

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 03-Civ-80515-Hurley/Lynch

KATY JOHNSON,

Plaintiff,

vs.

TUCKER MAX,

Defendant.

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DECLARATION OF RICHARD J. MOCKLER

RICHARD J. MOCKLER declares as follows:

1. I am an attorney licensed to practice law in the state of Florida. I am an associate at the law firm of Stroock & Stroock & Lavan LLP and am one of the attorneys representing the defendant in this action.

2. I have personal knowledge of the below facts and could testify thereto if I am called as a witness. I am familiar with the Internet and the World Wide Web, which I have used to follow the news and press relating to this action.

3. Based on the content of Plaintiff's website at <http://www.katyjohnson.com>, her potential damages resulting from the publication of the Miss Vermont Story could be considerable. Using my personal computer, I accessed Plaintiff's website on June 4, 2003. I printed certain pages relating to her resume, true and correct copies of which were attached as Exhibit B to Defendant's Notice of Removal.

4. According to the resume posted on her website, Plaintiff has also appeared in both the Miss USA Pageant and Miss America Pageant. Plaintiff has earned the following titles as a beauty pageant contestant: Miss Vermont USA 2001; 1st Inductee in Who's Who in Pageants 2000; Miss Vermont 1999; Miss Oktoberfest 1998; Miss Florida USA 1st Runner Up 1998; Miss United States Teen 1997; Florida Homecoming Queen 1996; Miss Teenage America Finalist 1995; Miss Florida Teen USA Photogenic Winner 1995; Miss Florida Teen USA 1st Runner Up 1995; and Florida Cinderella Teen 1994. Plaintiff also writes as a columnist for a several periodicals, including Pageantry Magazine. *See* Exhibit B to Defendant's Notice of Removal.

5. Plaintiff, in conjunction with her mother, Kathleen Johnson, operates a general partnership designed to capitalize on the name and reputation Plaintiff has created. *See* Composite Exhibit A to Defendant's Notice of Removal, Affidavit of Kathleen Johnson.

6. Plaintiff's personal and professional resume claims that she has appeared in at least nine (9) motion pictures, twelve (12) television programs, and six (6) theatrical performances, including lead roles in *Little Red Riding Hood*, *Oliver* and *Alice in Wonderland*. Additionally, Plaintiff claims to have appeared in television commercials promoting Scope® mouthwash, Crest® toothpaste, MCI® telephone services, and the World Wrestling Federation® ("WWF"). The WWF commercial was aired during the Superbowl® and rated in February 2000 as the "#1 Commercial" by USA Today. *See* Exhibit B to Defendant's Notice of Removal.

7. On her website, Plaintiff also claims that she is a YMCA Advocate for Values and the author of a character education comic strip, *Starlettes*, which she claims through her website

promotes the following: Selfesteem, Truth, Abstinence, Respect, Responsibility, Love, Encouragement, Temperance, Tolerance, Excellence, and Steadfastness.¹

8. Plaintiff Katy Johnson sued Defendant Tucker Max for unlawful commercial use of her name, invasion of her privacy, and battery.

9. The state court issued on May 6, 2003 its *ex parte* injunction against Defendant, and, notwithstanding her privacy concerns, Plaintiff issued the very next day a press release touting her *ex parte* victory and casting Defendant as a “parasitic smut peddler.” I first received a copy of this press release from Adam Liptak of the New York Times. A copy is Exhibit E to Defendant’s Notice of Removal.

10. A month later, on June 6, 2003, Plaintiff issued a second press release describing Defendant’s web site as “reprehensible,” “depraved” and “immoral” and specifically pointing out that Fla. Stat. § 540.08 could provide “swift justice” in the form of “injunctive relief” as well “punitive damages” and “royalties” for the commercial use of her name. A copy is Exhibit A hereto.

11. Since Plaintiff’s first press release, literally thousands of stories, news articles, message board discussions, and references to this litigation have appeared on the Internet. A June 30, 2003 search of the Internet using the popular Google™ search engine showed 71 news stories regarding this litigation and more than 1,870 other references. I accessed many of these articles on the Internet and printed them using my personal computer. A representative sample of the news articles, including true and correct copies, is Exhibit C to Defendant’s Notice of Removal.

¹ These claims appear on her site through a flash media display that I could not print and provide to this Court in paper form.

12. Based predominantly on Plaintiff's own press releases, this controversy has already received widespread attention in the media, including: *The New York Times*, *Associated Press*, *Aberdeen American News*, *Atlanta Journal-Constitution*, *Austin American Statesman*, *Barre-Montpelier Times*, *Bedford Times*, *Belleville News-Democrat*, *Billings Gazette*, *Biloxi Sun-Herald*, *Boston Globe*, *Calgary Sun*, *Canada.com*, *Canoe News*, *Canton Repository*, *Centre Daily Times*, *Chicago Sun-Times*, *Columbus Ledger-Enquirer*, *Concord Monitor*, *Dayton Daily News*, *Duluth News Tribune*, *Fort Wayne Journal-Gazette*, *Fort Wayne News-Sentinel*, *Grand Forks Herald*, *International Herald Tribune*, *Kansas City Star*, *Lakeland Ledger*, *Macon Telegraph*, *Naples Daily News*, *News Journal*, *Newsday*, *Newsweek*, *Palm Beach Post*, *Penn Live*, *Raleigh News*, *Richmond Times-Dispatch*, *Rocky Mount Telegram*, *Sarasota Herald-Tribune*, *South Florida Sun-Sentinel*, *St. Petersburg Times*, *The Tallahassee Democrat*, *Times Daily*, *New Orleans Times-Picayune*, *Toronto Sun*, *Tuscaloosa News*, *United Press International*, *Washington Times*, *Wilmington Morning Star*, *WKMG*, *WPBF*, and *WTEV*.

13. Notwithstanding the fact that much of the media attention surrounding this case has been created by Plaintiff, the coverage is evidence of her damages. The widespread exposure increases exponentially both the potential value of damages for royalties from Defendant's use of Plaintiff's name and the number of people who are aware of the Miss Vermont Story.

14. With respect to Plaintiff's potential damages, I performed a search on Westlaw to ascertain the size of jury verdicts in similar cases. In the Florida Jury Verdict Reporter, I found five reports relating to the claims asserted by Plaintiff.

15. In a Miami-Dade County, Florida case under Fla. Stat. § 540.08, a Miami-Dade County jury awarded \$264,000 in compensatory and punitive damages. In that case, the plaintiff

was a model whose photograph appeared in marketing brochures used to promote a hotel in the Bahamas. The damages award was based on the use of his photograph by the hotel beyond the time period permitted in a contract between the parties. A true and correct copy of the report from the Florida Jury Verdict Reporter, *Robert Wagner v. Sun Int'l Hotels, Ltd.*, 00 FJVR 2-33 (February 26, 1999), is attached as Exhibit D to Defendant's Notice of Removal.

16. In a Brevard County, Florida case alleging trespass, battery, intentional infliction of emotional distress, property damage, and invasion of privacy, the jury returned a verdict of \$751,000. The verdict included \$500,000 in punitive damages. A true and correct copy of the report from the Florida Jury Verdict Reporter, *Simmons v. Varner*, 94 FJVR 3-3 (February 16, 1994), is attached as Exhibit D to Defendant's Notice of Removal.

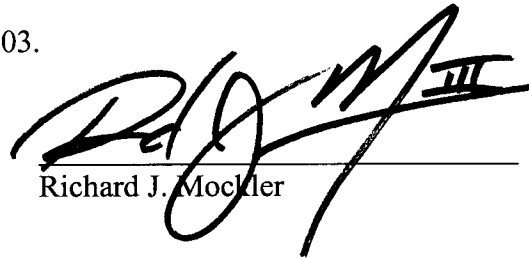
17. In a Gadsden County, Florida case where the plaintiff asserted claims for libel and invasion of privacy, the jury returned a verdict of \$1,627,500 in favor of the plaintiff. The verdict included \$759,000 in punitive damages. In that case, the defendants reported that plaintiff and his company were subject of a federal criminal investigation. A true and correct copy of the report from the Florida Jury Verdict Reporter, *Fleming v. Gadsden County Times et al.*, 88 FJVR 1-29 (January 1988), is attached as Exhibit D to Defendant's Notice of Removal.

18. In a Miami-Dade County, Florida case whether the plaintiff asserted a claim for battery, the jury returned a verdict of \$156,590.25 for the plaintiff. The verdict included \$70,000 in punitive damages. In that case, the jury found that the defendant committed a battery on plaintiff by punching plaintiff in the eye. A true and correct copy of the report from the Florida Jury Verdict Reporter, *Beilinson v. Elias*, 02 FJVR 8-51 (March 13, 2002), is attached as Exhibit D to Defendant's Notice of Removal.

19. In an analogous Florida case involving the publication of private facts, the defendants settled with Plaintiff for \$2,550,000. In that case, the defendants revealed publicly that Plaintiff was a homosexual, and Plaintiff's homosexuality was published in the Wall Street Journal. A true and correct copy of the report from the Florida Jury Verdict Reporter, *McCarty v. Bankers Insurance Co.*, 00 FJVR 10-38 (June 15, 2000), is attached as Exhibit D to Defendant's Notice of Removal.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 30th day of June, 2003.



Richard J. Mockler