligence and malice as those terms are defined in Sections 41.001(11) and 41.001(7)(B) of the Texas Civil Practice and Remedies Code. Therefore, Plaintiffs sue for exemplary damages in an amount to be determined at trial.

VII.
DAMAGES

36. As a direct and proximate result of all Defendants' conduct, Plaintiffs suffered injuries and were caused to incur the following damages:

- a. Pecuniary damages resulting from the unauthorized use of Plaintiffs' images and likeness in the past and in the future;
- b. Attorney fees and costs both in law and in equity;
- c. Court Costs; and
- d. Pre-judgment and post-judgment interest; and
- e. Exemplary Damages

VIII.
REQUEST FOR DISCLOSURE

37. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, each Defendant is requested to disclose within fifty (50) days after service of this Petition the information or material described in Rule 194.2 (a) through (l).

IX.
JURY DEMAND

38. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiffs hereby make application for a jury trial and request that this cause be set on the Court's Jury Docket. Plaintiffs acknowledge payment this date of the required jury fee.

X.
PRAYER

39. Plaintiffs request that Defendants be cited to appear and answer, and on final trial hereafter, the Plaintiffs have judgment against Defendants, jointly and severally, in an amount within the jurisdictional limits of this Court, together with all pre-judgment and post-judgment

interest as allowed by law, costs of Court, attorney's fees, and for such other and further relief to which Plaintiffs may be justly entitled by law and equity, including, but not limited to:

- a. Pecuniary damages in the past;
- b. Pecuniary damages in the future; and
- c. Attorney's fees
- d. Pre judgment interest;
- e. Post judgment interest; and
- f. Exemplary damages.

Respectfully submitted,

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A handwritten signature in blue ink, appearing to be 'D. Postiglione', is centered on the page. The signature is fluid and cursive, with a large loop for the 'D' and a horizontal stroke for the 'Postiglione' part.

Dennis C. Postiglione
State Bar No. 24041711

ATTORNEYS FOR PLAINTIFFS