

IN THE SECOND CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

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RICHARD R. ROOKER, CLERK

*[Signature]* D.C.

Case No.: 15C2403

JASON CROSS a/k/a MIKEL KNIGHT, an individual, )  
AND 1203 ENTERTAINMENT, LLC, )

Plaintiffs, )

v. )

FACEBOOK, INC., )

AND JOHN AND/OR JANE DOES 1-10, being an individual or individual(s) who act as administrators of the Facebook page "Families Against Mikel Knight and the MDRST" (later "Public Awareness of Mikel Knight and The Maverick Dirt Road Street Team")—on which statements inciting violence and false and defamatory statements were made—and whose identity is unknown to the Plaintiff at this time but who will be added by amendment when ascertained. )

Defendants. )

VERIFIED FIRST AMENDED COMPLAINT

COMES NOW, Plaintiffs Jason Cross a/k/a Mikel Knight (hereinafter, "Knight") and 1203 Entertainment, LLC (hereinafter, "1203 Entertainment"), by and through undersigned counsel, and for cause of action against the Defendants Facebook, Inc. (hereinafter, "Facebook") and John and/or Jane Does 1–10 (hereinafter, "Defendant Does"), would state as follows:

PARTIES

1. Plaintiff Knight is an individual, *sui juris*, and is a citizen and resident of Mt. Juliet, Wilson County, Tennessee.
2. Plaintiff 1203 Entertainment is a Tennessee limited liability company (SOS Control No. 000743543) with its principal place of business at 14919 Lebanon Road, Suite B, Old Hickory, Davidson County, Tennessee 37138-1819.

3. Plaintiff 1203 Entertainment is in the business of managing and promoting various artists, including Knight.
4. Defendant Facebook is a corporation formed under the laws of the State of Delaware with its principle place of business at 1601 Willow Road, Menlo Park, San Mateo County, California. Upon information and belief, Facebook's registered agent is Corporation Services Company, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.
5. Defendant Does are more than one unknown individual(s), organization(s), business(es), and/or entity or entities of unknown form that created, authored, organized, operated, and/or managed the Facebook page "Families Against Mikel Knight and the MDRST," which was available at <https://www.facebook.com/pages/Families-Against-Mikel-Knight-and-the-MDRST/1533971343525187>, and the same page, subsequently renamed "Public Awareness of Mikel Knight and The Maverick Dirt Road Street Team," which was available at <https://www.facebook.com/pages/Public-Awareness-of-Mikel-Knight-and-The-Maverick-Dirt-Road-Street-Team/1533971343525187> (both pages hereinafter referred to as the "Facebook page"). The identities and residences of Defendant Does are unknown to Plaintiffs. The identities of the Defendant Does will be added to the Complaint by Plaintiffs upon Plaintiffs' obtainment thereof.

- (a) In support of Plaintiffs' belief that there are multiple administrators of the Facebook page, Plaintiffs submit the following communication on the Facebook page: "Our names?" (response of administrators of the Facebook page on June 22, 2015 at 6:47 PM to a post on the Facebook page made by Facebook user, Dixie Rebel Mccullars [sic], asking, "Hey who ever is running this thing about mikel

what's your name??"). (See attached **Consolidated Exhibit A** for a copy of statements made on the Facebook page).

### **JURISDICTION AND VENUE**

6. Jurisdiction and venue are proper pursuant to Tennessee Code Annotated § 20-2-223(3) and Tennessee Code Annotated § 20-4-101(a) respectively, as the Defendants are causing tortious injury to the Plaintiffs by publishing and/or knowingly permitting others to publish statements that are libelous and/or incite violence on the Internet and which is also available for view in Tennessee, thereby giving rise to causes of action for negligence, libel, false light invasion of privacy, civil conspiracy, negligent infliction of emotional distress, and/or intentional infliction of emotional distress.

### **STATEMENT OF FACTS**

7. This matter was precipitated by two automobile accidents; the first occurring on or about June 9, 2014, in Daggett County, Utah and the second on or about June 16, 2014, in Donley County, Texas (hereinafter, the "accidents").
8. It is alleged that individuals working in furtherance of Plaintiffs' business interests were injured in both accidents.
9. Shortly after the accidents occurred, the Facebook page directly at issue in this matter was created. This Facebook page has been available for public view at <https://www.facebook.com/pages/Families-Against-Mikel-Knight-and-the-MDRST/1533971343525187>.
10. Upon reason and belief, at least one of the creators/administrators of the Facebook page was a relative of the individuals injured/deceased in the accidents.

11. Statements made by Defendant Does to incite violence against Plaintiffs, representatives, and agents thereof immediately began to appear on the page. (See attached **Consolidated Exhibit A** for copies of these statements).

12. Examples of these statements include, but are not limited to, the following:

- (a) "This Guy [Knight] Needs to be Took [sic] Out[.]" (Jamie Rhodes, June 29, 2015)
- (b) "Someone needs to give him [Knight] a [sic] old fashion <expletive deleted> whipping." (Kimber Anderson, June 27, 2015)
- (c) "[Y]ou and your crews better stay out of Henderson county Tx dope head[.]" (John Denver Long, June 24, 2015)
- (d) "I live in NC and I'm telling you, if these guys came this way....They would be Done." (Anna Bray, June 24, 2015)
- (e) "This will all come back around to bite jason HARD in the <expletive deleted> one day and I don't want to be there when it does, it will be an ugly sight." (Lea Fisher-Lane, June 23, 2015)
- (f) "[T]his guy [Mikel Knight] needs to be shot[.]" (Braxton Wolfe, reposted by Defendant Does on June 23, 2015)
- (g) "What's your lanky <expletive deleted> gonna do other than get beat up?" (Jeremy Sanner, June 22, 2015, in response to a statement made by a MDRST member)
- (h) "Maybe you know the group of boys that came around here in a mdrst van and got their <expletive deleted> kicked then[.]" (Jeremy Sanner, June 22, 2015, in response to a comment made by Jessica McBride, who claimed to be the girlfriend of a MDRST member)

- (i) “John cross .Jason cross whatever he's a punk cowboy wanna be.who needs to be put in his place.but he's a scared little <expletive deleted> who won't come out of the bus he has his pic plastered all over it.when they came to neosho mo.a couple of his boy wanted to fight at Casey's so I obliged them.one of me and ten of them but no mikel night they ran like scared rabbits when the cops came to escort them out of town .come on back y'all and bring mikel with you and koolwhip or donut or whatever your dumb <expletive deleted> names are .this the show me state <expletive deleted> we will be waiting[.]” (John Reed, June 20, 2015)
- (j) “He [Knight] needs to be kicked in the midsection HARD[.]” (Daren Lucas, June 20, 2015)
- (k) “I hope this man goes to jail soon or that these mom's against him just start looting and burning his trucks down[.]” (Sara Jane Sheedy, June 19, 2015)
- (l) “In North West Arkansas we should start a “Woop MK <expletive deleted> Street Team[.]”” (Michael Rowe, June 19, 2015)
- (m) “Yea this guy [Knight] is trash. I worked for him I wish I woulda just ran his <expletive deleted> over.” (JT Nicholson, June 19, 2015)
- (n) “He's [Mikel Knight] just a <expletive deleted> that hides behind his crew. I'd go toe to toe with him any day.” (Brandon Parks, June 3, 2015)
- (o) “He [Mikel Knight] threatens the boys and there [sic] family's [sic] so they are scared. I'd like to meet him and show him how a real man whoops <expletive deleted>[.]” (Kevin W Miller, June 3, 2015)
- (p) “We are doing our best to keep up with his vans and keep them ran out of Arkansas!” (Rick NMichelle [sic] Edwards, June 2, 2015)

- (q) “Just run them out of the country[.]” (Ken Chaplin, June 2, 2015)
- (r) “He sounds like an inbred. Someone needs to teach him a few lessons.” (Angie Lytle Bussard, May 29, 2015)
- (s) “That’s what I am thinking y [sic] don’t someone just give them a good <expletive deleted> kicking[.]” (Tim Hoard, May 21, 2015)

13. Statements made by Defendant Does on the Facebook page that are defamatory and/or constitute a false light invasion of Plaintiffs’ privacy (but do not directly call for violence) include, but are not limited to, the following:

- (a) “Taking people across state lines and working them over 90 hours a week and then abusing them leaving them stranded 100s of miles away from their homes is Human trafficking. Another form.” (June 23, 2015)
- (b) “Rebelrow [a music website] helping Mikel Knight with his inhumane slave operation?” (May 27, 2015)
- (c) “We need to share in different towns and areas to inform the real tax [sic] working Americans about the Mikel Knight brutal scam.” (May 23, 2015)
- (d) “Mikel Knight is all over the place with lies to cover up his scam.” (May 22, 2015)
- (e) “Wow. We are at a loss for words. Mikel Knight is now looking for random charities to use for selling his CDs so they can keep on scamming to say anything for a sale.” (May 22, 2015)
- (f) “If Safe Haven supports Mikel Knight we should hold them accountable for the blood money he makes off these young kids. If they really supported Mikel Knight they should use the money he donates to them to pay for the young kids

hospital bills and burial cost of the lives that were lost slaving for Mikel Knight.

Donate money to the kids that have fallen due to Mikel Knights [sic] peddling

Slave shop and using Safe Haven for pity sales.” (May 12, 2015)

14. Due to statements on Facebook that incite violence, are defamatory, and/or constitute a false light invasion of Plaintiffs’ privacy, members of Plaintiffs’ business have been assaulted and threatened while traveling across the country to sell compact discs and merchandise related to Knight.
15. The violence perpetuated against members of Plaintiffs’ business has been directly linked on several occasions to statements made on the Facebook page. Furthermore, law enforcement has acted on the accusations and “tips” posted on the page with such frequency that it has caused Plaintiffs’ vehicles to be repeatedly stopped, searched, and delayed or prevented from making sales.
16. In affidavits submitted to this Court, members of Plaintiffs’ business made statements describing their experiences with individuals who read and/or contributed to the Facebook page. Below are summaries of their experiences:
  - (a) On or around June 22, 2015, one MDRST crew member was in a tour bus that was rocked back and forth by a mob in a parking lot when the MDRST crew was attempting to rest for the night. The mob yelled at the MDRST crew members to get out of town, asked if they wanted to fight, and said they [the people in the mob] knew that the MDRST was “doing stuff to kids” based on what they read on Facebook. (See Exhibit A of Notice of Filing Affidavits in Support of Plaintiffs’ Emergency Ex Parte Motion for Temporary Injunction (hereinafter, “Notice of Filing Affidavits”), filed on July 8, 2015).

(b) On or around June 25, 2015, another MDRST member was accosted at a gas station by three trucks full of men that yelled at him and other MDRST crew members to get out of town within ten minutes, calling the crew members "human traffickers" based on what they [the men in the trucks] read on Facebook. One of the drivers informed the MDRST crew members that he had a pistol on his lap. When the MDRST crew members left the gas station, the trucks followed and continued to harass the MDRST crew members. (See Exhibit B of Notice of Filing Affidavits).

(c) In or around April of 2015, a MDRST crew member was confronted by a man in a gas station parking lot who called the MDRST crew members present "kidnappers and human sex traffickers," representing that he received such information from Facebook. The man attempted to initiate a physical altercation with the MDRST crew member. (See Exhibit C of Notice of Filing Affidavits).

17. In order to protect the lives of Plaintiffs' associates, and to stem the ongoing business loss to Knight and 1203 Entertainment, Plaintiffs sent a cease and desist letter to Facebook by certified mail on June 5, 2015, listing false and/or defamatory statements published on the Facebook page by the Does and demanding Facebook remove the Facebook page from Facebook servers. The letter was delivered to Facebook on June 9, 2015. (See attached **Exhibit B** for a copy of the cease and desist letter).

(a) On June 5, 2015, Plaintiffs also contacted Pinterest, an interactive computer service (like Facebook), regarding content similar to the content that is the subject matter of this litigation, and Pinterest removed such content on June 24, 2015. Additionally, Plaintiffs alerted Pinterest on August 4, 2015, that similar content was being posted to Pinterest again, and Pinterest removed content on August 11, 2015.



(See attached **Consolidated Exhibit C** for a copy of the correspondence between Pinterest and Plaintiffs' Counsel).

18. Due to Facebook's lack of communication with Plaintiffs regarding the cease and desist letter, Plaintiffs filed a Petition for Pre-Litigation Discovery (hereinafter, the "Petition") in this Court on June 22, 2015.
19. In the Petition, Knight and 1203 Entertainment requested from the Court an Order allowing Plaintiffs to obtain the personal information of Defendant Does (the administrators of the Facebook page) so Defendant Does could be sued for publishing and republishing content—and fostering a culture in which others would post content—that incites violence against Plaintiffs, representatives, and agents thereof, defames Plaintiffs, and/or constitutes a false light invasion of Plaintiffs' privacy.
20. Defendant Does intentionally utilized Facebook security and/or privacy tools to shield their identities from non-administrators of the Facebook page.
21. Plaintiffs contacted Facebook by email on June 30, 2015, and Facebook responded on the same day. An individual named "Marvin," who identified himself as part of Facebook's Intellectual Property Operations, stated that Facebook was not responsible for the content of the Facebook page that Plaintiffs "appear[ed] to be claiming . . . is defamatory." Marvin also stated, "If [Plaintiffs] believe there is another basis for [Plaintiffs] to allege that this content [the Facebook page] is unlawful or otherwise violates or infringes on [the Plaintiffs'] rights . . . [Plaintiffs should] provide further information." (See attached **Consolidated Exhibit D** for a copy of the email correspondence between Facebook and Plaintiffs' Counsel).

22. Plaintiffs responded to Marvin on July 7, 2015, informing Marvin that the content of the Facebook page “[n]ot only is . . . defamatory, but . . . has risen to a level of inciting violence.” In the same email, Plaintiffs sent copies of affidavits providing examples of how the Facebook page put Knight and MDRST crew members at risk of physical harm, thereby placing Facebook on notice that, if the Facebook page was not voluntarily removed from public access by Facebook, Plaintiffs would seek an Emergency Ex Parte Injunction to have it removed. (See attached **Consolidated Exhibit D** for a copy of the email correspondence between Facebook and Plaintiffs’ Counsel).

23. The Plaintiffs then cited various Facebook policies that Facebook itself was not following by allowing the Facebook page to remain active.

(a) The relevant Facebook policies and/or statements at issue here include, but are not limited to, the following:

- i. *“Moreover, **the duty** upon interactive computer services to exercise reasonable care in the form of removing from their platforms any user content that incites violence of which the service is made aware or of which the service otherwise has knowledge is supported by Facebook’s own policies regarding the posting of content that incites violence.”* Marne Levine (Facebook Vice President of Global Public Policy), Facebook Safety Message: “Controversial, Harmful and Hateful Speech on Facebook,” Facebook, Inc. (May 28, 2013, at 3:51 PM), <https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054> (emphasis added).

- ii. “We carefully review reports of threatening language to identify serious threats of harm to public and personal safety. We remove credible threats of physical harm to individuals.” Facebook Community Standard – “Direct Threats: How we help people who feel threatened by others on Facebook,” Facebook, Inc., <https://www.facebook.com/communitystandards#>.
- iii. “[W]e want to take this opportunity to explain our philosophy and policies regarding controversial or harmful content, including hate speech, and to explain some of the steps we are taking to reduce the proliferation of content that could create an unsafe environment for users . . . . *We prohibit content deemed to be directly harmful*, but allow content that is offensive or controversial. *We define harmful content as anything organizing real world violence*, theft, or property destruction, or that directly inflicts emotional distress on a specific private individual (e.g. bullying) . . . . We will increase the accountability of the creators of content that does not qualify as actionable hate speech but is cruel or insensitive by insisting that the authors stand behind the content they create. A few months ago we began testing a new requirement that the creator of any content containing cruel and insensitive humor include *his or her authentic identity* for the content to remain on Facebook. As a result, if an individual decides to publicly share cruel and insensitive content, users can hold the author accountable and directly object to the content. We will continue to develop this policy based on the results so far, which indicate that it is helping create a better environment for Facebook users.” Marne Levine (Facebook Vice President of Global Public Policy),

Facebook Safety Message: “Controversial, Harmful and Hateful Speech on Facebook,” Facebook, Inc. (May 28, 2013, at 3:51 PM), <https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054> (emphasis added). “You will not bully, intimidate, or harass any user.” Facebook Statement of Rights and Responsibilities, Facebook, Inc., <https://www.facebook.com/legal/terms> ).

- iv. “You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.” Facebook Statement of Rights and Responsibilities, Facebook, Inc., <https://www.facebook.com/legal/terms>.

24. On July 8, 2015, Plaintiffs received an email from “Robin,” who also identified herself as a member of the Facebook Intellectual Property Operations. Robin stated that “the content [the Facebook page] has already been removed from Facebook.” (See attached **Consolidated Exhibit D** for a copy of the email correspondence between Facebook and Plaintiffs’ Counsel).
25. Between July 9, 2015, and July 10, 2015, Facebook made the Facebook page once again available for public access.
26. Thereafter, Plaintiffs alerted Facebook that they had reason to believe Defendant Does were using other Facebook pages including “Jason cross aka mikel knight” to post content. Plaintiffs requested—as they had before in the Petition—that Facebook remove any defamatory content related to Knight and that Facebook provide Plaintiffs with the names of Defendant Does. Plaintiffs also requested someone from Facebook’s legal department contact Plaintiffs and stated, “If we [Plaintiffs] don’t get some immediate relief from this

harassment we may have no choice but to pursue litigation against Facebook directly, something we have been trying to avoid.” (See attached **Consolidated Exhibit D** for a copy of the email correspondence between Facebook and Plaintiffs’ Counsel).

27. On July 15, 2015, Plaintiffs received a message from “Ivy,” who also identified herself as a member of the Facebook Intellectual Property Operations. Ivy stated, “[W]e [members of Facebook Intellectual Property Operations] work closely with [Facebook’s] Legal department, which has reviewed the matter.” Ivy then told Plaintiffs that Facebook was not responsible for the reported content and that Plaintiffs could seek recourse against the party or parties who published such content. (See attached **Consolidated Exhibit D** for a copy of the email correspondence between Facebook and Plaintiffs’ Counsel).

28. Plaintiffs responded to Facebook on the same day stating that Facebook is, “at best, facilitating the tortious conduct of these individuals and placing people’s health and safety at risk in the process.” Plaintiffs also made it clear that Facebook would be held “responsible for any damage to person or property in the interim.” (See attached **Consolidated Exhibit D** for a copy of the email correspondence between Facebook and Plaintiffs’ Counsel).

29. On July 21, 2015, Plaintiffs filed a subpoena with this Court for disclosure of the identities and residences of administrators of various Facebook pages related to the subject matter of this litigation. In order to properly serve the subpoena on Facebook, Plaintiffs were required by California law to send the subpoena to the Superior Court of Sacramento for approval and conversion into a subpoena recognized by California courts.

30. Plaintiffs have not yet received a California subpoena from such court for Plaintiffs to issue by personal service to Facebook.

**CAUSES OF ACTION**

**COUNT I**

**NEGLIGENCE**

**(against Facebook)**

31. Plaintiffs incorporate Paragraphs 1 through 30 above as if each has been fully restated herein.

32. Tennessee recognizes the tort of negligence. Parker v. Holiday Hospitality Franchising, Inc. 446 S.W.3d 341, n.7 (Tenn. 2014) (internal citations omitted). When bringing a claim for negligence, a plaintiff must establish the following five elements:

- (a) Duty;
- (b) Breach of duty;
- (c) Injury or loss;
- (d) Causation in fact; and
- (e) Proximate cause. Id.

33. Duty is a legal obligation owed by a defendant to a plaintiff that requires the defendant to conform to a reasonable person standard of care in order to protect against unreasonable risks of harm. Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 89 (Tenn. 2000). A risk is “unreasonable and gives rise to a duty to act with due care if the foreseeable probability and gravity of harm posed by defendant’s conduct outweighs the burden upon defendant to engage in alternative conduct that would have prevented the harm.” Id. (citing McCall v. Wider, 913 S.W.2d 150, 153 (Tenn. 1995)).

34. Interactive computer services have a duty to exercise reasonable care in order to protect against unreasonable risks of harm in removing from their platforms any user content that

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incites violence of which the service is made aware or of which the service otherwise has knowledge. Such a duty is confirmed by statements of Marne Levine, Facebook's former Vice President of Global Public Policy.

(a) Speech that incites violence is not protected by the First Amendment of the Constitution or by the Tennessee State Constitution. Thus, the aforementioned duty upon Facebook is not diminished by free speech protections.

- i. Over the past century, the United States Supreme Court has consistently emphasized that the First Amendment's protection of free speech does not constitute an absolute protection. *See, e.g., Schenck v. U.S.*, 249 U.S. 47, 52 (1919) ("The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.").
- ii. One such limitation to freedom of speech articulated by the United States Supreme Court has been for "fighting words," defined as statements which "by their very utterance inflict injury or tend to incite an immediate breach of peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). The Court has clarified that fighting words "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Id.*
- iii. Additionally, "[r]esort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution . . . ." *Id.* (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 309-10 (1940)).

- iv. Subsequent United States Supreme Court cases have espoused the same view as the Court in Chaplinsky that the overwhelming need to prevent speech tending to incite violence trumps, in those specific circumstances, the protection of free speech. *See e.g.*, Brandenburg v. Ohio, 395 U.S. 444, 447 (1969).
- v. In Brandenburg, the Court stated that the First Amendment protection of free speech does not prevent a State from “forbid[ing] or proscribe[ing] advocacy of the use of force or of law violation . . . where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” Id.
- vi. The Tennessee Supreme Court also has held that protection of free speech by the First Amendment and the Tennessee State Constitution does not apply to “fighting words.” *See State v. Mitchell*, 343 S.W.3d 381, 400 (Tenn. 2011).
- vii. Several of these statements posted to the Facebook page constitute unprotected fighting words, including, but not limited to, the following:
  - a. “This Guy [Knight] Needs to be Took [sic] Out[.]” (Jamie Rhodes, June 29, 2015)
  - b. “Someone needs to give him [Knight] a [sic] old fashion <expletive deleted> whipping.” (Kimber Anderson, June 27, 2015)
  - c. “[Y]ou and your crews better stay out of Henderson county Tx dope head[.]” (John Denver Long, June 24, 2015)



- d. "I live in NC and I'm telling you, if these guys came this way.... They would be Done." (Anna Bray, June 24, 2015)
- e. "This will all come back around to bite jason HARD in the <expletive deleted> one day and I don't want to be there when it does, it will be an ugly sight." (Lea Fisher-Lane, June 23, 2015)
- f. "[T]his guy [Mikel Knight] needs to be shot[.]" (Braxton Wolfe, reposted by Defendant Does on June 23, 2015)
- g. "What's your lanky <expletive deleted> gonna do other than get beat up?" (Jeremy Sanner, June 22, 2015, in response to a statement made comment by a MDRST member)
- h. "Maybe you know the group of boys that came around here in a mdrst van and got their <expletive deleted> kicked then[.]" (Jeremy Sanner, June 22, 2015, in response to a comment made by Jessica McBride, who claimed to be the girlfriend of a MDRST member)
- i. "John cross Jason cross whatever he's a punk cowboy wanna be who needs to be put in his place but he's a scared little <expletive deleted> who won't come out of the bus he has his pic plastered all over it when they came to neosho mo a couple of his boy wanted to fight at Casey's so I obliged them one of me and ten of them but no mikel night they ran like scared rabbits when the cops came to escort them out of town .come on back y'all and bring mikel with you and koolwhip or donut or whatever your dumb <expletive deleted> names are .this the show

- me state <expletive deleted> we will be waiting[.]” (John Reed, June 20, 2015)
- j. “He [Knight] needs to be kicked in the midsection HARD[.]” (Daren Lucas, June 20, 2015)
- k. “I hope this man goes to jail soon or that these mom's against him just start looting and burning his trucks down[.]” (Sara Jane Sheedy, June 19, 2015)
- l. “In North West Arkansas we should start a “Woop MK <expletive deleted> Street Team[.]” (Michael Rowe, June 19, 2015)
- m. “Yea this guy [Knight] is trash. I worked for him I wish I woulda just ran his <expletive deleted> over.” (JT Nicholson, June 19, 2015)
- n. “He's [Mikel Knight] just a <expletive deleted> that hides behind his crew. I'd go toe to toe with him any day.” (Brandon Parks, June 3, 2015)
- o. “He [Mikel Knight] threatens the boys and there family's so they are scared. I'd like to meet him and show him how a real man whoops <expletive deleted>[.]” (Kevin W Miller, June 3, 2015)
- p. “We are doing our best to keep up with his vans and keep them ran out of Arkansas!” (Rick NMichelle Edwards, June 2, 2015)
- q. “Just run them out of the country[.]” (Ken Chaplin, June 2, 2015)
- r. “He sounds like an inbred. Someone needs to teach him a few lessons.” (Angie Lytle Bussard, May 29, 2015)

s. “That's what I am thinking y don't someone just give them a good

<expletive deleted> kicking[.]” (Tim Hoard, May 21, 2015)

- viii. The above statements that have been posted to the Facebook page do not constitute an “essential part of any exposition of ideas.” Chaplinksy, 315 U.S. at 572. The commenters clearly did not need to resort to such harsh and incendiary language in order to convey their ideas and opinions on Knight, 1203 Entertainment, and/or individuals and entities related thereto.
- ix. Rather, the mob mentality and abusive nature of these statements serve no beneficial purpose while severely damaging the “social interest in order and morality.” Chaplinksy, 315 U.S. at 572.

(b) The Communications Decency Act (hereinafter, the “CDA”) does not protect speech that incites violence, and the CDA promotes the removal of such speech from interactive computer services, such as Facebook. Thus, the aforementioned duty of Facebook is reinforced, not diminished, by the CDA.

- i. Congress enacted CDA § 230 to “promote the continued development of the Internet.” 47 U.S.C. § 230(b)(1).
- ii. However, CDA § 230 demonstrates that Congress, in passing the CDA, still intended a limit to speech when it results in or fosters criminal behavior, such as stalking and harassment. 47 U.S.C. § 230(b)(5) (“It is the policy of the United States . . . to ensure vigorous enforcement of

Federal criminal laws *to deter and punish trafficking in obscenity, stalking, and harassment by means of computer*") (emphasis added).

- iii. Additionally, CDA § 230(e)(3) allows the opportunity for pursuance of state law claims that are consistent with the CDA. 47 U.S.C. § 230(e)(3) ("Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section.").
- iv. CDA § 230 also encourages interactive computer services to take down or prevent violent or harassing material from remaining available to the public, even if such content is constitutionally protected. 47 U.S.C. § 230(2)(A) ("*No provider . . . of an interactive computer service shall be held liable on account of . . . [a]ny action voluntarily taken in good faith to restrict access to or availability of material the provider . . . considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable, whether or not such material is constitutionally protected*") (emphasis added).
- v. Plaintiffs submit that complainants should have the opportunity to pursue claims under state laws that intend to deter "trafficking in . . . stalking and harassment by means of computer" when the stalking and harassing practices of the opposing party or parties reach a level of speech that is unprotected by the First Amendment of the United States Constitution and promotes violence against other United States citizens in an immediate and/or ongoing fashion. Such claims remain consistent with the overarching goals of the CDA.

vi. Further, Plaintiffs submit that complainants should not be prevented from making state law claims against individuals who post material inciting violence simply because the interactive computer service on which the individuals post allows the individuals to cloak their identities in secrecy; if this were true, there would be no avenue of recourse for parties who are at the receiving end of violence incited by anonymous Internet users, absent requesting criminal prosecution of the perpetrators by the government. Such a result would overextend the CDA, which is only meant to separate an interactive computer service from posts of questionable legality, not to offer a means of full civil immunity to all Internet users and the interactive computer services that allow concealment of identifying user information.

(c) Facebook's own policies provide users with the reasonable expectation that speech inciting violence will be removed from public access by Facebook. The following statements by Facebook instill a duty on Facebook to remove content inciting violence:

- i. *"Moreover, **the duty upon interactive computer services to exercise reasonable care in the form of removing from their platforms any user content that incites violence of which the service is made aware or of which the service otherwise has knowledge is supported by Facebook's own policies regarding the posting of content that incites violence.**"* Marne Levine (Facebook Vice President of Global Public Policy), Facebook Safety Message: "Controversial, Harmful and Hateful Speech on

Facebook,” Facebook, Inc. (May 28, 2013 at 3:51 PM), [https://www.](https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054)

[facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054](https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054) (emphasis added).

- ii. “We carefully review reports of threatening language to identify serious threats of harm to public and personal safety. We remove credible threats of physical harm to individuals.” Facebook Community Standard – “Direct Threats: How we help people who feel threatened by others on Facebook”, Facebook, Inc., <https://www.facebook.com/communitystandards#>.
- iii. “[W]e want to take this opportunity to explain our philosophy and policies regarding controversial or harmful content, including hate speech, and to explain some of the steps we are taking to reduce the proliferation of content that could create an unsafe environment for users. . . . *We prohibit content deemed to be directly harmful*, but allow content that is offensive or controversial. *We define harmful content as anything organizing real world violence*, theft, or property destruction, or that directly inflicts emotional distress on a specific private individual (e.g. bullying). . . . We will increase the accountability of the creators of content that does not qualify as actionable hate speech but is cruel or insensitive by insisting that the authors stand behind the content they create. A few months ago we began testing a new requirement that the creator of any content containing cruel and insensitive humor include his or her authentic identity for the content to remain on Facebook. As a result, if an individual decides

to publicly share cruel and insensitive content, users can hold the author accountable and directly object to the content. We will continue to develop this policy based on the results so far, which indicate that it is helping create a better environment for Facebook users.” Marne Levine (Facebook Vice President of Global Public Policy), Facebook Safety Message: “Controversial, Harmful and Hateful Speech on Facebook”, Facebook, Inc. (May 28, 2013 at 3:51 PM), <https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054> (emphasis added).

- iv. “You will not bully, intimidate, or harass any user.” Facebook Statement of Rights and Responsibilities, Facebook, Inc., <https://www.facebook.com/legal/terms>.
- v. “You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.” Facebook Statement of Rights and Responsibilities, Facebook, Inc., <https://www.facebook.com/legal/terms>.

35. Facebook breached this duty by failing to keep the Facebook page unavailable for public access despite having notice that the Facebook page incites violence. Such notice was supplied to Facebook by Plaintiffs in a series of email correspondence commencing as early as July 7, 2015.

36. As a direct and proximate result of Facebook’s failure to exercise reasonable care in removing from its platform user content that incites violence of which it was made aware, Plaintiffs, representatives, and agents thereof have been assaulted; have suffered

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tremendous loss in business opportunities; have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities; and suffered serious mental and emotional injury in the form of stress, anxiety, fear, and depression at the inability to conduct business without fear of injury or serious bodily harm from angered individuals.

## **COUNT II**

### **LIBEL**

**(against Defendant Does 1-10)**

37. Plaintiffs incorporate Paragraphs 1 through 36 above as if each has been fully restated herein.

38. Libel is the written form of defamation. Davis v. Tennessee, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001).

39. A plaintiff must prove the following elements to establish a prima facie case of defamation in Tennessee:

- (1) a party published a statement;
- (2) with knowledge that the statement is false and defaming to the other; or
- (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. Sullivan v. Baptist Mem'l Hosp., 995 S.W.2d 569, 571 (Tenn. 1999) (citing Restatement (Second) of Torts § 580B (1977)).

40. Tennessee distinguishes between public figure defamation plaintiffs and private person defamation plaintiffs. In re Conservatorship of Turner, No. M2013-01665-COA-R3-CV,



2014 WL 1901115, at \*8 (Tenn. Ct. App. May 9, 2014) (citing Press, Inc. v. Verran, 569 S.W.2d 435, 442 (Tenn. 1978)). “If the plaintiff in a case of libel is a public official or public figure, they must also prove that the libelous statements were made with actual malice . . . knowledge that it was false or with reckless disregard of whether it was false or not.” Eisenstein v. WTVF-TV, News Channel 5 Network, LLC, 389 S.W.3d 313, 318 (Tenn. Ct. App. 2012).

41. A public figure is defined to include individuals who “have thrust themselves into the vortex of important public controversies; those who achieve such pervasive fame or notoriety that they become public figures for all purposes, and in all contexts; those who voluntarily inject themselves, or are drawn into public controversies, and become public figures for a limited range of issues; and those who assume special prominence in the resolution of public questions.” Press, Inc., 569 S.W.2d at 441.
42. If Plaintiffs make a request for retraction or if the defamatory content is republished after Plaintiffs have provided notice of the defamatory statements, the actual malice requirement is satisfied. *See* Myers v. Pickering Firm, Inc., 959 S.W.2d 152, 164 (Tenn. Ct. App. 1997).
43. For purposes of defamation, “publication” is defined as “the communication of defamatory matter to a third person.” Sullivan, 995 S.W.2d at 571–72. The postings to the Facebook page by Defendant Does were communications to third parties (visitors to the Facebook page) and, therefore, constitute publications for purposes of defamation.
44. A statement must be false and defamatory to expose the speaker or writer to liability for defamation. Biltcliffe v. Hailey’s Harbor, Inc., No. M2003-02408-COA-R3-CV, 2005 WL 2860164, at \*4 (Tenn. Ct. App. Oct. 27, 2005). Determining whether a statement is capable

of conveying defamatory meaning and whether the statement is false are "distinct elements of the tort of defamation and must be considered separately." Id.

45. Several of the statements made on the Facebook page by Defendant Does relating to Plaintiffs are false and defamatory. A statement is defamatory "if it tends so to harm the reputation of another as to lower him [or her] in the estimation of the community or to deter third persons from associating or dealing with him [or her]." Id. The defamatory statements made by the Defendant Does include, but are not limited to, the following:

- (a) "Taking people across state lines and working them over 90 hours a week and then abusing them leaving them stranded 100s of miles away from their homes is Human trafficking. Another form." (June 23, 2015)
  - i. This statement is defamatory. The suggestion that Plaintiffs abuse their agents and/or representatives, subjecting them to harsh and potentially illegal working conditions, is extremely damaging to Plaintiffs' personal and business reputations, lowers Plaintiffs in the estimation of the community (both the entertainment industry and Plaintiffs' target audience), and deters third parties, such as fellow entertainers, artists, and businesses in the entertainment industry and current and potential fans, from associating with Plaintiffs.
  - ii. This statement is false. Plaintiffs' agents and/or representatives are not subjected to such working conditions.
- (b) "Rebelrow [a music website] helping Mikel Knight with his inhumane slave operation?" (May 27, 2015)

- i. This statement is defamatory. The suggestion that the working conditions of Plaintiffs' agents and/or representatives amount to an "inhumane slave operation" is extremely damaging to Plaintiffs' personal and business reputations, lowers Plaintiffs in the estimation of the community (both the entertainment industry and Plaintiffs' target audience), and deters third parties, such as fellow entertainers, artists, and businesses in the entertainment industry and current and potential fans, from associating with Plaintiffs.
- ii. This statement is false. Plaintiffs' agents and/or representatives are not subjected to such working conditions.

(c) "We need to share in different towns and areas to inform the real tax [sic] working Americans about the Mikel Knight brutal scam." (May 23, 2015)

- i. This statement is defamatory. Stating that the business practices of Plaintiffs amount to a "brutal scam" is extremely damaging to Plaintiffs' personal and business reputations, lowers Plaintiffs in the estimation of the community (both the entertainment industry and Plaintiffs' target audience), and deters third parties, such as fellow entertainers, artists, and businesses in the entertainment industry and current and potential fans, from associating with Plaintiffs.
- ii. This statement is false. Plaintiffs do not engage in any unscrupulous business practices in selling CDs of Knight and other 1203 Entertainment artists.

(d) “Mikel Knight is all over the place with lies to cover up his scam.” (May 22, 2015)

- i. This statement is defamatory. Stating that the business practices of Plaintiffs amount to a “scam” is extremely damaging to Plaintiffs’ personal and business reputations, lowers Plaintiffs in the estimation of the community (both the entertainment industry and Plaintiffs’ target audience), and deters third parties, such as fellow entertainers, artists, and businesses in the entertainment industry and current and potential fans, from associating with Plaintiffs.
- ii. This statement is false. Plaintiffs do not engage in any unscrupulous business practices in selling CDs of Knight and other 1203 Entertainment artists.

(e) “Wow. We are at a loss for words. Mikel Knight is now looking for random charities to use for selling his CDs so they can keep on scamming to say anything for a sale.” (May 22, 2015)

- i. This statement is defamatory. Stating that the business practices of Plaintiffs amount to “scamming” is extremely damaging to Plaintiffs’ personal and business reputations, lowers Plaintiffs in the estimation of the community (both the entertainment industry and Plaintiffs’ target audience), and deters third parties, such as fellow entertainers, artists, and businesses in the entertainment industry and current and potential fans, from associating with Plaintiffs.

- ii. This statement is false. Plaintiffs do not engage in any unscrupulous business practices in selling CDs of Knight and other 1203 Entertainment artists.

(f) "If Safe Haven supports Mikel Knight we should hold them accountable for the blood money he makes off these young kids. If they really supported Mikel Knight they should use the money he donates to them to pay for the young kids hospital bills and burial cost of the lives that were lost slaving for Mikel Knight. Donate money to the kids that have fallen due to Mikel Knights [sic] peddling Slave shop and using Safe Haven for pity sales." (May 11, 2015)

- i. This statement is defamatory. The suggestion that the working conditions of Plaintiffs' agents and/or representatives amount to a "[s]lave shop" is extremely damaging to Plaintiffs' personal and business reputations, lowers Plaintiffs in the estimation of the community (both the entertainment industry and Plaintiffs' target audience), and deters third parties, such as fellow entertainers, artists, and businesses in the entertainment industry and current and potential fans, from associating with Plaintiffs.

- ii. This statement is false. Plaintiffs' agents and/or representatives are not subjected to such working conditions.

46. When Defendant Does published statements on the Facebook page, they had knowledge of or, in the alternative, acted in reckless disregard for the truth of the statements. Defendant Does never interviewed, communicated with, or in any way consulted with Plaintiffs prior to the publication of their statements to the Facebook page regarding the truth of the statements. Defendant Does merely have an unfounded and unsubstantiated suspicion of

Plaintiffs' supposedly illegal conduct or behavior and, in publishing their statements regardless of this lack of proof, Defendant Does acted at least in reckless disregard as to the falsity of their statements.

47. As a direct and proximate result of Defendant Does' false and defamatory statements, Plaintiffs, representatives, and agents thereof have suffered tremendous loss in business opportunities, and have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities.

### **COUNT III**

#### **FALSE LIGHT INVASION OF PRIVACY**

**(against Defendant Does 1–10)**

48. Plaintiffs incorporate Paragraphs 1 through 47 above as if each has been fully restated herein.
49. The Tennessee Supreme Court has adopted the tort of false light invasion of privacy as defined in the Restatement (Second) of Torts:

“One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if:

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.” Eisenstein v. WTVF-TV, News Channel 5 Network, LLC, 389

S.W.3d 313, 318 (Tenn. Ct. App. 2012) (citing Restatement (Second) of Torts § 652E (1977)).

50. “[T]he falsehood involved in a false light action ‘may consist in dissemination of matters which, while technically true, give an objectionably false impression where the communicator fails to modify the basic statement with amplifying facts which modify the statement to create a less objectionable impression corresponding to full reality.’” *Id.* (citing Russell G. Donaldson, Annotation, False Light Invasion of Privacy – Cognizability and Elements, 57 A.L.R. 4th 22, § 13 (Cum. Supp. 2012)). In an analysis for false light invasion of privacy, the question is whether the defendant “made any discrete or selective presentations of information that are susceptible to inferences” which cast the plaintiff in a false light. *Id.* at 321.

51. Several of the statements made on the Facebook page by Defendant Does relating to Plaintiffs constitute false light invasion of privacy against Plaintiffs. Such statements include, but are not limited to, the following:

- (a) “Taking people across state lines and working them over 90 hours a week and then abusing them leaving them stranded 100s of miles away from their homes is Human trafficking. Another form.” (June 23, 2015)
- (b) “Rebelrow [a music website] helping Mikel Knight with his inhumane slave operation?” (May 27, 2015)
- (c) “We need to share in different towns and areas to inform the real tax [sic] working Americans about the Mikel Knight brutal scam.” (May 23, 2015)
- (d) “Mikel Knight is all over the place with lies to cover up his scam.” (May 22, 2015)

(e) "Wow. We are at a loss for words. Mikel Knight is now looking for random charities to use for selling his CDs so they can keep on scamming to say anything for a sale." (May 22, 2015)

(f) "If Safe Haven supports Mikel Knight we should hold them accountable for the blood money he makes off these young kids. If they really supported Mikel Knight they should use the money he donates to them to pay for the young kids hospital bills and burial cost of the lives that were lost slaving for Mikel Knight. Donate money to the kids that have fallen due to Mikel Knights [sic] peddling Slave shop and using Safe Haven for pity sales." (May 12, 2015)

52. The above statements made on the Facebook page by Defendant Does placed Plaintiffs before the public in a false light. Even if Defendant Does merely opined that Plaintiffs committed crimes and/or had extremely questionable, unsavory, and potentially illegal business operations, or conveyed their apparently strong suspicions regarding such behavior and actions, to third parties, when taken as a whole, these communications cast Plaintiffs as individuals/entities without honesty, with questionable morals, and as utterly untrustworthy. Further, Defendant Does' statements cast Plaintiffs as abusive towards their agents and/or representatives.

53. The false light in which Defendant Does placed Plaintiffs before the public would be highly offensive to a reasonable person. The statements made by Defendant Does create the following impressions: that Plaintiffs are running a fraudulent and criminal business; that Plaintiffs exploit and take advantage of young, naïve, and inexperienced individuals; that Plaintiffs' agents and/or representatives are akin to indentured servants who must live and work in horrible conditions; and that Plaintiffs have defrauded charitable organizations.



This is a major misrepresentation of Plaintiffs' business enterprise and of Plaintiffs' characters and personal and business integrity.

54. When publishing the statements to the Facebook page, Defendant Does had knowledge of or acted in reckless disregard as to the falsity of the statements, in regards to Plaintiffs' alleged conduct and behavior, and as to the false light in which Plaintiffs would be placed before the public as a result of the statements. Defendant Does never interviewed, communicated with, or consulted in any way with Plaintiffs regarding the truth of the statements.

55. As a direct and proximate result of Defendant Does' statements constituting false light invasion of privacy, Plaintiffs, representatives, and agents thereof have suffered tremendous loss in business opportunities, and have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities.

#### **COUNT IV**

#### **CIVIL CONSPIRACY**

**(against Defendant Does 1-10)**

56. Plaintiffs incorporate Paragraphs 1 through 55 above as if each has been fully restated herein.

57. Tennessee recognizes the tort of civil conspiracy. Kincaid v. S. Trust Bank, 221 S.W.3d 32, 38 (Tenn. Ct. App. 2006) (internal citations omitted). When bringing a claim for civil conspiracy, a plaintiff must establish the following four elements:

(1) a common design between two or more persons;

- (2) to accomplish by concerted action an unlawful purpose, or a lawful purpose by unlawful means;
- (3) an overt act in furtherance of the conspiracy; and
- (4) resulting injury. Id.

58. By the Defendant Does' own admission there is more than one individual, organization, business, and/or entity or entities of unknown form that created, authored, organized, operated, and/or managed the Facebook page. The common design of the Defendant Does is to use the Facebook page to promote physical, reputational and monetary injury to the Plaintiffs.

59. Defendant Does have accomplished a concerted action for an unlawful purpose by creating, authoring, organizing, operating, and/or managing the Facebook page in such a way as to incite violence against Plaintiffs, representatives, and agents thereof, defame Plaintiffs, and/or place Plaintiffs in a false light before the public

60. The overt acts performed by the Defendant Does in furtherance of the conspiracy include creating, authoring, organizing, operating, and/or managing the Facebook page.

61. As a direct and proximate result of Defendant Does' conspiracy, Plaintiffs, representatives, and agents thereof have suffered tremendous loss in business opportunities, and have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities.

**COUNT V****INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS****(against Defendant Does 1-10)**

62. Plaintiffs incorporate Paragraphs 1 through 61 above as if each has been fully restated herein.

63. Tennessee recognizes the tort of intentional infliction of emotional distress. Bain v. Wells, 936 S.W.2d 618, 622 (Tenn. 1997). When bringing a claim for intentional infliction of emotional distress, a plaintiff must establish the following elements:

- (1) The conduct complained of must be intentional or reckless;
- (2) The conduct must be so outrageous that it is not tolerated by civilized society; and
- (3) The conduct complained of must result in serious mental injury. Id.

64. Defendant Does' conduct of publishing the Facebook page was intentional or reckless. Defendant Does intentionally or recklessly chose to create the Facebook page and post thereto, regardless of the falsity as to the statements posted to the Facebook page by Defendant Does. Moreover, Defendant Does' conduct was reckless or intentional in that they never interviewed, communicated with, or in any way consulted with Plaintiffs prior to the publication of their statements to the Facebook page regarding the truth of the statements.

65. Defendant Does' behavior and actions toward Plaintiffs was extremely outrageous. Statements on the Facebook page by Defendant Does that incite violence against Plaintiffs, representatives, and agents thereof, defame Plaintiffs, and/or place Plaintiffs in a false light before the public amount to extreme and outrageous conduct that is utterly intolerable in civilized society.

66. As a direct and proximate result of Defendant Does' publication of the Facebook page, Plaintiffs, representatives, and agents thereof have suffered tremendous loss in business opportunities, and have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities.

## **COUNT VI**

### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**(against Defendant Does 1–10)**

67. Plaintiffs incorporate Paragraphs 1 through 66 above as if each has been fully restated herein.

68. Tennessee recognizes the tort of negligent infliction of emotional distress. Camper v. Minor, 915 S.W.2d 437, 446 (Tenn. 1996). Tennessee courts have adopted the general negligence standard when analyzing claims for negligent infliction of emotional distress. Id. When bringing a claim for negligent infliction of emotional distress, a plaintiff must establish the following five elements of general negligence:

- (a) Duty;
- (b) Breach of duty;
- (c) Injury or loss;
- (d) Causation in fact; and
- (e) Proximate cause. Id.

69. The plaintiff must also establish a serious emotional injury that “a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case.” Id. Additionally, Tennessee courts require

that the claimed injury or impairment must be supported by expert medical or scientific proof. Id.

70. Duty is a legal obligation owed by a defendant to a plaintiff that requires the defendant to conform to a reasonable person standard of care in order to protect against unreasonable risks of harm. Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 89 (Tenn. 2000). A risk is “unreasonable and gives rise to a duty to act with due care if the foreseeable probability and gravity of harm posed by defendant’s conduct outweighs the burden upon defendant to engage in alternative conduct that would have prevented the harm.” Id. (citing McCall v. Wider, 913 S.W.2d 150, 153 (Tenn. 1995)).

71. In Defendant Does’s publication on the Facebook page, Defendant Does owed a duty to Plaintiffs to refrain from making statements on the Facebook page that incite violence against Plaintiffs, representatives, and agents thereof, defame Plaintiffs, and/or place Plaintiffs in a false light before the public. Further, Defendant Does owed a duty to Plaintiffs to accurately and objectively relay Plaintiffs’ business enterprise, business practices, and music entertainment performances/activities to the public.

72. Defendant Does breached this duty when they published the Facebook page, which contains statements that incite violence against Plaintiffs, representatives, and agents thereof, defame Plaintiffs, and/or place Plaintiffs in a false light before the public. Further, Defendant Does breached their duty when they mischaracterized Plaintiffs’ business enterprise, business practices, and music entertainment performance/activities to the public in postings to the Facebook page.

73. As a direct and proximate result of Defendant Does’ breach of duty, Plaintiffs, representatives, and agents thereof have suffered tremendous loss in business

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opportunities, and have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities.

74. Plaintiffs' mental and emotional injuries shall be supported by expert medical or scientific proof upon trial.

## COUNT VII

### NEGLIGENCE

(against Defendant Does 1-10)

75. Plaintiffs incorporate Paragraphs 1 through 74 above as if each has been fully restated herein.

76. Tennessee recognizes the tort of negligence. Parker v. Holiday Hospitality Franchising, Inc. 446 S.W.3d 341, n.7 (Tenn. 2014) (internal citations omitted). When bringing a claim for negligence, a plaintiff must establish the following five elements:

- (a) Duty;
- (b) Breach of duty;
- (c) Injury or loss;
- (d) Causation in fact; and
- (e) Proximate cause. Id.

77. Duty is a legal obligation owed by a defendant to a plaintiff that requires the defendant to conform to a reasonable person standard of care in order to protect against unreasonable risks of harm. Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 89 (Tenn. 2000). A risk is "unreasonable and gives rise to a duty to act with due care if the foreseeable probability and gravity of harm posed by defendant's conduct outweighs the burden upon defendant

to engage in alternative conduct that would have prevented the harm.” Id. (citing McCall v. Wider, 913 S.W.2d 150, 153 (Tenn. 1995)).

78. In Defendant Does’s publication on the Facebook page, Defendant Does owed a duty to Plaintiffs to refrain from making statements on the Facebook page that incite violence against Plaintiffs, representatives, and agents thereof, defame Plaintiffs, and/or place Plaintiffs in a false light before the public. Further, Defendant Does owed a duty to Plaintiffs to accurately and objectively relay Plaintiffs’ business enterprise, business practices, and music entertainment performances / activities to the public.

79. Defendant Does breached this duty when they created, authored, organized, operated, and/or managed the Facebook page, which contains statements that incite violence against Plaintiffs, representatives, and agents thereof, defame Plaintiffs, and/or place Plaintiffs in a false light before the public. Further, Defendant Does breached their duty when they mischaracterized Plaintiffs’ business enterprise, business practices, and music entertainment performance/activities to the public in postings to the Facebook page.

80. As a direct and proximate result of Defendant Does’ breach of duty, Plaintiffs, representatives, and agents thereof have been assaulted; have suffered tremendous loss in business opportunities; have suffered serious mental and emotional injury in the form of extreme public embarrassment, stress, anxiety, fear, and depression at the resulting loss of business and personal reputations and opportunities; and suffered serious mental and emotional injury in the form of stress, anxiety, fear, and depression at the inability to conduct business without fear of injury or serious bodily harm from angered individuals.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, Jason Cross a/k/a Mikel Knight and 1203 Entertainment, LLC, pray for judgment against Defendants Facebook and Does as follows:

81. That this Court enter judgment in their favor on all counts of this Complaint;
82. That this Court award them damages in the amount of TWO MILLION (\$2,000,000.00) DOLLARS;
83. That this Court further award Plaintiffs punitive damages upon an evidentiary showing of entitlement to the same;
84. For a temporary and permanent injunction enjoining Facebook from allowing public access to Facebook page entitled "Families Against Mikel Knight and the MDRST," which was available at <https://www.facebook.com/pages/Families-Against-Mikel-Knight-and-the-MDRST/1533971343525187>, and the same page, subsequently renamed "Public Awareness of Mikel Knight and The Maverick Dirt Road Street Team," which was available at <https://www.facebook.com/pages/Public-Awareness-of-Mikel-Knight-and-The-Maverick-Dirt-Road-Street-Team/1533971343525187>;
85. For a temporary and permanent injunction enjoining Defendant Does from continued publication of the Facebook page entitled "Families Against Mikel Knight and the MDRST," which was available at <https://www.facebook.com/pages/Families-Against-Mikel-Knight-and-the-MDRST/1533971343525187>, and the same page, subsequently renamed "Public Awareness of Mikel Knight and The Maverick Dirt Road Street Team," which was available at <https://www.facebook.com/pages/Public-Awareness-of-Mikel-Knight-and-The-Maverick-Dirt-Road-Street-Team/1533971343525187>;



86. For a permanent injunction requiring Defendant Does to publish a retraction of the Facebook page in regards to Defendant Does allegation of Plaintiffs' involvement in any wrongful behavior or questionable business methods;

87. For a permanent injunction requiring Defendant Does to publish an apology on Facebook's website to Plaintiffs for:

- (a) wrongfully implicating Plaintiffs, representatives, and agents thereof of participating in wrongful behavior or questionable business methods;
- (b) inciting violence against Plaintiffs, representatives, and agents thereof;
- (c) defaming Plaintiffs, representatives, and agents thereof; and
- (d) placing Plaintiffs, representatives, and agents thereof in a false light before the public;

88. That Plaintiffs be entitled to amend their Complaint to include additional damages based upon continued investigation and discovery;

89. For interest, court costs, discretionary costs as allowed by law, and attorney's fees; and

90. Any other further and general relief as deemed appropriate by the Court.

Respectfully Submitted,




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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of August 2015, a true and exact copy of the foregoing has been sent via U.S. Mail, postage prepaid, to the following:

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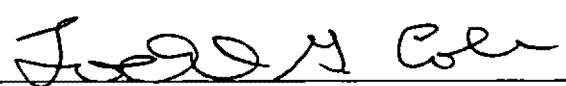
**OATH**

**STATE OF TENNESSEE        )**  
**COUNTY OF DAVIDSON       )**

Jason Cross a/k/a Mikel Knight, acting on his own behalf and as representative of 1203 Entertainment, LLC, being first duly sworn, makes oath that he has read the foregoing Verified First Amended Complaint, knows the contents thereof, and that the same is true and correct to the best of his knowledge, information and belief; that this Verified First Amended Complaint is not made out of levity, or by collusion with the Defendants, but in sincerity and truth, for the caused mentioned therein.

  
\_\_\_\_\_  
JASON CROSS A/K/A MIKEL KNIGHT

Sworn to and subscribed before me on this the 6<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 04/03/17.

