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Charles Bacarisse
District Clerk
Harris District

Cause No. 2007-38998

K. Syvette Wimberly	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
Vivid Entertainment Group and Lara	§	
Madden a/k/a Syvette Wimberly	§	
	§	
Defendants.	§	<u>234</u> JUDICIAL DISTRICT

Plaintiff's Original Petition

Plaintiff complains of Vivid Entertainment Group ("Vivid") and Lara Madden a/k/a Syvette Wimberly ("Madden") (collectively as "Defendants") and for cause will show that:

I.

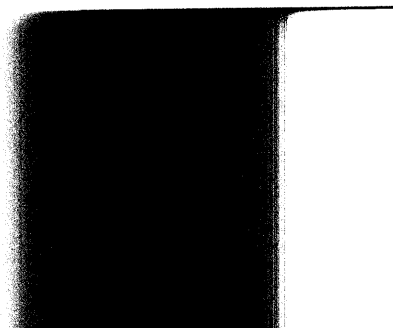
Nature of Action and Discovery Level

1. Plaintiff has suffered injuries as a result of Defendants' invasion of privacy, negligence and intentional infliction of emotional distress. Plaintiff proposes discovery under Level II, as contemplated by Tex. R. Civ. P. 190.3.

II.

Jurisdiction and Venue

2. The District Court of Harris County, Texas, has jurisdiction over this case because no other court has exclusive jurisdiction and the amount in controversy exceeds the minimum limits of the district court. Jurisdiction is proper because all parties reside in Texas, conduct substantial, continuous and systematic business in Texas and/or have committed tortious acts in Texas. Further, jurisdiction is proper in Texas under the Texas Long-Arm Statute because



Defendants have committed tortious acts in Texas, and/or have committed acts that constitute doing business in Texas. TEX. CIV. PRAC. & REM. CODE § 17.041 et seq.

3. Venue is proper because Defendants committed tortious acts in Harris County, Texas and all or substantially all of the events giving rise to the claim occurred in Harris County, Texas, thereby satisfying §§, 15.002 and 15.093, Texas Civil Practice and Remedies Code.

IV.

Parties

4. Plaintiff is a resident of Harris County, Texas.

5. Defendant Vivid Entertainment Group is a California corporation that has substantial, continuous and systematic business contacts in Texas and has committed tortious acts in Texas. Defendant may be served through its registered agent for service of process, Steven Alan Hirsch, 3599 Cahuenga Boulevard West, Los Angeles, California 90068.

6. Defendant Lara Madden a/k/a Syvette Wimberly is an individual living that may be served through her principal place of business, Vivid Entertainment Group, 3599 Cahuenga Boulevard West, Los Angeles, California 90068.

V.

Facts

7. Plaintiff met Defendant Madden near the beginning of high school in the ninth grade when both parties were attending school in Kingwood, Texas.

8. Plaintiff and Defendant Madden were friends but eventually that friendship ended due to conflict.

9. Defendant Madden married while in high school and did not graduate with Plaintiff. Plaintiff did not see or hear from or of Defendant Madden after she left high school

until she was informed recently by an acquaintance that there was a woman appearing in multiple explicit pornographic videos with Plaintiff's name, Syvette Wimberly.

10. Plaintiff has since found out that the pornographic performer who appropriated her name and used it in various pornographic movies while working for Defendant Vivid Entertainment Group was her former high school friend Lara Madden. Defendants have appropriated and used Plaintiff's name in advertising, movies and various productions for their own profit and gain causing Plaintiff loss of enjoyment of life, inconvenience, emotional distress, mental anguish and other damages. Defendants' actions and Plaintiff's injuries and ongoing.

VI.

Causes of Action

Negligence

11. Plaintiff repeats and realleges each allegation contained above.

12. Plaintiff sustained injuries because of Defendant Vivid's negligence. Defendant and/or its employees negligently:

- Failed to use ordinary care in ascertaining the accuracy of information given to others;
- Failed in instituting appropriate hiring practices;
- Failed in training its employees;
- Failed to screen its potential employees;
- Failed to use ordinary care in making representations to others.

13. Plaintiff sustained injuries because of Defendant Madden's negligence. Defendant negligently:

- Failed to use ordinary care in making representations to others;

- Failed to use ordinary care in performing her business; and
- Failed to exercise reasonable care to avoid a foreseeable risk of injury to others.

14. Defendants were grossly negligent and consciously disregarded the risk of harm in performing their actions. As a result, Plaintiff is entitled to punitive damages.

15. As a result of Defendant's negligence, Plaintiff sustained and will continue to sustain injuries, including, but not limited to embarrassment, loss of enjoyment of life, inconvenience, emotional distress, and mental anguish.

Invasion of Privacy

16. Plaintiff repeats and realleges each allegation contained above.

17. Plaintiff received injuries as a result of Defendants' invasion of her privacy. Defendants appropriated Plaintiff's name and its value and Plaintiff can be identified from the publication because it is her name. The Defendants have received and continue to receive advantages and benefits from the appropriation and use of Plaintiff's name and Plaintiff suffered an injury as a result of the Defendants' appropriation.

18. As a result of the Defendants' invasion of Plaintiff's privacy, Plaintiff has suffered humiliation, embarrassment, loss of enjoyment of life, emotional distress, mental anguish, and anxiety.

Intentional Infliction of Emotional Distress

19. Plaintiff repeats and realleges each allegation contained above.

20. Plaintiff brings her claim for intentional infliction of emotional distress as an individual against Defendants who acted intentionally or recklessly causing Plaintiff severe emotional distress by their outrageous and extreme conduct for which there is no other remedy.

21. Specifically, Defendant Madden deliberately chose to use Plaintiff's name as her "stage name" for her pornographic performance career despite knowing the potential consequences for Plaintiff including extreme embarrassment, unsubstantiated association with the pornography industry and other consequences. Defendant Vivid recklessly chose to accept and heavily publicize Plaintiff's name as though it was Defendant Madden's name and without regard to the true person and identity of the name in question. Defendant used Plaintiff's name in association with its pornographic films thereby wrongly linking Plaintiff with the industry and ideas, judgments, attitudes and behavior associated with the adult film industry.

22. As a result of the Defendants' intentional infliction of emotional distress, Plaintiff has suffered humiliation, embarrassment, loss of enjoyment of life, emotional distress, mental anguish, and anxiety.

23. Plaintiff, therefore, requests that this Court issue an order enjoining Defendants Madden and Vivid from continuing to use Plaintiff's name in the adult film or any other business. Should such order not be entered, Plaintiff will suffer irreparable harm as she will be unable to undo the associations formed between her and the pornography industry and the other personal and public results of such association. There is no adequate remedy at law for the damages suffered by Plaintiff as a result of Defendants' actions, it being impossible to fully predict the damages and impossible to take back false information and associations.

VII.

Prayer

Plaintiff prays for relief and judgment, as follows:

- A permanent injunction enjoining the Defendants from using Plaintiff's name;

- Actual damages;
- Punitive Damages;
- Special damages; Interest on damages (pre- and post-judgment) in accordance with law;
- Plaintiff's reasonable attorneys' fees;
- Costs of court;
- Expert witness fees;
- Costs of copies of depositions; and
- Such other and further relief as the Court may deem just and proper.

VIII.

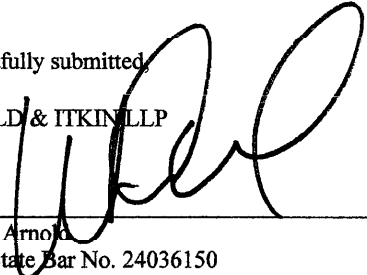
Jury Trial Request

Plaintiff hereby respectfully requests a trial by jury on all claims.

DATED: June 26, 2007

Respectfully submitted,

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