



Floor, Beverly Hills, CA 90212-2401, its registered office. Service of said Defendant as described above can be effected by personal delivery.

5. Defendant Tree Fitty Group, LLC, also known as/doing business as Trees (“Trees”), is a Texas limited liability company, and service of process may be effected upon said Defendant by serving the registered agent of Trees, Clinton S. Barlow, at 9310 Seagrove Dr., Dallas, TX 75243-7230. Service of said Defendant as described above can be effected by personal delivery.

#### **JURISDICTION AND VENUE**

6. The subject matter in controversy is within the jurisdictional limits of this Court.

7. This Court has jurisdiction over Defendant Andy Dick pursuant to section 17.042(2) of the Texas Civil Practice and Remedies Code because said Defendant engaged in activities constituting business in the state of Texas in that Andy Dick committed a tort in whole or in part in Texas. Furthermore, Andy Dick established minimum contacts sufficient to confer jurisdiction over Andy Dick, the assumption of jurisdiction over Andy Dick will not offend traditional notions of fair play and substantial justice, and it is consistent with the constitutional requirements of due process.

8. This Court has jurisdiction over Defendant UTA pursuant to section 17.042(1)–(2) of the Texas Civil Practice and Remedies Code because UTA contracted with a Texas resident and either party performed the contract in whole or in part in Texas and because UTA committed a tort in whole or in part in Texas. Furthermore, UTA purposefully availed itself of the privilege of conducting activities in the state of Texas, it established minimum contacts sufficient to confer jurisdiction over UTA, the assumption of jurisdiction over UTA will not offend traditional notions of fair play and substantial justice, and it is consistent with the

constitutional requirements of due process.

9. This Court has jurisdiction over Defendant Trees because at all relevant times, said Defendant operated a place of business in Dallas, Texas and therefore transacted business within the State of Texas.

10. Venue in Dallas County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county and because venue as to all other Defendants is proper in Dallas County, Texas. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 15.002(a)(1), 15.005 (Vernon 2010).

#### **FACTS**

11. UTA is a California-based talent agency that represents actors, musicians, celebrities, and various entertainers and performers. By agreement, UTA secures work for their clients, and in return for which, UTA collects a portion of the client's pay. At all relevant times, UTA represented Andy Dick, an actor/comedian/entertainer who, as part of his professional life, performs stand-up comedy at venues across the country.

12. Trees is a Dallas, Texas performance venue that retains musicians and entertainers to perform on its premises, for which Trees charges customers an admission fee to attend performances.

13. UTA, or in the alternative, UTA and others, arranged for Andy Dick to perform a live musical comedy routine at a series of locations as part of its Christmas-themed "Stocking Stuffer Comedy Tour." UTA, Andy Dick, and Trees all agreed that the tour would include a performance at Trees on December 19, 2010. UTA and Trees knew or should have known that Andy Dick was becoming increasingly disruptive during his performances, as he would

occasionally assault customers, guests, and even fellow performers without provocation. UTA and Trees were also aware of Andy Dick's history of substance abuse, which had been known to interfere with his performances. Nevertheless, UTA and Trees scheduled the December 19, 2010 show because they believed Andy Dick's provocative behavior would draw attention and generate more customers, thereby increasing their expected profit.

14. On December 18, 2010, Andy Dick performed at Emo's, an Austin, Texas performance venue. There, Andy Dick pulled an attendee onstage and repeatedly forced the patron's head into Andy Dick's groin.

15. The following day (December 19, 2010), Plaintiff paid for and attended the Trees performance featuring Andy Dick. About twenty to thirty minutes into the performance, Andy Dick, wearing jeans with a black blazer and a white t-shirt, exited the stage and later reappeared wearing a red skirt, black top, and a wig. A few minutes later, Andy Dick dropped his microphone, left the stage, and entered the audience.

16. As Andy Dick walked through the audience, he approached where Plaintiff was seated, and Plaintiff asked Andy Dick for his autograph. Andy Dick told Plaintiff to "hold on a minute" and pulled a barstool next to Plaintiff. Andy Dick then grabbed Plaintiff's head and shoulders to raise himself on top of the barstool. Andy Dick then took control of Plaintiff's head with his left hand and pulled down his costume skirt with his right hand, exposing the fact that he was not wearing underwear beneath the skirt. Defendant Dick then, while still controlling Plaintiff's head with his hand, forced his genitals against the left side of Plaintiff's face. Plaintiff immediately pulled away. Andy Dick returned to the stage with the help of Defendant's employees.

17. At all relevant times, Trees owned, operated, controlled and/or had the right to control the premises where the incident took place.

18. At all relevant times, Plaintiff was a business invitee on the Trees premises.

#### **PLAINTIFF'S CAUSES OF ACTION AGAINST ANDY DICK**

##### *A. Offensive Physical Contact*

19. On or about December 19, 2010, at 2709 Elm St., Dallas, Dallas County Texas, Defendant Andy Dick intentionally and/or knowingly and without consent, physically contacted Plaintiff by taking control of Plaintiff's head and forcing Defendant's genitals against Plaintiff's face. Defendant knew or should have known that such contact would be offensive to Plaintiff. Alternatively, Andy Dick intentionally and/or knowingly threatened Plaintiff by pulling down Andy Dick's costume skirt and taking control of Plaintiff's head, suggesting he would sexually assault Plaintiff; this placed Plaintiff in apprehension of imminent bodily injury.

##### *B. Intentional Infliction of Emotional Distress*

20. Andy Dick's intentional conduct was extreme and outrageous. Plaintiff was an attendee seeking Defendant's autograph. Andy Dick degraded and humiliated Plaintiff by a crude and disgusting sexual display. To so egregiously humiliate a patron goes beyond all possible bounds of decency and is atrocious and intolerable in a civilized community. As a proximate cause of Andy Dick's conduct, Plaintiff suffered severe and long-lasting emotional distress. The event has so stigmatized Plaintiff that he has been harassed and ridiculed by the workers he supervises as well as his management peers. The YouTube postings of the assault in question perpetuate his distress.

*C. Defamation by Conduct*

21. Andy Dick's extreme and outrageous conduct constituted a defamatory message that Plaintiff was in agreement with and a participant in the morally degenerate, sexually perverted, and publically lewd act at issue. The conduct also constituted a defamatory message that Plaintiff consented and/or was an assistant to Andy Dick's performance. Both statements were false and defamatory per se.

22. The Defendant published the defamatory conduct on December 19, 2010 at Trees, a performance venue. The defamation by conduct was made in front of an audience and unsuspecting work force of over fifty (50) people attending the performance.

23. Defendant Andy Dick made the false defamatory conduct set forth above by negligently failing to ascertain or state the truth. The Defendant either knew or should have known in the exercise of ordinary care that the defamatory message was false.

24. Plaintiff has been employed as a manager of a large retail location for the past several years and at present supervises approximately seventy-five (75) employees. Prior to Andy Dick's defamatory conduct, the Plaintiff enjoyed a reputation as a responsible, hard-working professional.

25. As a direct and proximate result of the Defendant's false defamatory conduct, the Plaintiff has endured shame, embarrassment, humiliation, and mental pain and anguish. Additionally, Plaintiff has and will in the future be seriously injured in his reputation, good name, standing in the community, and will be exposed to the contempt and ridicule of the public in general as well as of his business associates, customers, friends, and relatives. Consequently, Plaintiff seeks actual damages in a sum within the jurisdictional limits of this Court.

## PLAINTIFF'S CAUSES OF ACTION AGAINST UTA

### *A. Offensive Physical Contact – Vicarious Liability*

26. UTA is vicariously liable for Andy Dick's offensive physical contact of Plaintiff because at all relevant times, UTA represented and/or employed Andy Dick, and Andy Dick's offensive physical contact was within the scope of employment. UTA represented and/or retained Andy Dick to perform for customers by engaging in shocking and inappropriate conduct. Andy Dick accomplished this end by forcing his genitals against Plaintiff's face in an effort to shock and entertain the crowd at Plaintiff's expense and for the sexual gratification of Defendant Andy Dick.

27. Alternatively, UTA ratified Andy Dick's offensive physical contact because Andy Dick performed the offensive physical contact in Defendant's interest or intended to further Defendant's purpose of making a profit. UTA approved by word, act, or conduct after acquiring full knowledge of the act and intended to give validity to the offensive physical contact.

28. Alternatively, UTA aided and encouraged Andy Dick's offensive physical contact and is therefore jointly and severally liable. UTA knew or should have known that Andy Dick had a history of assaulting customers in his act/routine in order to make a profit.

### *B. Intentional Infliction of Emotional Distress – Vicarious Liability*

29. UTA is vicariously liable for Andy Dick's intentional conduct. At all relevant times, UTA represented and/or employed Andy Dick, and Andy Dick's intentional infliction of emotional distress was within the scope of that representation and/or employment. UTA represented and/or retained Andy Dick to perform and attract customers for profit. Andy Dick attempted to accomplish this end by forcing his genitals against Plaintiff's face in an effort to shock the crowd, thereby promoting his act, his career, and his reputation, for which he was paid.

30. Alternatively, UTA ratified Andy Dick's intentional infliction of emotional distress because Andy Dick acted in Defendant's interest or intended to further Defendant's purpose of making a profit. UTA approved by word, act, or conduct after acquiring full knowledge of the act and intended to give validity to the act.

31. Alternatively, UTA aided and encouraged Andy Dick's extreme and outrageous conduct and is therefore jointly and severally liable for Andy Dick's intentional infliction of emotional distress. UTA knew or should have known that Andy Dick had a long history of assaulting patrons as well as uninvolved citizens to attract customers and increase Defendant's profit. A cursory examination of Andy Dick's past reveals, at a minimum, the following:

- a. On or about September 14, 2001, Andy Dick was sued for sexual battery and emotional distress in Los Angeles, California;
- b. On or about July 16, 2008, Andy Dick was arrested after pulling down a female patron's shirt in Murrieta, California;
- c. On or about January 23, 2010, Andy Dick was arrested and charged with two felony counts of sexual abuse in Huntington, West Virginia; and
- d. On or about December 18, 2010, while performing at Emo's, a music/performance venue in Austin, Texas, Andy Dick repeatedly forced a male patron's face into his groin.

*C. Defamation by Conduct – Vicarious Liability*

32. UTA is vicariously liable for Andy Dick's defamatory conduct. At all relevant times, UTA represented and/or employed Andy Dick, and Andy Dick's defamatory conduct was within the scope of that representation and/or employment. UTA retained Andy Dick to perform and attract customers by humiliating and degrading others for entertainment. Andy Dick attempted to accomplish this end by forcing his genitals against Plaintiff's face in an effort to shock the crowd at Plaintiff's mental and emotional expense.



33. Alternatively, UTA ratified Andy Dick's defamatory conduct because Andy Dick performed the offensive physical contact in Defendant's interest or intended to further Defendant's purpose of making a profit. UTA approved by word, act, or conduct after acquiring full knowledge of the act and intended to give validity to the defamation.

34. Alternatively, UTA aided and encouraged Andy Dick's defamatory conduct and is therefore jointly and severally liable for defamation. UTA knew or should have known that Andy Dick had a history of assaulting and humiliating employees, co-workers, unsuspecting citizens, and customers, and Defendant encouraged Andy Dick to continue to degrade customers by assaulting them to entertain others and increase Defendant's profit. UTA assisted Andy Dick in this conduct by promoting and/or hiring him and allowing him to engage in obscene behavior in search of profits.

*D. Negligence*

35. Defendant UTA owed Plaintiff a duty of ordinary care. Defendant violated its duty to Plaintiff by committing acts or omissions that collectively and severally constituted negligence and/or gross negligence. Specifically, Defendant UTA, through its employees, agents, representatives, and officers, was negligent and grossly negligent in the following respects:

- a. Failing to provide a safe environment for guests and business invitees, such as Plaintiff;
- b. Failing to provide adequate supervision and monitoring of Andy Dick, who was allowed unlimited, unrestrained access to the members of the audience;
- c. Failing to institute and implement policies for the protection of its patrons/audience members;
- d. Failing to adequately investigate the history of Andy Dick's inappropriate performance conduct and/or knowingly ignoring the

history of Andy Dick's inappropriate performance conduct;

- e. Failing to warn Plaintiff or the patrons/members of the audience of the dangerous and/or repulsive physical and sexual propensities of Andy Dick; and
- f. Retaining Andy Dick as a performer when UTA knew or should have known of his dangerous and/or repulsive physical and sexual propensities.

36. Defendant's acts and omissions proximately caused Plaintiff's injuries and damages.

### **PLAINTIFF'S CAUSES OF ACTION AGAINST TREES**

#### *A. Offensive Physical Contact – Vicarious Liability*

37. Trees is vicariously liable for Andy Dick's offensive physical contact of Plaintiff because at all relevant times, Trees represented and/or employed Andy Dick, and Andy Dick's offensive physical contact was within the scope of employment. Trees represented and/or retained Andy Dick to perform for customers by engaging in shocking and inappropriate conduct. Andy Dick accomplished this end by forcing Defendant's genitals against Plaintiff's face in an effort to shock and entertain the crowd at Plaintiff's expense and for the sexual gratification of Defendant Andy Dick.

38. Alternatively, Trees ratified Andy Dick's offensive physical contact because Andy Dick performed the offensive physical contact in Defendant's interest or intended to further Defendant's purpose of making a profit. Trees approved by word, act, or conduct after acquiring full knowledge of the act and intended to give validity to the offensive physical contact.

39. Alternatively, Trees aided and encouraged Andy Dick's offensive physical contact and is therefore jointly and severally liable. Trees knew or should have known that Andy Dick had a history of assaulting customers in his act/routine in order to make a profit.

*B. Intentional Infliction of Emotional Distress – Vicarious Liability*

40. Trees is vicariously liable for Andy Dick's intentional conduct. At all relevant times, Trees represented and/or employed Andy Dick, and Andy Dick's intentional infliction of emotional distress was within the scope of that representation and/or employment. Trees represented and/or retained Andy Dick to perform and attract customers for profit. Andy Dick attempted to accomplish this end by forcing his genitals against Plaintiff's face in an effort to shock the crowd, thereby promoting his act, his career, and his reputation, for which he was paid.

41. Alternatively, Trees ratified Andy Dick's intentional infliction of emotional distress because Andy Dick acted in Defendant's interest or intended to further Defendant's purpose of making a profit. Trees approved by word, act, or conduct after acquiring full knowledge of the act and intended to give validity to the act.

42. Alternatively, Trees aided and encouraged Andy Dick's extreme and outrageous conduct and is therefore jointly and severally liable for Andy Dick's intentional infliction of emotional distress. Trees knew or should have known that Andy Dick had a long history of assaulting patrons as well as uninvolved citizens to attract customers and increase Defendant's profit. A cursory examination of Andy Dick's past reveals, at a minimum, the following:

- a. On or about September 14, 2001, Andy Dick was sued for sexual battery and emotional distress in Los Angeles, California;
- b. On or about July 16, 2008, Andy Dick was arrested after pulling down a female patron's shirt in Murrieta, California;
- c. On or about January 23, 2010, Andy Dick was arrested and charged with two felony counts of sexual abuse in Huntington,

West Virginia; and

- d. On or about December 18, 2010, while performing at Emo's, a music/performance venue in Austin, Texas, Andy Dick repeatedly forced a male patron's face into his groin.

*C. Defamation by Conduct – Vicarious Liability*

43. Trees is vicariously liable for Andy Dick's defamatory conduct. At all relevant times, Trees represented and/or employed Andy Dick, and Andy Dick's defamatory conduct was within the scope of that representation and/or employment. Trees retained Andy Dick to perform and attract customers by humiliating and degrading others for entertainment. Andy Dick attempted to accomplish this end by forcing his genitals against Plaintiff's face in an effort to shock the crowd at Plaintiff's mental and emotional expense.

44. Alternatively, Trees ratified Andy Dick's defamatory conduct because Andy Dick performed the offensive physical contact in Defendant's interest or intended to further Defendant's purpose of making a profit. Trees approved by word, act, or conduct after acquiring full knowledge of the act and intended to give validity to the defamation.

45. Alternatively, Trees aided and encouraged Andy Dick's defamatory conduct and is therefore jointly and severally liable for defamation. Trees knew or should have known that Andy Dick had a history of assaulting and humiliating employees, co-workers, unsuspecting citizens, and customers, and Defendant encouraged Andy Dick to continue to degrade customers by assaulting them to entertain others and increase Defendant's profit. Trees assisted Andy Dick in this conduct by promoting and/or hiring him and allowing him to engage in obscene behavior in search of profits.

*D. Negligence*

46. Defendant Trees owed Plaintiff a duty of ordinary care. Defendant violated its duty to Plaintiff by committing acts or omissions that collectively and severally constituted negligence and/or gross negligence. Specifically, Defendant Trees, through its employees, agents, representatives, and officers, was negligent and grossly negligent in the following respects:

- a. Failing to provide a safe environment for guests and business invitees, such as Plaintiff;
- b. Failing to provide adequate supervision and monitoring of Andy Dick, who was allowed unlimited, unrestrained access to the members of the audience;
- c. Failing to institute and implement policies for the protection of its patrons/audience members;
- d. Failing to adequately investigate the history of Andy Dick's inappropriate performance conduct and/or knowingly ignoring the history of Andy Dick's inappropriate performance conduct;
- e. Failing to warn Plaintiff or the patrons/members of the audience of the dangerous and/or repulsive physical and sexual propensities of Andy Dick; and
- f. Retaining Andy Dick as a performer when Trees knew or should have known of his dangerous and/or repulsive physical and sexual propensities.

47. Defendant's acts and omissions proximately caused Plaintiff's injuries and damages.

*E. Premises Liability*

48. At all relevant times, Plaintiff held the status of business invitee on Defendant Trees's premises.

49. Trees knew or should have known that Andy Dick posed an unreasonable and foreseeable risk of harm on its premises. Andy Dick has an extensive history that includes multiple episodes of offensive physical contact, including but not limited to, sexual assaults that have occurred on premises the same or similar to Trees. Trees breached the duty of care it owed to Plaintiff by facilitating Andy Dick's behavior, including the offensive physical contact. Defendant's acts and/or omissions proximately caused Plaintiff's injuries and damages.

#### **PROXIMATE CAUSE**

50. Each and every one of the foregoing acts and/or omissions on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

#### **EXEMPLARY DAMAGES**

51. Andy Dick's conduct demonstrated malice or a specific intent to harm or substantially injure Plaintiff. In the alternative, Andy Dick's actions were taken with conscious indifference to the rights, safety, or welfare of Plaintiff. Additionally, the conduct of Defendants Trees and UTA, and that of Defendants' agents and employees acting within the scope of their employment, constituted gross negligence. Defendants' actions, when viewed objectively, involved an extreme degree of risk considering the probability and magnitude of potential harm. Defendants were subjectively aware of this risk but proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff. Each of Defendants' acts and omissions, whether taken singularly or in any combination, was a proximate cause of Plaintiff's injuries and damages described below.

52. As a result of Defendants' conduct, Plaintiff seeks punitive damages and/or exemplary damages in the amount to be determined by the trier of fact. Plaintiff further seeks as an element of the punitive damages the recovery of attorney fees and court costs.

### **DAMAGES**

53. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff was caused to suffer damages including but not limited to the following:

- A. Mental anguish in the past;
- B. Mental anguish in the future;
- C. Injury to character or reputation in the past;
- D. Injury to character or reputation in the future;
- E. Nominal damages regarding defamation;
- F. Exemplary damages; and
- G. Attorney fees.

### **DEMAND FOR JURY TRIAL**

54. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

### **REQUEST FOR DISCLOSURE**


55. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff Robert Tucker respectfully prays that Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiff against Defendants for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of filing suit through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of Court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

**THE MOORE LAW FIRM, PLLC**

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