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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 JANE DOE NOS. 1-14, inclusive,
12 individuals;

13 Plaintiffs,

14 v.

15 GIRLSDOPORN.COM, a business
organization, form unknown; MICHAEL J.
16 PRATT, an individual; ANDRE GARCIA,
an individual; MATTHEW WOLFE, an
17 individual; BLL MEDIA, INC., a California
corporation; BLL MEDIA HOLDINGS,
18 LLC, a Nevada limited liability company;
DOMI PUBLICATIONS, LLC, a Nevada
19 limited liability company; EG
PUBLICATIONS, INC., a California
20 corporation; MIM MEDIA, LLC, a
California limited liability company;
21 BUBBLEGUM FILMS, INC., a business
organization, form unknown; OH WELL
22 MEDIA LIMITED, a business organization,
form unknown; MERRO MEDIA, INC., a
California corporation; MERRO MEDIA
23 HOLDINGS, LLC, a Nevada limited liability
company; and ROES 1 - 500, inclusive,

24 Defendants.

LEAD CASE:
Case No. 37-2016-00019027-CU-FR-CTL

CONSOLIDATED WITH:
Case No. 37-2017-00043712-CU-FR-CTL
Case No. 37-2017-00033321-CU-FR-CTL

DEFENDANTS' TRIAL BRIEF

Judge: Hon. Kevin Enright
Dept.: 904
Trial Date: June 24, 2019

[IMAGED FILE]

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1 Defendants MICHAEL J. PRATT, ANDRE GARCIA, and MATTHEW WOLFE, (collectively,
2 “Individual Defendants”), and Defendants MICHAEL J. PRATT, ANDRE GARCIA, MATTHEW
3 WOLFE, GIRLSDOPORN.COM, BLL MEDIA, INC., BLL MEDIA HOLDINGS, EG
4 PUBLICATIONS, INC., MIM MEDIA, LLC, BUBBLEGUM FILMS, INC., MERRO MEDIA,
5 INC., and MERRO MEDIA HOLDINGS, LLC (collectively “Defendants”) by and through their
6 attorneys of record, hereby submit this Trial Brief.

7 **I. INTRODUCTION**

8
9 Plaintiffs are twenty-two adult women who each entered into one or more written contracts
10 to star in one or more pornographic videos. Defendant BLL Media, Inc. is the San Diego operator
11 of a subscription-based website that features videos of adult men and adult women engaging in
12 formulaic sexual activity in a hotel room. BLL Media, Inc. published the videos of Plaintiffs on its
13 website girlsdoporn.com. Several of the women made a “solo” video under written contract that
14 was published on a website called www.girlsdotoys.com.

15 The written contract was a single page document called a “Model/Talent Release” which
16 each Plaintiff signed. A sample is attached to the Notice of Lodgment (“NOL”) as Exhibit “A.” It
17 repeatedly specified that the videos could be used anywhere, anyhow, for any purpose chosen by
18 the producer on behalf of the video’s owner:

19
20 ...I hereby give the photographer, his legal representative and assigns, those for
21 whom the photographer is acting, and those acting with his permission, or his
22 employees, the right and permission to copyright, and/or **use, reuse and/or**
23 **publish and republish videos, films, pictures or portraits of me . . . for any**
24 **purpose whatsoever, including the right to sub license such rights; including**
25 **the use of any printed matter in conjunction therewith.**

26 The third paragraph specified that BLL Media, Inc. could “use and reuse, publish,
27 distribute, edit, excerpt, exhibit and otherwise exploit” the plaintiff’s name, likeness,
28 performance, voice, pictures and statements, “including those of me nude or semi-nude . . . for
any and all uses . . . **throughout the world in perpetuity, without limitations, . . .**”

1 Each Plaintiff also read aloud a videotaped statement acknowledging that she gave up all
2 rights to the video and that it could be used as the producers saw fit:

3 I, [NAME], am doing this scene for BLL Media of my own free will and I am of
4 sound mind and body. I am not under the influence of drugs or any mind-altering
5 substances. I know the pictures and footage filmed today, on [DATE] will be used
6 in a scene named [FIRST NAME]. After the scene is filmed, I know I have released
7 all rights whatsoever to the footage. Anything contained in the footage may be
8 used however BLL Media chooses. All other model agreements are stated in the
9 Model Release I am willingly signing to do this scene.

10 A sample verbal statement is attached to the NOL as Exhibit “B.” Each Plaintiff was paid thousands
11 of dollars in cash before the video was filmed. An example of the receipts given by the model for
12 payment at the time of filming is attached to the NOL as Exhibit “C.”

13 Despite the written contracts, the exorbitant pay, the videotaped acknowledgment, and other
14 protocols BLL Media, Inc. followed, Plaintiffs now refute the written contract, and claim that they
15 were told that their videos would never be discovered by the public or published online. They claim
16 the parties entered into an oral agreement that their videos would be released on a DVD (in
17 Australia, population 24.6 million [per Google] versus approximately 11,000 subscribers to
18 www.girlsdoporn.com) or sold only to an individual collector. Plaintiffs also claim to have been
19 defrauded not just by the producer but by all Defendants regarding the distribution of the videos
20 without regard to any particular Defendants’ role in the production of the videos.

21 The evidence will show that the producer, BLL Media Inc., did not agree to limit
22 distribution to a single buyer or DVD release. The women were uniformly paid thousands of dollars
23 for videos that were intended for publication on the internet as permitted under the terms of the
24 Model/Talent Release. Logic dictates Plaintiffs had no basis to expect the video would languish in
25 a video store in Australia on an anachronistic DVD format but even so, that is public publication
26 of the video. In fact, in the 22 depositions of Plaintiffs, not a single woman could identify a writing
27 confirming the terms of the so-called oral agreement, despite the existence of dozens of emails and
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1 text messages back and forth.

2 As to Plaintiffs' fraud claims, each claims to have been misled about distribution **before**
3 they signed the single page Model/Talent Release whose terms permitting unfettered use of the
4 video contradict Plaintiffs' claims of limited distribution. The women would have discovered the
5 fraud upon being handed the single page contract that gave BLL Media, Inc. complete discretion
6 to use the videos any way it wished. The lack of objection at the time, versus the story they tell now
7 for trial, strongly evidences that there was no agreement regarding limited video distribution
8 between BLL Media, Inc. and any Plaintiff.

9
10 Plaintiffs also claim Defendants breached an agreement to keep their information
11 confidential by releasing their identities on the internet. Even though Defendants had no such
12 obligation (per the contract), the Defendants never released any of Plaintiffs' personal information
13 to the public. What Plaintiffs complain about are the actions of third-parties – "internet trolls" –
14 who ferreted out the names of the women on the internet. Again, in Plaintiffs' depositions, none of
15 the women had personal knowledge to support the claim Defendants released their information and,
16 in fact, Defendants have also been subjected to countless online attacks by internet trolls. The
17 evidence may very well show that one of the Jane Does was the most notorious troll who contacted
18 many women online. Beyond that, business reasons dictated that Defendants' did not "out" their
19 models on the internet.
20

21 As the Court will hear, each Plaintiff's motivation in deciding to make a pornographic video
22 was the easy money. The contemporaneous communications make that clear. Their claims as
23 couched by their attorneys are based on regret for the decisions Plaintiffs made which resulted in
24 consequences that they did not think through.
25

26 **A. The Plaintiffs Are 22 Women who were Adults When they Shot the Videos**

27 There are 22 plaintiffs who are described in a Glossary of Plaintiffs by their actual name, and
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1 the Jane Doe number by which they have been referred to since this case began in 2016, attached
2 to the NOL as Exhibit “D”. They were all over the age of 18 when they shot videos for
3 Defendant BLL Media, Inc. from 2013 to 2016.

4 **B. Introduction to Defendants**

5 Defendants are described in the Chart of Defendants attached to the NOL as Exhibit “E.”

- 6 • BLL Media, Inc. is the main operating corporation. It is owned by BLL Media,
7 Holdings Inc. Mr. Pratt operates BLL Media Inc. and is its indirect sole owner via his
8 ownership of the BLL Media Holdings.
- 9 • Defendant Ruben “Andre” Garcia is an employee of BLL Media, Inc.
- 10 • Defendant Merro Media, Inc. provided consulting services to BLL Media, Inc.
- 11 • Defendant Matthew Wolfe was employed by Merro Media, Inc.

12 When corresponding and speaking with prospective models or the public, the three
13 individual defendants used an alias to protect their privacy. Pratt went by “Mark,” Garcia went by
14 “Jonathan,” and Wolfe went by his real middle name, “Isaac.” Plaintiffs will go to great lengths to
15 show that it was improper to use aliases, but it’s not uncommon or improper.

16 The Court will hear evidence regarding several off-shore entities that Plaintiffs will
17 characterize as part of an international conspiracy. The principal entity is an unserved defendant
18 called Oh Well Media, Ltd. (“OWM”). It owns the world-wide intellectual property rights to the
19 videos that BLL Media, Inc. produces in the United States and publishes under a licensing
20 agreement. OWM was provided ownership rights to the “IP” monetized by BLL Media, Inc., in
21 consideration of the expertise, equipment and support in the startup phase of Mr. Pratt’s venture.
22 The intent and agreement of the parties was memorialized in 2016. In short, the evidence will show
23 that OWM, its predecessors and related entities were established prior to litigation for legitimate
24 business purposes.

25 **II. OVERVIEW OF EVIDENCE TO BE PRESENTED AT TRIAL**

26 There are three operative complaints for the cases that have been consolidated for trial. These
27 are Jane Does 1-14’s Second Amended Complaint, Jane Does 15-16 Complaint, and Jane Does 17-
28

1 22's Complaint (collectively, "the Complaints"). Among them, Plaintiffs allege a total of 13 causes
2 of action against all of the named Defendants.¹

3 The website www.girlsdoporn.com began operating in 2009. There are about 500 videos
4 on the website. BLL Media, Inc, has shot video of about 600 women. The website generates
5 revenues from subscribers who pay \$29.99 a month for access to all videos. A new video is added
6 each week on Friday. The videos are about an hour in length. The full-length videos are accessed
7 through girlsdoporn.com behind a paywall. Trailers of the videos are available on other websites
8 through affiliate marketers.

9 As it pertains to Plaintiffs' claims, BLL Media followed its uniform recruitment and
10 production protocols. BLL Media, Inc. posted advertisements on Craigslist for modeling jobs. From
11 the safety and comfort of their homes, schools and offices, Plaintiffs responded to the advertisement
12 expressing interest in the modeling job. BLL Media Inc. sent a response email notifying the Plaintiff
13 (and all other applicants) that BLL Media, Inc. was seeking adult women for a legitimate adult gig
14 to make an adult video in San Diego. (*See* NOL, Exhibit "F".) There was no ambiguity. Plaintiffs
15 all expressed interest in making a video after learning the video was a porn shoot, before any
16 discussions of where the videos would be distributed.

17 BLL Media, Inc. asked the women to provide clothed and nude photographs to confirm
18 suitability in terms of age and appearance and to weed out men trying to pass themselves as
19 applicants to get pictures of the male actors. Those women who met the qualifications were
20 contacted by email, text and telephone to discuss filming. If a woman wanted to be in a pornographic
21 video, BLL Media, Inc, booked a round trip flight and hotel arrangements in San Diego in her name.

22 Most videos were shot in luxury hotel rooms in San Diego. At the location, the women were
23 photographed again for final approval based on their current appearance, taking into consideration
24 blemishes or tattoos not visible on the first round of pictures. The amount of money the woman
25 would be paid was negotiated and sometimes reduced from the original offer due to creative factors
26 within the producer's discretion, such as the woman's appearance.

27 _____
28 ¹ Does 1-16 allege 12 causes of action, while Does 17-22 included an additional thirteenth cause
of action for Declaratory Relief.

1 Before shooting, the women were provided the Model/Talent Release to review and sign.
2 Some of the women were videotaped signing the Model/Talent Release which will allow the Court
3 to observe that the women were not intimidated during or rushed through the review and signing
4 process. Some women claim they were plied with alcoholic drinks. Jane Doe No. 1 claims she was
5 intoxicated when she signed the Model/Talent Release, but, as the Court will see clearly from the
6 video of her at the time, she is not impaired in any way. Defendant's expert, Mark Kalish, MD will
7 opine that none of the women who claim they were intoxicated were based on the contemporaneous
8 video.

9 In addition to the Model/Talent Release, many of the women also signed a confidentiality
10 and non-disclosure contractor agreement. A sample is attached to the NOL as Exhibit "G". As noted
11 above, the women were paid in cash the full agreed upon amount before filming began, and they
12 issued BLL Media, Inc. or the producer a receipt for payment.

13 Finally, to ensure that there was irrefutable evidence in the event of a later dispute that the
14 adult women were agreeing to shoot a pornographic video and give up all rights to the footage, they
15 were then filmed reading aloud the afore-quoted statement confirming their understanding of the
16 Model/Talent Agreement.

17 Once the formalities were completed, the woman and the male actor(s) were filmed engaging
18 in a series of proscribed sexual positions. The women were interviewed on camera at several points
19 along the way during filming. Once filming was completed, the women were free to bathe, leave,
20 and return home on the pre-booked flight from San Diego airport.

21 No plaintiff was forced to engage in sex, was held against her will, or went unpaid. The
22 shoots were conducted professionally. Women were not provided alcohol or drugs for the simple
23 reason that it would make the footage filmed unusable.

24 An edited video was released on www.girlsdoporn.com within weeks or months of shooting
25 in the discretion of BLL Media, Inc. The women's names were not used or associated with the video
26 on www.girlsdoporn.com. Each video was simply given a sequential number. BLL Media, Inc.
27 never used the women's real identities online.
28

1 It is not disputed that the women’s videos were discussed online. It is not disputed that some
2 women’s real names were posted by third parties, but that information never came from Defendants.
3 The Court can expect tearful testimony about harassment, and fear of being discovered while in
4 public. Most of the “harassment” consisted of rude messages directed to the women’s Facebook or
5 Instagram accounts. Not a single Plaintiff has personal knowledge of any facts for their accusations
6 that Defendants were behind any “harassment” as that was simply not the case.

7 Plaintiffs will engage in endless mud-slinging and morality plays. The bottom line, however,
8 is that this is a case brought by adult women who contracted to do business with a legitimate
9 pornography business. They ask the Court to disbelieve what it can see with the Court’s own eyes
10 when viewing the contemporaneous videos

11 **III. TRIAL ISSUES RELATING TO PLAINTIFFS’ CLAIMS**

12 Plaintiffs’ primary claim is that Defendants breached an oral agreement to limit distribution
13 of the videos. While Defendants deny that there ever was an oral agreement, it would have been
14 superseded by the Model/Talent Release and Confidentiality Agreements that Plaintiffs willingly
15 signed.

16 As to the fraud claims, the Model/Talent Release was provided after Defendants made the
17 allegedly false statements regarding distribution. As the Court is likely aware, as adults Plaintiffs
18 had a duty to read the contract and they are presumed now to have read and understood it at the time
19 of signing. It contained terms that directly contradicted the alleged misstatements. Those terms
20 were straightforward, not concealed, and not difficult to understand. Plaintiffs’ failure to read the
21 contract does not excuse its enforcement.

22 Plaintiffs also claim that if the Plaintiffs’ consent was obtained by fraud, that Defendants
23 mere use of their images amounts to actionable statutory and common law misappropriation of
24 likeness. Clearly Plaintiffs agreed that BLL Media, Inc. could use their images, and even they admit
25 the images could be used publicly. The Model/Talent Release each Plaintiff signed also says so
26 expressly. Plaintiffs claim that the alleged misappropriation entitles them to damages consisting of
27 Defendants’ profits from the use of their images despite the incontrovertible contract terms. Whether
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1 there were any profits is disputed. In any event, the economic damages will be the subject of
2 testimony by expert witnesses on both sides, with Tony Yip testifying on Defendants' behalf.

3 **IV. LEGAL ISSUES IN DISPUTE**

4 **A. Individual Defendants Have No Liability for Claims**

5 Plaintiffs have named Garcia, Pratt and Wolfe ("Individual Defendants") in causes of action
6 for which they cannot be liable, namely, namely, common law misappropriation of likeness,
7 statutory misappropriation of likeness, and breach of contract. Neither Garcia, Wolfe, or Pratt ever;
8 (1) personally distributed Plaintiffs' pornographic videos, or (2) entered into any contracts with
9 Plaintiffs. Furthermore, they are not alter egos of the entity defendants.

10 **B. The Individual Defendants Have No Alter Ego Liability**

11 **1. Andre Garcia**

12 The evidence will show Garcia has never had an ownership interest in any named entity
13 defendant. Nor has he ever held a director, officer, or member position for any named entity
14 defendant. Garcia has been a salaried employee of BLL Media, Inc. since May 2015. Plaintiffs will
15 present no evidence that Garcia has ever owned, operated, or controlled any website displaying
16 pornography, including the websites listed in The Complaints. There will be no evidence that Garcia
17 shares a bank account with any other defendant, and no evidence that a corporate defendant has ever
18 deposited money into Garcia's bank account to shield its income. There will be no evidence that
19 Garcia has ever held himself out as being liable for the debts of any of the other named defendants.

20 **2. Matthew Wolfe**

21 The evidence will show Wolfe has never owned, operated, or controlled
22 www.girlsdoporn.com, or posted content thereon. The only named defendants in which Wolfe has
23 an indirect ownership interest are Merro Media, Inc., Merro Media Holdings, LLC, and M1M
24 Media, Inc. Wolfe is also not an officer, director, member, or employee of any entity defendants
25 other than Merro Media, Inc., Merro Media Holdings, LLC, and M1M Media, Inc. Merro Media,
26 Inc., Merro Media Holdings, LLC, and M1M Media, Inc. each 1) has its own separate bank account,
27 2) maintains its own corporate formalities, 3) is adequately capitalized, and has sufficient capital to
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1 pay all reasonably anticipated expenses, and 4) is not a mere shell entity for the affairs of each other
2 or any other named defendant.

3 Moreover, Wolfe maintains his own separate personal bank account that is not shared with
4 any named defendant. None of the named defendants deposit money into Wolfe's bank account to
5 shield their income, and Wolfe has never held himself out as liable for the debts of any other
6 defendant.

7 **3. Michael Pratt**

8 Pratt has an indirect ownership interest in 1) BLL Media, Inc., which owns, operates, and
9 controls www.girlsdoporn.com, a website on which Plaintiffs allege their videos were published, 2)
10 M1M Media, Inc., which owns, operates, and controls www.girlsdotoys.com, another website on
11 which certain Plaintiffs allege their videos were published and 3) Domi Publications, on which none
12 of Plaintiffs' videos were posted. Each entity defendant in which Pratt has ownership interest (1)
13 has its own separate bank account, (2) maintains its own corporate formalities, (3) is adequately
14 capitalized, and has sufficient capital to pay all reasonably anticipated expenses, and (4) is not a
15 mere shell entity for the affairs of each other or for any other named defendant. Pratt also maintains
16 his own separate personal bank account in which no other defendant deposits money to shield its
17 income. Moreover, Pratt has never held himself out as liable for the debts of any other named
18 defendant.

19
20 **C. Plaintiffs' Claims Against the Individual Defendants for Common Law and
21 Statutory Misappropriation of Likeness and Breach of Contract Fail**

22 **1. Misappropriation of Name & Likeness (Common Law)**

23 The elements of a common-law action for Misappropriation of Likeness are the
24 unauthorized use of the Plaintiff's identity to the defendant's advantage by appropriating the
25 plaintiff's name, voice, likeness, etc. *Kirby v. Sega of America, Inc* (2006) 144 Cal.App.4th 47,
26 55-56.

27 **2. Misappropriation of Name & Likeness (Civ. Code §3344)**

28 California Civil Code §3344 states:

1 (a) Any person who knowingly uses another's name, voice,
2 signature, photograph, or likeness, in any manner, on or in products,
3 merchandise, or goods, or for purposes of advertising or selling, or
4 soliciting purchases of products, merchandise, goods or
services, without such person's prior consent shall be liable for any
damages sustained by the person or persons injured as a result
thereof.

5 The evidence will show Garcia, Wolfe, and Pratt have never knowingly used the name,
6 voice, signature, photograph, or likeness of any of the Plaintiffs in their individual capacities for
7 any purpose. As such, this claim will be subject to a directed verdict upon the close of Plaintiffs'
8 evidence.

9 **3. Breach of Contract**

10 The elements of a breach of contract claim are (1) the existence of a contract; (2) Plaintiff's
11 performance or excuse for nonperformance; (3) defendant's breach; and (4) resulting damages.
12 Here, neither Garcia, Wolfe, or Pratt ever entered into any contract with Plaintiffs. Therefore,
13 Garcia, Wolfe, and Pratt could not have breached any contract resulting in damage to Plaintiffs.

14 Garcia, Wolfe, and Pratt are not the alter egos of any named entity defendants and are
15 therefore not liable to Plaintiffs for their causes of action for common law misappropriation,
16 statutory misappropriation, or breach of contract.

17 Moreover, the Individual Defendants have never (1) distributed Plaintiffs' videos, (2)
18 knowingly used Plaintiffs' videos for any commercial purpose, or, (3) received any monies or other
19 commercial benefit from Plaintiffs' pornographic videos. Only two of the entity defendants have
20 posted Plaintiffs' videos on the internet, namely BLL Media, Inc. on www.girlsdoporn.com, and
21 M1M Media, Inc. on www.girlsdotoys.com.²

22
23 **D. Jane Doe Nos. 4, 9, 16, 17, and 21's Claims for Misappropriation of Name &
24 Likeness Are Barred By the Statute of Limitations**

25 Jane Does Nos. 4, 9, 16, 17, and 21's claims for common law misappropriation are barred
26 by the two-year statute of limitations. See Code Civ. Proc. § 335.1. Additionally, Jane Does Nos.

27 _____
28 ² M1M Media, Inc. has only published videos of Does Nos. 1, 2, 5, 9, 12, 14, and 22 on
www.girlsdotoys.com.

1 4, 9, 16, 17, and 21’s claims for statutory misappropriation are barred by the two-year statute of
2 limitations. See Code Civ. Proc. § 335.1.

3 The statute of limitations begins to run once the cause of action accrues, which is usually
4 when the plaintiff sustains damages or injury. *Norgart v. Upjohn Co.* (1999) 21 Cal.App.4th 383,
5 397. While a statute of limitations does not accrue until discovery by a Plaintiff, the evidence will
6 show that Jane Does Nos. 4, 9, 16, 17, and 21 learned of their video’s release on GirlsDoPorn.com
7 more than two years prior to filing of their Complaints.

8 The video release dates, date of discovery, statutes of limitations expiration dates, and
9 complaint filing dates for Does Nos. 4, 9, 16, 17, and 21 are listed below.

10

<u>PLAINTIFF</u>	<u>RELEASE DATE</u>	<u>DISCOVERY DATE (according to Plaintiffs)</u>	<u>FILING DATE</u>	<u>S.O.L. EXPIRATION</u>
Doe No. 4	October 26, 2013	June 2013	June 2, 2016	June 2015
Doe No. 9	June 8, 2014	June 2014	December 14, 2016	June 2016
Doe No. 16	February 20, 2015	March 2015	September 7, 2017	March 2017
Doe No. 17	October 2, 2015	October 2015	November 8, 2017	October 2017
Doe No. 21	June 19, 2015	June 2015	November 8, 2017	June 2017

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Even based on the date each Plaintiff claims to have first discovered the publication of her video online, the statute of limitations bars each of the misappropriation claims. Thus, Jane Does Nos. 4, 9, 16, 17, and 21’s fifth and sixth causes of action are subject to a directed verdict upon the close of Plaintiff’s evidence.

23 **E. Plaintiffs’ Claims for Fraudulent Transfer Will Fail**

24 Plaintiffs’ claims for fraudulent transfer fail because the evidence will show Plaintiffs
25 cannot establish any actual transfer of an asset or that they suffered actual injury as a result of the
26 alleged transfer, which is an essential element.

27 “A transfer in fraud of creditors may be attacked only by one who is injured thereby.
28

1 Mere intent to delay or defraud is not sufficient; injury to the creditor must be shown
2 affirmatively. In other words, prejudice to the plaintiff is essential. It cannot be said
3 that a creditor has been injured unless the transfer puts beyond [her] reach property
4 [she] otherwise would be able to subject to the payment of [her] debt.”

5 (*Mehrtash v. Mehrdash* (2001) 93 Cal.App.4th 75, 80 [citations omitted].)

6 Plaintiffs’ only alleged harm is that they have not received compensation for their claims in this
7 action. (SAC at ¶ 228.) Quite obviously they have not and likely will not prevail on their claims.
8 Thus, Defendants’ alleged conduct could not be a substantial factor in causing Plaintiffs’ alleged
9 harm. (See SAC at ¶ 229.) Defendants will ask that the claims be dismissed either after Plaintiffs’
10 Opening or close of their evidence.

11 **F. Plaintiffs Have Not Sustained Any Economic Injury**

12 Plaintiff were paid at the time they shot the video in an amount agreed upon before shooting
13 commenced. Under the terms of the Model/Talent Release that each signed, they have no right to
14 further payment for any use of their images in any manner, anywhere. The Model/Talent Release
15 states in pertinent parts:

16 For and in consideration of my engagement as a model by Clockwork Productions, Inc. on
17 behalf of BLL Media, Inc. hereinafter referred to as the photographer, on terms or fee
18 hereinafter stated, I hereby give the photographer, his legal representatives and assigns and
19 those for whom the photographer is acting, and those acting with his permission, or his
20 employees, the right and permission to copyright and/or use, reuse”.

21 I acknowledge and agree that this release shall not be subject to the terms
22 of any union or guild agreement and that no further sums will be due to me in
23 the connection with the use or reuse of my Appearance, the Program or any
24 other program in television or any other medium.

25 You shall also have the right and I shall fully cooperate with you to let
26 you produce, distribute, and otherwise exploit trailers and “behind-the-
27 scenes” or “making of” program incorporating my Appearance.

28 Plaintiffs will have to overcome the presumption of the validity of the written contract signed by
all Plaintiffs to show any entitlement to further economic damages. If they are able to establish
that the written contract should be invalidated, they must then present evidence of the value of their
images as used by BLL Media, Inc., beyond the thousands of dollars each was already paid.

1 Based on the testimony of Plaintiffs' retained expert witness, Plaintiffs damages are
2 speculative. Plaintiffs' expert will admit that there is no precise way for any Plaintiff to calculate
3 revenue from a single Plaintiffs' video. Instead, Plaintiffs' expert estimated the revenues equaled
4 the amount of revenues for the week the video was posted. Plaintiffs' expert found that the total
5 amount of damages for all Plaintiffs combined was \$1,317,198.00. Defendants' expert, Tony Yip
6 will testify that Plaintiffs' total damages are \$987,962.00.

7 As for the emotional distress allegations, Plaintiffs dismissed their claim for intentional
8 infliction of emotional distress, leaving simple garden variety damages to be evaluated at best.
9 Plaintiffs have uniformly claimed at least \$500,000.00 per Plaintiff without any sort of specific
10 calculation for these damages. No Plaintiff could explain in deposition how that number was
11 reached. The evidence will show some Plaintiffs have not sought mental health treatment while
12 others sought mental health treatment and medication for other traumas separate and apart from the
13 distribution of their videos, including, but not limited to, childhood trauma and abuse, and drug and
14 alcohol abuse.

15 Thus, based on each Plaintiffs' individual circumstances and proclaimed harm suffered as
16 a result of Defendants' alleged actions, Plaintiffs will have to establish that each Plaintiff sustained
17 damages and the Court will have to determine the amount to award each Plaintiff. A lump sum
18 award would be improper.

19 **G. Garcia Will Plead the Fifth Amendment If Called as a Witness**

20 The Court should anticipate that Mr. Garcia will not testify because he will assert the Fifth
21 Amendment. Under the circumstances which are of Plaintiffs' counsel's creation, Mr. Garcia has
22 no choice but to assert the privilege. As addressed in Defendants' Opposition to Plaintiffs' Motion
23 in Limine No. 1, Plaintiffs' counsel literally threatened Mr. Garcia with the risk of criminal
24 jeopardy unless he waived his right to attend a party deposition. (See Opposition to Plaintiffs'
25 Motion in Limine No. 3, page 3, lines 13-22). The Court should consider staying the case as to Mr.
26 Garcia until he is no longer under risk of criminal prosecution to allow him a fair opportunity to
27 participate in his own defense at trial.
28

1 **V. PLAINTIFFS HAVE SOUGHT A PUBLIC TRIAL, WERE TOLD THE TRIAL**
2 **WOULD BE PUBLIC, AND HAVE GENERATED PUBLICITY TO DRAW**
3 **ATTENTION TO THEIR CASE IN THE MEDIA**

4 Plaintiffs complain about the risk of embarrassment based on the type of questions that may
5 be posed to them on cross examination. The Court can obviously control what questions can be
6 answered, but Plaintiffs’ implicit suggestion that the Court should limit the questions posed is
7 inimical to the purposes of trial. Plaintiffs chose a public trial.

8 Further, on March 17, 2017, Judge Pollack ordered that the Doe identities of Plaintiffs who
9 have not been dismissed are to “be unmasked or unsealed by the Court not prior to the first day of
10 trial.” (See NOL, Exhibit “H”.) Plaintiffs thus cannot feign surprise when their identities are
11 released on or before their day in court.

12 Finally, the Court should note that Plaintiffs’ counsel, including Ed Chapin and Brian Holm,
13 but not Defendants’ counsel, have appeared in filmed interviews with at least one local news
14 station. The footage is still viewable at [https://www.nbcsandiego.com/investigations/San-Diego-](https://www.nbcsandiego.com/investigations/San-Diego-Porn-Scheme-Heads-to-Court-507228581.html)
15 [Porn-Scheme-Heads-to-Court-507228581.html](https://www.nbcsandiego.com/investigations/San-Diego-Porn-Scheme-Heads-to-Court-507228581.html) Plaintiffs’ counsel has intentionally generated
16 publicity about the case and the trial and now have the chutzpah to complain that Defendants are
17 going to embarrass Plaintiffs. If Plaintiffs are embarrassed when the interested public and media
18 attend the trial, they can blame their own attorneys.

19 **VI. CONCLUSION**

20 In sum, Plaintiffs are plagued by legal and factual issues, and they will not be able to meet
21 their burden for their claims given that they willingly and knowingly assented to appear in
22 pornography videos which could be used by BLL Media Inc. in any manner it desired.
23 Ultimately, each Plaintiffs’ case is about regret in agreeing to film pornography videos for money
24 and the clear and foreseeable consequences that followed.

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Dated: June 20, 2019

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