

VENUE AND PARTIES AND JURISDICTION

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2 1. PLAINTIFF HEATHER SWEET P/K/A DITA VON TEESE ("Sweet" and/or
3 "Plaintiff") is and was at all times mentioned herein a resident of Los Angeles County, California.

4 2. DEFENDANT EROTICA LIMITED ("EL" and/or "Defendant") is and was at all times
5 mentioned herein a foreign business entity form unknown doing substantial business in Los Angeles
6 County, California.

7 3. PLAINTIFF is unaware of the true names and capacities, whether individual, corporate,
8 associate or otherwise, of Defendants DOES 1 through 50 (hereinafter "DOES" and/or
9 "DEFENDANTS"), inclusive, and therefore sues said Does by such fictitious names. PLAINTIFF will
10 seek leave of Court to amend this Complaint to show the true names and capacities of such DOES
11 when the same has been ascertained. PLAINTIFF is informed, believes, and thereupon alleges that
12 each of the fictitiously named DEFENDANTS are responsible to PLAINTIFF for the injuries suffered
13 and alleged herein, or are subject to the jurisdiction of the Court as a necessary party for the relief
14 herein requested.

15 4. PLAINTIFF is informed, believes, and thereupon alleges that each DOE is now, and
16 was at all times mentioned herein, the agent, principal, partner, joint venturer, employee or alter ego of
17 the remaining DEFENDANTS, and that all of the acts and conduct alleged herein were performed
18 within the course and scope and in the furtherance of such agency, partnership, joint venture,
19 employment or alter ego relationship.

20 5. Venue is properly laid in this Court because the contract referenced in this Complaint
21 was entered into in Los Angeles County, California, because the parties have contractually agreed to
22 this venue in the contract referenced in this Complaint, and because the actions giving rise to the
23 causes of action were undertaken in Los Angeles County, California.

24 **FACTUAL ALLEGATIONS**

25 6. PLAINTIFF re-alleges and incorporates herein by reference, as though set forth in full,
26 each and every allegation contained in Paragraphs 1 through 5, inclusive.

27 7. Sweet is a world-famous fetish model, actress, and burlesque performer who is widely
28 credited with reviving burlesque shows and the art of burlesque worldwide. Her one-woman shows

1 include on-stage performances with music and dance routines inside oversized props, such as a martini
2 or champagne glass, a carousel horse, a birdcage, and a lipstick container. These shows typically come
3 with pre-recorded music for Sweet's shows. Sweet herself generally is accompanied by only two
4 assistants to each show, and she contracts with promoters to provide her with security services and on-
5 stage help with stage set-up and prop assistance.

6 8. In or around April 2007, Sweet's agent Melissa Dishell ("Dishell") began negotiating
7 with Defendant EL for Sweet to perform at EL's upcoming Erotica 2007, the world's largest adult
8 entertainment trade-show well known in the entertainment and adult entertainment industries. Sweet
9 had headlined EL's Erotica 2006 trade-show the previous year, which was such a big hit that EL
10 immediately asked that she return the following year to perform her burlesque show for another three
11 consecutive nights. EL promised to pay Sweet double her \$25,000 contract price in 2006 for their
12 Erotica 2007 trade-show. Because of EL's representations and prompt payment of monies owed in
13 2006, Sweet and Dishell had no reason to believe EL would renege on their contract in 2007. Sweet
14 and Dishell further trusted that EL would pay promptly as they negotiated with EL directly this year
15 rather than through an unrelated public relations company. The parties negotiated the contract terms in
16 mid-2007 and memorialized their agreement in a written contract (the "Contract") on or about July 11,
17 2007, which was executed by the parties a few days later. A true and correct copy of the Contract is
18 attached and incorporated herein as **Exhibit A**.

19 9. Under the terms of the Contract, Sweet agreed to headline Erotica 2007 and perform her
20 one-woman burlesque show twice a day on November 23, 24, and 25, 2007. See Exhibit A at p. 1.
21 These shows would take place at Earl's Court in London during EL's Erotica 2007 trade-show. Id. In
22 exchange for her performances, EL agreed to pay Sweet \$50,000, half of which was due and payable
23 within five days of the Contract's execution, and half of which was due and payable on the date of her
24 performances. Id. Under their agreement, Sweet would be entitled to keep the initial \$25,000 payment
25 if EL cancelled the event or terminated the parties' agreement for any reason. Id. at pp. 4-5. Sweet
26 would be entitled to the full amount due - \$50,000 - if EL cancelled the event or terminated the parties'
27 agreement for any reason within ten days or less before November 23, 2007, due to Sweet's busy
28 schedule and her need to travel several days beforehand to London from Los Angeles to set-up for her

1 performances. Id. These shows would constitute Sweet's sole performances in the United Kingdom.

2 10. On or about July 16, 2007, Sweet sent EL an invoice setting forth the payment due
3 immediately - \$25,000 - and the payment due on the date of her performances - another \$25,000. A
4 true and correct copy of Sweet's invoice (the "Invoice") sent to EL is attached hereto as Exhibit B. EL
5 again accepted these terms verbally and in writing and promptly paid the initial \$25,000 owed to Sweet
6 shortly after the Contract's execution.

7 11. Following their booking of Sweet, EL widely advertised Sweet's performance as the
8 highlight of its 2006 trade-show on its internet website and used her past performances to generate
9 interest and sell tickets for its Erotica 2007 trade-show. Sweet headlined the Erotica 2007 trade-show
10 again, EL put her name and face on the cover of its Exhibitors' Manual and Show Guide, and EL used
11 Sweet's upcoming appearance dates, her name, and her likeness in its promotional materials for the
12 Erotica 2007 trade-show, including but not limited to radio and print advertisements. Sweet and her
13 agent Dishell further advertised Sweet's appearance and the Erotica 2007 trade-show generally on EL's
14 behalf in the press via telephone and email messages to secure greater press coverage for the trade-
15 show.

16 12. On or around November 20, 2007, Sweet traveled to London from Los Angeles with her
17 two assistants to set-up for her show. On November 23, 24, and 25, Sweet performed her shows twice
18 a day for all three dates in full accordance with her agreed-upon duties and responsibilities as set forth
19 in the Contract. Sweet further appeared in the trade-show's VIP Area as agreed-upon in the Contract
20 each day, and she appeared in her trade-show booth to sign books and meet trade-show visitors twice a
21 day for all three dates as set forth in the Contract. Sweet's performances, like Sweet's prior shows,
22 were very successful for both Sweet and EL. EL did not complain to Sweet about any aspect of her
23 execution of the Contract terms, nor did EL cancel the Erotica 2007 event, nor did EL terminate the
24 Contract, nor did Sweet terminate the Contract. The parties did not modify or re-negotiate any terms in
25 the Contract in any way, and Sweet completed her contractual duties fully expecting to be paid the
26 remainder of monies owed her upon the completion of her shows.

27 13. On or about November 26, 2007, Sweet traveled back to Los Angeles from London on
28 or about November 26, 2007, fully expecting that EL immediately would wire her the remaining

1 \$25,000 payment as set forth in their Contract. EL again promised her and her representatives before
2 she left London that payment would be forthcoming as per the Contract terms. EL further asked
3 Dishell to call EL upon their return to Los Angeles to discuss Sweet's appearance at their next Erotica
4 trade-show in 2008.

5 14. EL did not make the \$25,000 final payment to Sweet, however, nor did EL make this
6 payment over the next several months, despite repeated telephone calls, email messages, and faxed
7 letters from Sweet and her representatives to EL. Despite being readily available to negotiate the terms
8 of the Contract in early 2007 and discuss pre-show arrangements in the months leading up to the trade-
9 show, EL abruptly cut off all contact with Sweet and her representatives after the trade-show. They
10 continually ignored all of Sweet's attempts to contact them by telephone, email, and facsimile
11 regarding payment and other matters.

12 15. By January 2008, Sweet still had not been paid the remaining \$25,000 owed her by EL.
13 Sweet faxed additional copies of her invoice to EL on or around January 11, 2008, and February 8,
14 2008, with attached letters requesting payment, all to no avail. A true and correct copy of her fax and
15 invoice from these dates is attached hereto as Exhibit C. EL ignored these faxed letters just as it
16 ignored her other attempts to contact EL by and through telephone, email, and faxed letters.

17 16. To date, EL has yet to pay the \$25,000 owed Sweet. In the meantime, EL has widely
18 advertised Sweet's performances at their trade-show in November 2007 on its website and in its other
19 promotional materials. EL further has used her performance at their trade-show to promote future EL-
20 organized and sponsored events, including Erotica 2008, thus unjustly benefitting from Sweet's work
21 to Sweet's detriment. By March 2008, it was clear that Sweet would not receive the monies owed her
22 without judicial intervention.

23 **FIRST CAUSE OF ACTION**

24 **(BREACH OF WRITTEN CONTRACT AGAINST DEFENDANT and DOES 1 through 50)**

25 17. PLAINTIFF repeats, re-alleges, and incorporates by this reference Paragraphs 1 through
26 16, as though fully set forth herein.

27 18. Sweet and EL entered into a written agreement the terms of which were the following:

28 1) Sweet agreed to perform her burlesque show on November 23, 24, and 25, 2007 at EL's Erotica

1 2007 trade-show in London, and 2) EL agreed to pay Sweet \$50,000 for her performances, \$25,000
2 upon the execution of the written agreement and \$25,000 on the date of the performances. This
3 Contract represents a valid and binding contract the terms of which are certain and enforceable. See
4 **Exhibit A.**

5 19. Sweet at all times performed her obligations under the Contract, save those
6 obligations excused by EL's breaches by performing her burlesque shows at EL's Erotica 2007 trade-
7 show on November 23, 24, and 25, 2007.

8 20. EL breached the terms of the Contract by failing and refusing to pay Sweet the
9 remaining \$25,000 owed on the date of her performance. This refusal to perform on the Contract was
10 undertaken without stipulation, justification, excuse, or waiver.

11 21. Sweet's damages are a certain, foreseeable, and measurable consequence
12 of EL's breach. As a direct and proximate result of said breach, Sweet has been damaged in the
13 amount of twenty-five-thousand dollars (\$25,000) for services rendered, plus interest accrued and
14 growing, owed by EL and DOES to Sweet.

15 22. In the alternative, Sweet is entitled to quantum meruit, viz., the reasonable value of the
16 services rendered to EL and Does to prevent their grossly unjust enrichment.

17 **SECOND CAUSE OF ACTION**

18 **(BREACH OF ORAL CONTRACT AGAINST DEFENDANT and DOES 1 through 50)**

19 23. PLAINTIFF repeats, re-alleges, and incorporates by this reference Paragraphs 1 through
20 22, as though fully set forth herein.

21 24. Sweet and EL entered into a valid oral agreement for Sweet to perform burlesque
22 shows at EL's Erotica 2007 trade-show as described above. EL would personally gain from both the
23 work performed by Sweet.

24 25. The terms of that agreement were the following: 1) Sweet agreed to perform her
25 burlesque show on November 23, 24, and 25, 2007 at EL's Erotica 2007 trade-show in London, and 2)
26 EL agreed to pay Sweet \$50,000 for her performances, \$25,000 upon the execution of the agreement
27 and \$25,000 on the date of the performances.

28 26. This oral agreement represents a valid and binding contract, the terms of which are

1 certain and enforceable. The agreement is not, by its terms, to last for more than one year.

2 27. Sweet at all times performed her obligations under the oral agreement, save those
3 obligations excused by EL' breaches.

4 28. EL breached the terms of the oral agreement by failing and refusing to pay Sweet the
5 remaining \$25,000 payment owed upon the date of her performances. This refusal to perform under
6 the agreement was undertaken without stipulation, justification, excuse, or waiver.

7 29. Sweet's damages are a certain, foreseeable, and measurable consequence
8 of EL' breach. As a direct and proximate result of said breach, Sweet has been damaged in the amount
9 of twenty-five thousand dollars (\$25,000) plus interest accrued and growing, owed by EL to Sweet.

10 30. In the alternative, Sweet is entitled to quantum meruit, viz., the reasonable value of the
11 services rendered to EL and Does 1-50 in order to prevent their grossly unjust enrichment.

12 **THIRD CAUSE OF ACTION**

13 **(BREACH OF IMPLIED-IN-FACT CONTRACT AGAINST DEFENDANT and DOES 1**
14 **through 50)**

15 31. PLAINTIFF re-alleges and incorporates herein by reference, as though set forth in full,
16 each and every allegation contained in Paragraphs 1 through 30, inclusive.

17 32. Sweet and EL have at all times acted consistently with the existence of a valid contract
18 for the rendering of Sweet's professional services to EL. Sweet performed her duties arising under the
19 contract save those obligations that were excused by EL's breaches. EL accepted the benefit of
20 Sweet's services with full knowledge that Sweet expected to be financially compensated for her
21 professional efforts. EL repeatedly stated its desire for Sweet to perform her burlesque shows at EL's
22 Erotica 2007 trade-show in London and promise to pay Sweet in full for her professional efforts.
23 Sweet relied on EL's representations when she performed her shows. Thus, EL undertook actions
24 consistent with a request to provide services and Sweet provided those services with the mutual
25 understanding that she expected payment.

26 33. Sweet fully performed her duties under the parties' agreement by performing her
27 burlesque shows on November 23, 24, and 25, 2007, at EL's Erotica 2007 trade-show in London.

28 34. EL breached the implied-in-fact agreement by failing to pay Sweet the remaining

1 \$25,000 owed. Its failure and refusal to perform was undertaken without stipulation, justification,
2 excuse, or waiver.

3 35. Sweet's damages are a certain, foreseeable, and measurable consequence of
4 EL's breach. As a direct and proximate result of said breach, Sweet has been damaged in the amount
5 of twenty-five thousand dollars (\$25,000) for services rendered plus interest accrued and growing,
6 owed by EL to Sweet.

7 **FOURTH CAUSE OF ACTION**

8 **(BREACH OF IMPLIED-IN-LAW CONTRACT AGAINST DEFENDANT and DOES 1**
9 **through 50)**

10 36. PLAINTIFF re-alleges and incorporates herein by reference, as though set forth in full,
11 each and every allegation contained in Paragraphs 1 through 35, inclusive.

12 37. Sweet rendered professional services to EL from which EL benefitted. Said services
13 were not rendered gratuitously but with the mutual understanding that Sweet would be paid for the
14 services rendered. Throughout that time, EL accepted the benefit of Sweet's services with full
15 knowledge that Sweet expected to be financially compensated for her professional efforts.

16 38. EL failed to compensate Sweet for the services she rendered. As a result, EL has been
17 unjustly enriched by benefitting from Sweet's burlesque performances for which it did not pay.

18 39. Sweet's damages are a certain, foreseeable, and measurable consequence
19 of EL' unjust enrichment. As a direct and proximate result of EL's failure to pay for services rendered,
20 EL has been unjustly enriched in the amount of twenty-five thousand dollars (\$25,000).

21 40. In the alternative, Sweet is entitled to quantum meruit, viz., the reasonable value of the
22 services rendered to EL and Does 1-50 in order to prevent their grossly unjust enrichment.

23 **FIFTH CAUSE OF ACTION**

24 **(VIOLATION OF CIVIL CODE §§1709 and 1710 [Deceit] AGAINST DEFENDANT and DOES**
25 **1 through 50)**

26 41. PLAINTIFF re-alleges and incorporates herein by reference, as though set forth in full,
27 each and every allegation contained in Paragraphs 1 through 40, inclusive.

28 42. Under Civil Code § 1709, "one who willfully deceives another with intent to induce him

1 to alter his position to his injury or risk, is liable for any damage which he thereby suffers." Civil Code
 2 § 1710 defines "deceit" within the meaning of § 1709 as either "(1) The suggestion, as a fact, of that
 3 which is not true, by one who does not believe it to be true; (2) The assertion, as a fact, of that which is
 4 not true, by one who has no reasonable ground for believing it to be true; (3) The suppression of a fact,
 5 by one who is bound to disclose it, or who gives information of other facts which are likely to mislead
 6 for want of communication of that fact; or (4) A promise, made without any intention of performing
 7 it."

8 43. EL repeatedly represented to Sweet that she would be paid in full for the professional
 9 services she rendered as set forth in the Contract. See Exhibit A. These representations of fact were
 10 false, false at the time they were made, and EL was aware of their falsity at that time.

11 44. EL falsely represented its intention to pay Sweet the agreed-upon payment of \$25,000
 12 on the dates of her performances, and these false representations were made with the intent that Sweet
 13 rely on them. Sweet actually relied on EL's false representations of fact by performing her burlesque
 14 show on November 23, 24, and 25, 2007. Had EL not continually assured Sweet, through a written
 15 contract, through numerous written correspondence prior to the show, and through numerous verbal
 16 promises that Sweet would be paid in full as set forth in the parties' Contract, Sweet would never have
 17 traveled to London from Los Angeles and performed her show on all three dates in November 2007.
 18 Sweet's reliance was reasonable as EL is a well-known company in England, and EL's Erotica 2007
 19 trade-show is very popular and well-known in the entertainment industry.

20 45. EL's fraudulent statements were made with malice and a conscious disregard for the
 21 probable consequences their statements would cause Sweet.

22 46. As a direct and proximate result of these statements, Sweet has been damaged in an
 23 amount no less than twenty-five thousand dollars (\$25,000). EL acted with malice, fraud, oppression,
 24 and/or reckless disregard of Sweet's rights within the meaning of California Civil Code § 3294, thereby
 25 entitling Sweet to recover exemplary and punitive damages in an amount according to proof at trial.

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SIXTH CAUSE OF ACTION

(VIOLATION OF CIVIL CODE § 1572 [Actual Fraud] AGAINST DEFENDANT and DOES 1 through 50)

47. PLAINTIFF repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 46, as though fully set forth herein.

48. Under Civil Code § 1572, actual fraud is defined as "any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract: (1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (3) The suppression of that which is true, by one having knowledge or belief of the fact; (4) A promise made without any intention of performing it; or (5) Any other act fitted to deceive."

49. EL falsely represented its intention to pay Sweet the agreed-upon payment of \$25,000 on the dates of her performances, and these false representations were made with the intent that Sweet rely on them. Sweet actually relied on EL's false representations of fact by performing her burlesque show on November 23, 24, and 25, 2007. Had EL not continually assured Sweet, through a written contract, through numerous written correspondence prior to the show, and through numerous verbal promises that Sweet would be paid in full as set forth in the parties' Contract, Sweet would never have traveled to London from Los Angeles and performed her show on all three dates in November 2007. Sweet's reliance was reasonable as EL is a well-known company in England, and EL's Erotica 2007 trade-show is very popular and well-known in the entertainment industry.

50. EL's fraudulent statements were made with malice and a conscious disregard for the probable consequences their statements would cause Sweet. EL made these fraudulent and false statements to Sweet fully aware that they were false and false at the time they were made.

51. As a direct and proximate result thereof, Sweet has been damaged in an amount no less than twenty-five thousand dollars (\$25,000). EL acted with malice, fraud, oppression, and/or reckless disregard of Sweet's rights within the meaning of California Civil Code § 3294, thereby entitling Sweet to recover exemplary and punitive damages in an amount according to proof at trial.

1 SEVENTH CAUSE OF ACTION

2 (VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 AGAINST DEFENDANT and
3 DOES 1 through 50)

4 52. PLAINTIFF repeats, re-alleges, and incorporates by this reference Paragraphs 1 through
5 51 as though fully set forth herein.

6 53. Sweet is informed and believes that EL engaged in acts of fraudulent business practices
7 and untrue or misleading advertisements in violation of numerous provisions under federal and state
8 statutory and common law, including but not limited to the Unfair Competition Law (Business &
9 Professions Code §§ 17200 et seq. and 17500 et seq.) and the Consumer Legal Remedies Act (Civil
10 Code § 1770 et seq.).

11 54. Business and Professions Code §17200 et seq., provides that unfair competition shall
12 mean and include "all unlawful, unfair or fraudulent business act or practices and unfair, deceptive,
13 untrue or misleading advertising."

14 55. EL falls within the definition of "person" as set forth at Business & Professions Code §
15 17203 and §17506.

16 56. Sweet is informed, believes, and thereon alleges that EL has maintained continued
17 fraudulent business practices by engaging in practices including but not limited to the following: 1)
18 EL's continued false statements and representations that he intended to fully pay Sweet their agreed-
19 upon contract price for her professional services; 2) EL's continued and repeated false statements that
20 Sweet would be paid in full for her professional services; and 3) EL's ultimate failure to pay Sweet the
21 remaining \$25,000 owed her.

22 57. EL repeatedly requested Sweet to perform her shows at EL's trade-show in London by
23 making verbal and written representations to her and her representatives before and during her
24 performances in November 2007 that it would pay her the full Contract price.

25 58. Sweet is informed, believes, and thereupon alleges that as a direct and proximate result
26 of EL' unfair and fraudulent business practices, it has received and will continue to receive ill-gotten
27 gains. Sweet is therefore entitled to disgorgement of all monies received as a result of EL's fraud and
28 unfair business practices.

1 59. EL acted with malice, fraud, oppression, and/or reckless disregard of Sweet's rights
2 within the meaning of California Civil Code § 3294, thereby entitling Sweet to recover exemplary and
3 punitive damages in an amount according to proof at trial.

4 **EIGHTH CAUSE OF ACTION**

5 **(QUANTUM MERUIT [Restitution] AGAINST DEFENDANT and DOES 1-50)**

6 60. PLAINTIFF repeats, re-alleges, and incorporates by this reference Paragraphs 1 through
7 59 as though fully set forth herein.

8 61. Sweet performed the herein-referenced artistic and professional services for EL at their
9 request, which EL accepted, used, benefitted from, and enjoyed.

10 62. The reasonable value for the services rendered is \$50,000, plus interest and costs.

11 63. But for the first half of the \$50,000 paid to Sweet upon execution of the Contract,
12 neither the whole nor any part of the remaining twenty-five thousand dollars (\$25,000) owing for
13 services rendered has been paid to Sweet by EL although Sweet has demanded payment repeatedly.
14 There is now due, owing, and unpaid from EL to Sweet twenty-five thousand dollars (\$25,000), plus
15 interest accrued and growing.

16 **NINTH CAUSE OF ACTION**

17 **(ACCOUNT STATED AGAINST DEFENDANT and DOES 1-50)**

18 64. PLAINTIFF repeats, re-alleges, and incorporates by this reference Paragraphs 1 through
19 63 as though fully set forth herein.

20 65. On or about July 16, 2007, at Los Angeles, California, an account was stated in writing
21 by and between Sweet and EL, and on such statement a balance of \$25,000 was found due to Sweet
22 from EL to be paid on or about the date of her agreed-upon performances in November 2007. EL
23 agreed to pay to Sweet said balance on those dates. A true and correct copy of the account stated is
24 attached and incorporated hereto as **Exhibit B**.

25 66. Although repeatedly demanded by Sweet from EL, neither all nor any part of the agreed
26 balance of \$25,000 has been paid.

27 67. There is now due, owing, and unpaid from EL to Sweet the sum of twenty-five thousand
28 dollars (\$25,000), together with interest plus interest accrued and growing.

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68. Sweet has incurred attorney's fees and costs in connection with this matter, in an amount to be determined at trial, which fees and costs Sweet is entitled to recover from EL pursuant to applicable law, including but not limited to Civil Code § 1717.5.

WHEREFORE PLAINTIFF prays for judgment against DEFENDANTS and each of them as follows:

1. For general and compensatory damages, including prejudgment interest, in accordance with proof at time of trial;
2. For punitive damages where permitted to be determined at trial;
3. For Plaintiff's costs and attorneys fees where permitted; and,
4. For such other and further relief as the Court may deem just and proper.

DATED: March 13, 2008

KEITH A. FINK & ASSOCIATES

By



Keith A. Fink
S. Keven Steinberg
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HEATHER SWEET P/K/A DITA VON TEESE

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