

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

2010 MAR 11 P 2:24

CARMELLA DECESARE GARCIA
307 Halstead Lane
Westlake, OH 44145

Plaintiff,

vs.

SIN NIGHT CLUB
1296 W. 6th Street
Cleveland, OH 44113

and

FIRST CLASS MOBILE DJ SERVICE
554 Jeanette Street
Brunswick, OH 44212

and

TONY STOJKOSKI
554 Jeanette Street
Brunswick, OH 44212

and

GORDON STOJKOSKI
3454 Forest Lake Drive
Medina, OH 44256

and

**JOHN DOE INDIVIDUALS #1-5, WHOSE
EXACT IDENTITY CANNOT BE
ASCERTAINED AT PRESENT**

and

**JOHN DOE ENTITIES #1-5, WHOSE
EXACT IDENTITY CANNOT BE
ASCERTAINED AT PRESENT**

Defendants.

CASE NO.

GERALD E. FURST
CLERK OF COURTS
CUYAHOGA COUNTY

JUDGE:

Complaint
MICHAEL P DONNELLY
CV 10 721016

**COMPLAINT WITH ATTACHED
PLAINTIFF'S FIRST SET OF
INTERROGATORIES &
REQUEST FOR PRODUCTION
OF DOCUMENTS**

DEPOSITED
MAR 11 2010
SECURE COSTS
GERALD E. FURST, Clerk of Courts
PER [Signature] DEPUTY

Now come Plaintiffs by and through counsel, and for their Complaint against the Defendants allege and state as follows:

1. At all times relevant hereto, Plaintiff Carmella DeCesare Garcia was a resident of Cuyahoga County, in the State of Ohio.
2. At all times relevant hereto, Defendant Sin Night Club was an Ohio Corporation; and/or partnership; and/or sole proprietorship; and/or limited liability company; and or any other company doing business at 1296 W. 6th Street, Cleveland, Ohio.
3. At all times relevant hereto, Defendant First Class Mobile DJ Service was an Ohio Corporation; and/or partnership; and/or sole proprietorship; and/or limited liability company; and or any other company doing business at 554 Jeanette Street, Brunswick, OH.
4. At all times relevant hereto, Defendant Gordon Stojkoski was an owner of the entity doing business as "Sin Night Club", 1296 W. 6th Street, Cleveland, Ohio.
5. At all times relevant hereto, Defendant Tony Stojkoski was an owner of the entity doing business as "First Class Mobile DJ Service", 554 Jeanette Street, Brunswick, Ohio.
6. Plaintiff is a professional model and makes her living and derives substantial income from the use and marketing of her image and likeness.
7. Plaintiff is informed and believes, and upon such information and belief alleges that Defendant appropriated Plaintiff's image in form of a photograph (hereinafter "IMAGE") and used the IMAGE in advertisements for the Defendants (said advertisement bearing the IMAGE being hereinafter referred to as, "ADVERTISEMENTS").
8. Plaintiff is informed and believes, and upon such information and belief alleges that the ADVERTISEMENTS were designed and made by Defendant First Class Mobile DJ Services and Defendant Tony Stojkoski at the direction of Defendant Sin Night Club and Gordon Stojkoski.

9. The ADVERTISEMENTS were published and distributed throughout the greater Cleveland area and Plaintiff is informed and believes, and upon such information and belief alleges, that Defendants caused the ADVERTISEMENTS to be published on numerous occasions.

COUNT I:
Unauthorized Commercial Use of Individuals Persona (O.R.C. 2741) ; Against All Defendants

10. Plaintiff restates the allegations contained in paragraphs 1 through 9 of this Complaint as if fully re-written herein.

11. Plaintiff has never consented to Defendants' use of her likeness or image for any purpose whatsoever, nor has she ever authorized Defendants to use her image or likeness for any purpose whatsoever.

12. The IMAGE used by the Defendants in the ADVERTISEMENTS is readily identifiable as being an image of Plaintiff taken from a photograph of Plaintiff in that any person viewing the images with the naked eye could reasonably determine that the images depict Plaintiff's face and are reproductions of a photograph of the Plaintiff.

13. In appropriating and using Plaintiff's image in the ADVERTISEMENTS , Defendants acted knowingly in that they knew that the IMAGE depicted Plaintiff and caused the IMAGE to be used in the ADVERTISEMENTS as is described above.

14. As a direct and proximate result of Defendants' unauthorized commercial use of Plaintiff's persona, Defendants received revenues and realized profits.

15. As a direct and proximate result of Defendants' unauthorized commercial use of Plaintiff's persona, Plaintiff suffered impairment of her reputation and standing both professionally and in the community at large, loss in income, embarrassment and mental anguish.

16. Plaintiff further states that in so far as one or more officers, directors, or managing

agents of Defendants. Whose identities are presently unknown to Plaintiff was ultimately responsible for approving Defendants' above described use of the Image, and did in fact make such approval, Defendants authorized and/or ratified the wrongful conduct alleged herein. As a result, Plaintiff is entitled to punitive and exemplary damages against Defendants.

COUNT II:

Invasion of Common Law Right of Privacy; Against All Defendants

17. Plaintiff restates the allegations contained in paragraphs 1 through 16 of this Complaint as if fully re-written herein.

18. Defendants appropriated and used the IMAGE depicting Plaintiff for the purpose of advertising and promoting their businesses. Defendants did not receive permission to use Plaintiff's image. Defendants paid nothing for the use of Plaintiff's Image.

19. Plaintiff is a professional model and regularly receives payment for the commercial use of her image and likeness.

20. Had the Plaintiff known that her image was to be used for commercial gain of the Defendants then Plaintiff would have expected to be paid for such use. Plaintiff did not know of the use nor was she compensated for such use.

21. Plaintiff is entitled to restitution of the reasonable value of the benefit derived by Defendants for the unauthorized use they made of Plaintiff's image. The value of such benefit is within the jurisdiction of the Court.

COUNT III:

Unjust Enrichment; Against All Defendants

22. Plaintiff restates the allegations contained in paragraphs 1 through 21 of this Complaint as if fully re-written herein.

23. Defendants appropriated and used the IMAGE depicting Plaintiff for the purpose of advertising and promoting their businesses. Defendants paid Plaintiff nothing for the use of

Plaintiff's image.

24. Plaintiff is a professional model and regularly receives payment for the commercial use of her image and likeness.

25. Had the Plaintiff known that her image was to be used for commercial gain of the Defendants, Plaintiff would have expected to be paid for such use. Plaintiff did not know of the use nor was she paid anything for that use.

26. Plaintiff further states that she is entitled to restitution of the reasonable value of the benefit derived by Defendants for the unauthorized use they made of Plaintiff's image. The value of such is within the jurisdiction of the Court.

COUNT IV:
Quantum Meruit; Against All Defendants

27. Plaintiff restates the allegations contained in paragraphs 1 through 26 of this Complaint as if fully re-written herein.

28. Defendants appropriated and used the IMAGE depicting Plaintiff for the purpose of advertising and promoting their businesses for defendants' pecuniary gain and profit. Defendant paid Plaintiff nothing for the use of her image.

29. Plaintiff is a professional model and regularly receives payment for the commercial use of her image and likeness.

30. Had Plaintiff known that her image was to be used for commercial gain of the Defendants, then Plaintiff would have expected to be paid for such use. Plaintiff did not know of the use nor was she paid anything for that use.

31. Plaintiff is entitled to recover from Defendants the reasonable value of the use Defendants made of Plaintiff's image. The value of said services is an amount within the jurisdiction of the Court.

COUNT V:

Negligence; Against All Defendants

32. Plaintiff restates the allegations contained in paragraphs 1 through 31 of this Complaint as if fully re-written herein.

33. Defendants owed Plaintiff a duty not to use her image without her knowledge and authorization and to not use her image in a way that would cause her embarrassment, damage to her reputation and place her in a false light in the public eye.

34. Defendants breached the duty they owed to Plaintiff by, as is described above, appropriating her image, using it on the ADVERTISEMENTS promoting the Defendants' businesses, and then repeatedly publishing the ADVERTISEMENTS to the public, all without Plaintiff's knowledge or consent.

35. As a direct and proximate cause of the actions taken by Defendants in breach of the duty they owed to Plaintiff, Plaintiff has suffered embarrassment, humiliation, mental anguish and damage to her personal and professional reputations, all in an amount to be proven at trial.

COUNT VI:

Claims Against John Doe Individuals #1-5 and John Doe Entities #1-5

36. Defendant John Doe Individuals #1-5 and/or John Doe Entities #1-5 are individuals or entities whose name and address is presently unknown and could not be discovered prior to the filing of this Complaint with reasonable and due diligence.

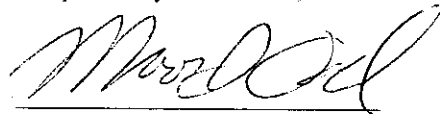
37. Plaintiff states that the conduct of Defendant John Doe Individuals #1-5 and/or John Doe Entities #1-5, may have caused or contributed to the injuries complained of and forming the basis of this Complaint and for which contribution and/or liability may be apportioned. If, in fact, evidence discloses a claim to be asserted against John Doe Individuals #1-5 and/or John Doe Entities #1-5, the Complaint will be amended pursuant to the applicable Rules of

Civil Procedure, upon full identification of such individual or entity.

38. As a direct and proximate result of the actions of the Defendant John Doe Individuals #1-5 and/or John Doe Entities #1-5, Plaintiff sustained damages as previously alleged herein.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, on behalf of Plaintiff Carmella Garcia, in an amount in excess of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000)** in compensatory damages and punitive damages, together with interest, costs, reasonable attorney fees and any such legal and equitable relief deemed just and appropriate.

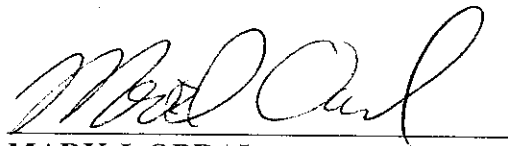
Respectfully submitted,



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JURY DEMAND

A trial by jury is hereby requested in the within action.



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ALEXANDER L. PAL
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MARK J. OBRAL & ASSOCIATES