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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Docket No: BER-L- 7775-08

**YVETTE GORZELANY, JOANNA
OBIEDZINSKI, and PAULINA PAKOS,**

Plaintiffs,

VS.

CIVIL ACTION

**SIMON & SCHUSTER, INC. (A Co.
licensed t/d/b in the State of NJ), SIMON
SPOTLIGHT ENTERTAINMENT (A Co.
licensed t/d/b in the State of NJ and a
Division of Simon & Schuster, Inc.), JAY
LOUIS, Individually, CLUBITUP.COM (A
Co. licensed t/d/b in the State of NJ, CLUB
BLISS, a Co. licensed t/d/b in New Jersey,
JOHN DO 1-100 and ABC/XYZ CO.
(fictitious names),**

**COMPLAINT and JURY DEMAND
DESIGNATION OF TRIAL COUNSEL
and CERTIFICATION**

Defendants.

Plaintiffs, YVETTE GORZELANY, JOANNA OBIEDZINSKI and PAULINA PAKOS,
residing in the State of New Jersey, by way of Complaint against the Defendants herein say:

PARTIES

1. Plaintiff, YVETTE GORZELANY, 22 years old, residing at [REDACTED]

2. Plaintiff, JOANNA OBIEDZINSKI, 21 years old, residing at [REDACTED]

3. Plaintiff, PAULINA PAKOS, 24 years old, residing at [REDACTED]

[REDACTED] was and continues to be a resident of Sussex County, NJ.

4. Defendant, SIMON & SCHUSTER, INC., located at 30 Avenue of the Americas, NY, NY 10020 (hereinafter referred to as "S&S"), at all times mentioned herein was a New York corporation authorized to do business in the State of New Jersey and operating in the State as a publishing company.

5. Defendant, SIMON SPOTLIGHT ENTERTAINMENT (hereinafter referred to "SSE"), here and at all times mentioned herein was a company affiliated with Defendant S&S, and a division of S&S located at 1230 Avenue of the Americas, NY, NY 10020.

6. Defendant, CLUBITUP.COM, LLC (hereinafter referred to as "Clubitup"), and at all times herein mentioned, was a New Jersey corporation authorized to do business in the State of New Jersey and operating as a multi-level advertising and promoting entity. Defendant, CLUBITUP.COM took photographs of Plaintiffs while Plaintiffs were in Club Bliss and it is these photographs which are now in the book.

7. Defendant, JAY LOUIS, was at all times herein mentioned the creator of a website by the name of www.hotchickswithdeuchbags.com and the author of the book which evolved from that website, book entitled "Hot Chicks with Douchebags".

8. Defendant, CLUB BLISS, and at all times herein mentioned, was a New Jersey corporation authorized to do business in the State of New Jersey and Plaintiffs were lawful business invitees when these photographs were taken and upon information and belief, Defendant, CLUB BLISS and Defendant, CLUBITUP.COM, were involved in a business arrangement.

9. Plaintiffs are ignorant of the true names and capacities of Defendants, JOHN DOE 1-100 and ABC/XYZ CO., inclusive, whether individual, corporate, associate or otherwise, and therefore sues said Defendants by such fictitious names, and Plaintiffs names, and Plaintiff will

pray leave to amend this Complaint to show their true names and capacities when the same are ascertained. Plaintiff is informed and believes that each of the Defendants named herein as a Doe is legally responsible for the events and happenings herein described and for the damages proximately caused thereby.

10. At all times herein mentioned, Defendants, and each of them, were the agents, servants, and employees of each of the remaining co-defendants and, in doing the things hereafter alleged, were acting in the course and scope of their authority as such agents, servants and employees and with the permission and consent of their co-defendants.

STATEMENT OF FACTS

11. Plaintiffs on or about June 7, 2007, were patrons and/or business invitees of a club known as Bliss located in Clifton, NJ at which time Plaintiffs photographs were taken by a company known as Defendant, CLUBITUP. Plaintiffs were not provided with or requested a consent/authorization form. Thereafter, Defendant JAY LOUIS, through Defendant, CLUBITUP, came into possession, by events unknown to the Plaintiff, of these photographs through CLUBITUP.COM and included these photographs in a book known as Hot Chicks with Douchebags, and was published by Defendant, SSE, a division of Defendant, Simon & Schuster, Inc. with a copyright date of 2008 and placed on retail shelves in August 2008.

12. After this book was published and sold commercially the Plaintiffs immediately were made aware of their likeness and photographs being included in this book. The photographs has resulted in the commercial exploitation of the Plaintiff's likeness.

13. Plaintiffs' privacy has been invaded, as the Plaintiffs are not public figures and the authors depict these Plaintiffs as females who date dubious men. This belief and/or depiction is not open for public observation, but is rather a private matter. In addition, the depiction is

false, harmful, vulgar and obscene. Plaintiffs have a reasonable expectation of privacy which has been violated.

14. The Defendants have sought to capitalize and have capitalized on Plaintiffs' likeliness for purposes other than the dissemination of news or information. The Defendants, as set forth above, have used the Plaintiffs' likeliness for trade purposes. The Defendants have used the Plaintiffs' photographs to promote and sell this book.

15. As a result of the publishing of the Plaintiffs' photographs in this vulgar and negative book, the Plaintiffs have suffered damages, which have resulted in the Plaintiffs undergoing medical treatment, psychological therapy as well as financial damages, as Plaintiffs have been rejected in job applications and opportunities as a direct result of being included in this offensive book. The long term effect of this book on Plaintiffs cannot be completely known except to say the damages are extensive.

16. Plaintiff JOANNA OBIEDZINSKI, had applied for a position as Matre'd/Captain at a very well known and prestigious country club known as the Westmount Country Club located in NJ. On or about August 4, 2008, Ms. Obiedzinski was notified that her application and interview, although had gone very well, was going to be rejected and the club had chosen to hire another interviewee based on her inclusion in the book at issue. Westmont Country Club went on to state that "as you know the job as Matre'd Captain is a serious one. Dealing with brides, grooms and their families becomes personal and is built on trust. You have worked for us many years in the past. There has been some speculation of a book you are in. A lady explained the book to me after I mentioned hiring you. Although you would be a immense candidate for the job, we cannot have things like this floating around...I do encourage you to apply for another job if you feel you may be interested. I regret you were not selected. But the offensive book seems

to be well known and we cannot have the image represent us". The manager of the Westmont Country Club, Thomas Del Gatto authors this letter and stands by his decision.

17. The Plaintiffs JOANNA OBIEDZINSKI and PAULINA PAKOS, are also college students wherein Paulina Pakos is currently a 4th year student at Ramapo College located in Mahwah, NJ seeking a bachelor of arts degree in Psychology and is scheduled to graduate in December 2008. Ms. Pakos, based on the fact of her major and desire to do social work and counseling has serious concerns of the damage to her name and reputation in seeking a career in this field that being included in this book shall continue to follow her for the rest of her life. Plaintiff, Paulina Pakos was dating a person who broke up with her as a result of Plaintiff's appearance in the book. Ms. Pakos' nephews, who are 7 and 5 years old, who have become aware of the book, question why Plaintiff is in it. Plaintiff's personal life has been affected adversely.

18. Plaintiff Yvette Gorzelany is employed currently in a family business engaged in commercial and residential cleaning, whose clients include many Bergen County customers. This business requires the trust of customers in allowing access to homes and offices.

19. Ms. Joanna Obiedzinski is currently a student at Montclair University located in NJ with a major in Psychology and Dietetics, and has similar concerns as Plaintiff Pakos.

20. On or about August 2008, Plaintiffs were shocked to discover that their photographs were displayed in the book at issue as a result of being contacted by friends who saw and/or heard of the book being sold in such companies as Barnes and Nobles.

21. When Plaintiffs discovered their photographs in this book, they immediately protested and sent a letter dated August 14, 2008 to SSE, a division of Simon & Schuster. In that letter, Plaintiffs requested that the unauthorized circulation of Plaintiffs photographs and

inclusion of Plaintiffs photographs and this book be terminated immediately. Defendant, Simon & Schuster responded back in a letter dated September 8, 2008 by Vice-President Senior Counsel, Jennifer K. Weidman, which in pertinent parts concluded that "as there can be no dispute that the use of the pictures of your clients is of a non-commercial nature and there is a significant relationship to the editorial context in which it appears, that your client cannot establish falsity and that the statements in the book are constitutionally protected opinion, we deny that your clients have a cognizable claim and/or are entitled to any damages".

22. When Plaintiffs discovered the extensive and large scale dissemination of the book, Plaintiffs protested and immediately voiced their concerns which were rejected by the Defendants. There has been internet dialog through the website www.lasvegasweekly.com, by individuals who have found themselves similarly situated to the Plaintiffs in this Complaint have begun to discuss the issue of the Defendants' profiting from the defamation of character of the Plaintiffs and the fact that they have found themselves included in this book which they had no knowledge about. The individuals who have found themselves included in this book have described themselves as victims which author Jay Louis seeks to gain from. There is no gain to be had by any of the individuals who have found themselves included in this book. On these internet websites there is also being discussed that the book's publicist SSE has not provided information about whose name is actually on the contract for allegedly selling the photos.

23. The Plaintiffs find it disturbing that a person can take another's photograph without their consent and write derogatory remarks about the subjects in the picture and make money off belittling the people.

24. The author Jay Louis has been quoted as saying that he doesn't know anyone pictured in the book. He says he would be really surprised if anyone turns out to be upset. "It's

part of the douchebag persona-if you can't take lumps and get called out and then be cruel about it, you look so much better instantly heroic". Louis states "ditch the skank", referring to the women in the book, if you as a man do no want to be a "douchebag".

25. Plaintiffs' families have also been affected by the inclusion of the Plaintiffs in this book, and have incurred emotional distress.

FIRST CAUSE OF ACTION
Intentional Infliction of Emotional Distress Against All Defendants

1. Plaintiffs reallege and incorporate herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. Defendants, and each of them, had knowledge of Plaintiffs particular susceptibility to emotional distress due to the vulgar nature of the book, and the negative light which the Plaintiffs are cast in the book. Defendant, LOUIS calls girls with tattoos, "tramp stamps" and says it is the first sign of "douchebague infection".

3. At all times herein mentioned and up to and including the publishing of the book, Defendants, and each of them, unconscionably used Plaintiffs' photograph and likeness without Plaintiffs' consent and published same in a book. Defendants, and each of them, then proceed to fabricate stories about the Plaintiffs without Plaintiffs authorizations or consent, which the inclusion of these photographs help to market and promote the sale of this book.

4. At all times herein mentioned and up to and including the present, Defendants, and each of them, unconscionably disseminated Plaintiffs' private and personal information, for the purpose of distributing this book to the general public in an attempt to market and promote this book.

5. At all times herein mentioned, Defendants, and each of them, continued the use and dissemination of Plaintiffs' personal and private information, including actual photographs of the Plaintiffs after the Defendants and each of them were given demand by the Plaintiffs to cease such actions. The continued usage and dissemination continues to the present.

6. In direct contravention of Plaintiffs' issues, the Defendants, and each of them, without Plaintiff's authorization on a continual basis, used the photographs of the Plaintiffs in the book at issue.

7. The conduct of Defendants, and each of them, was intentional and malicious insofar as their actions were taken with knowledge that Plaintiffs' emotional and physical distress would increase as a result of Defendants' conduct, but nevertheless undertook and continued such conduct with a wanton and reckless disregard of the consequences to Plaintiffs.

8. As a proximate result of the conduct alleged herein, Plaintiffs suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and body, all to Plaintiffs damages in an amount presently unknown. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained when ascertained.

9. As a further proximate result of the conduct alleged herein, Plaintiffs have incurred and in the future will incur, sundry expenses in the examination, care and treatment of Plaintiffs physical and emotional injuries, the exact nature and extent of which are presently unknown to Plaintiffs. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained when ascertained.

10. The acts of Defendants, and each of them, were willful, wanton, malicious and oppressive, and justify the awarding of exemplary and punitive damages.

SECOND CAUSE OF ACTION

For Negligent Infliction of Emotional Distress Against All Defendants

1. Plaintiffs reallege and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. Defendants, and each of them, were aware and knew, or should have known, of Plaintiffs particular susceptibility to emotional distress due to the vulgar and obscene nature of this book.

3. At all times mentioned herein and up to and including the present, Defendants, and each of them, engaged in negligent conduct by unconscionably using Plaintiffs' likeness and photographs without Plaintiffs' authorization or consent, to market and promote the book at issue.

4. At all times herein mentioned and up to and including the present, Defendants, and each of them, engaged in negligent conduct by unconscionably disseminating Plaintiffs' private and personal information, including Plaintiffs' likeness and photographs, to help distribute to the general public this book and to help market and promote the book at issue.

5. At all times herein mentioned, Defendants, and each of them, continued the use and dissemination of Plaintiffs' likeness and photographs after Plaintiffs' demanded that Defendants cease doing so.

6. As a proximate result of the negligent conduct of the Defendants, and each of them, and the consequences proximately caused thereby, Plaintiffs have suffered severe emotional distress and mental suffering, all to their damage in a sum that cannot be presently ascertained. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained when ascertained.

7. As a further proximate result of the negligent conduct of the Defendants, and each of them, Plaintiffs have incurred and will in the future incur, sundry expenses in the examination, care and treatment of Plaintiffs physical and emotional injuries, the exact nature and extent of which are presently unknown to the Plaintiffs. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained when ascertained.

THIRD CAUSE OF ACTION
For Conspiracy to Commit Fraud Against All Defendants

1. Plaintiffs reallege and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. Plaintiffs believes, that at times presently unknown to Plaintiffs, Defendants, and each of them, knowingly and willfully conspired and agreed among themselves to perpetrate a fraud on Plaintiffs in order to utilize their personal and private information along with Plaintiffs' likeness and photographs to promote and market the book and to induce the general public to purchase the book based on Plaintiffs' photographs being included in the book for Defendants own enrichment.

3. Pursuant to said conspiracy, Defendants, and each of them, demonstrated their agreement to perpetrate a fraud on Plaintiffs, by virtue of the fact that they knew that the photographs, stills and representations made by them were fraud and that they did not intend to cease and desist in using and disseminating Plaintiffs personal and private information including Plaintiffs' likeness and photographs, as evidenced by Defendants' continued misuse of this information through the present.

4. Plaintiffs, at the time these became aware for the first time of the use and dissemination of Plaintiffs' photographs and likeness, at the time the book was being sold in stores.

5. As a proximate result of the wrongful acts perpetrated by Defendants, and each of them, Plaintiffs were subject to extreme emotional distress and torment by being forced to be included in this vulgar and obscene book.

6. As a further proximate result of the wrongful acts perpetrated by Defendants, and each of them, Plaintiffs have sustained injuries to their health, strength and activity, all of which injuries have caused and continue to cause Plaintiffs great mental, physical and nervous pain and suffering. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained as a result thereof when ascertained.

7. As a further proximate result of the wrongful acts perpetrated by Defendants, and each of them, Plaintiffs have sustained and will continue to sustain, disabling, serious and permanent physical and emotional injuries, all to Plaintiffs general damage in an amount presently unascertainable.

8. As a further proximate result of the wrongful acts perpetrated by Defendants, and each of them, Plaintiffs have incurred and in the future will incur, sundry expenses in the examination, care and treatment of Plaintiffs physical and emotional injuries, the exact nature and extent of which are presently unknown to Plaintiffs. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained as a result thereof when ascertained.

FOURTH CAUSE OF ACTION
For Invasion of Privacy Against All Defendants

1. Plaintiffs reallege and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. The right of privacy is protected.

3. At all times mentioned herein and up to and including the present, Plaintiffs had legally protected interest in their personal and private information, including Plaintiffs' likeness and photographs.

4. At all times herein mentioned and up to and including the present, Plaintiffs had a reasonable expectation of privacy in their personal and private information and including their likenesses and photographs as described herein, and said private information should not be used without their consent or authorization in an attempt to promote and market the sale of Defendants' book for monetary gain.

5. The conduct of Defendants, and each of them, disseminating Plaintiffs' personal and private information as described herein, constituted a serious invasion of Plaintiffs' right to privacy and such an egregious breach of social norms that Plaintiffs were, as a result thereof, objected to extremely emotional distress and torment.

6. As a proximate result of the conduct of Defendants, and each of them, Plaintiffs have suffered emotional distress, mental suffering and invasion of their Constitutional right to privacy in a sum which is presently unascertainable. Plaintiffs will seek a leave of Court to amend this Complaint to set forth the full amount of damages sustained as a result thereof when ascertained.

7. The acts of Defendants, and each of them, were wilful, wanton, malicious, and oppressive, and justify the awarding of exemplary and punitive damages.

FIFTH CAUSE OF ACTION
For Unfair Competition pursuant to Business & Professions Code
Section 17200 Against All Defendants

1. Plaintiffs repeats, realleges and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. The Defendants, and each of them, unconscionably and without authorization, used and disseminated personal and private information of Plaintiffs, including Plaintiffs' likeness and photographs to help market and promote the sale of the book.

3. Plaintiffs were informed and believe that Defendants, and each of them, used and disseminated Plaintiffs personal and private information, including Plaintiffs' likenesses and photographs with Plaintiffs implied endorsement, which was neither given nor requested, and without Plaintiffs' consent or authorization for the sole purpose of Defendants' financial gain and enrichment.

4. Defendants, and each of the, unless restrained, will continue to use and disseminate Plaintiffs personal and private information as described herein for purposes of their own enrichment and financial gain.

5. The conduct of Defendants, and each of them, as described herein, constitutes unfair competition.

6. Plaintiffs, and each member of the general public who has had personal and confidential information used to disseminated by Defendants, and each of them, without consent or authorization, to promote and market the sale of the book, has suffered damage in an unknown amount to be proven at the time of trial.

SIXTH CAUSE OF ACTION
For Conspiracy to Commit Fraud Against All Defendants

1. Plaintiffs reallege and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. Defendant's negligence, carelessness, and/or recklessness in gaining possession of the photographs and using them in the book without the consent of the Plaintiffs has caused Plaintiffs damages.

3. The vulgar and obscene nature of the book and negative light which it has placed Plaintiffs has caused damage to their reputation.

WHEREFORE, Plaintiffs demand judgment against all Defendants, and each of them, for injunctive relief and actual, special and compensatory damages in an amount deemed at the time of trial to be just, fair and appropriate.

SEVENTH CAUSE OF ACTION
For Defamation Against All Defendants

1. Plaintiffs repeats, realleges and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. Defendants published a book known as "Hot Chicks with Douchebags", and included Plaintiffs' photographs and likenesses without consent or authorization and by doing so depicts Plaintiffs' honesty, integrity, virtue and/or reputation. The book has defamatory statements given describing girls as "ass shaking". Plaintiffs are not public figures.

3. The statements imputed by Defendants' slurs have damaged Plaintiffs' honesty, integrity, virtue and/or reputation and the obscene and vulgar nature of the book with the

statements made by Defendants have caused damages to Plaintiffs and defamed Plaintiffs. The defamatory statements have resulted in liability.

WHEREFORE, Plaintiffs demand judgment against all Defendants, and each of them, for injunctive relief and actual, special and compensatory damages in an amount deemed at the time of trial to be just, fair and appropriate.

EIGHTH CAUSE OF ACTION
For Humiliation against all Defendants

1. Plaintiffs repeats, realleges and incorporates herein by reference all the allegations set forth in the preceding paragraphs as if fully set forth herein.

2. Plaintiffs have suffered humiliation by Defendants' negligence, carelessness, and/or recklessness and have been caused damages.

3. Plaintiffs have been held up to ridicule, scorn and their reputations have been injured.

4. Plaintiffs have been ridiculed as a result of their inclusion in this book.

5. Defendants have committed defamatory libel as a result of the written, permanent form of the book.

6. Defendants have committed libel and damages to Plaintiffs' reputations and exposed Plaintiffs to ridicule.

WHEREFORE, for the above causes of action, Plaintiffs requests:

1. For general damages according to proof;
2. For medical and related expenses according to proof;
3. For future medical and related expenses according to proof;
4. For interest therein at the legal rate;
5. For an award of exemplary and punitive damages;
6. For costs of suit incurred herein; and
7. For such other and further relief that the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, attorney Charles P. Ingenito, Esq., is hereby designated as trial counsel.

CERTIFICATION

Pursuant to R. 4:5-1, I certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

Attorneys for Plaintiff

By: 

CHARLES P. INGENITO, ESQ.

Dated: October 9, 2008