STATE OF NORTH CAROLINA HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO: 18 CVS 116 2018 MAR 29 PM 4: 42

HAYWOOD COUNTY, C.S.C.

DEBORAH KING,

V.

Plaintiff,

MEMORANDUM IN OPPOSITION OF DEFENDANT'S MOTION TO DISMISS

HAYWOOD REPUBLICAN ALLIANCE, A Non-Incorporated Political Action Committee, and RICHARD OWEN WEST, Treasurer of HAYWOOD REPUBLICAN ALLIANCE and individually; JEREMY DAVIS, individually, and as Chairman of the HAYWOOD REPUBLICAN ALLIANCE and JOHN DOE 1 THROUGH 6

Defendant(s).

Plaintiff's law suit states a cause of action for invasion of privacy by appropriation of her name or license for a commercial use or benefit. The Plaintiffs also sought punitive damages and injunctive relief. The allegation in the complaint was that the Plaintiffs likeness was sold within a commercial setting without her consent. It is based upon this single tort that the Plaintiff has brought this action. It appears from the Defendants brief that they have missed the mark on what the complaint is about.

Each of the defendants Richard Owen, Jeremy Davis, and Eddie Cabe were sued in their individual capacities. The Plaintiff alleges and maintains that these men sold Kebbie Buttons at various activities in an around Haywood county including the hillbilly jam and other public venues within Haywood County for monetary benefit.

## LEGAL ARGUMENT

Each of these individuals named in this as Defendants engaged in the activities complained of by only participating as members of Haywood Republican Alliance. These are the only individuals that the Plaintiff seeks recovery of for damages caused by the tort. Under the case of *Hien* 

*Nguyen v. Jayceon Taylor, et. al.* 219 N.C. app 1, (2012) stands in support and on all fours with the cause of action asserted herein. Justice Calabria stated as follows: "North Carolina recognizes a claim for invasion of privacy by means of "appropriation, for the Defendants advantage, of Plaintiff's name or likeness" *Renwick v. News and Observer Publishing Company*, 310 N.C. 312, 322,312 S.E. 2<sup>nd</sup> 405, 411 (1984).

In the *Nguyen* case cited above the Plaintiffs who are officers of the Greensboro Police Department arrested the Defendant Taylor for criminal trespass among other charges. An individual in Taylor's entourage recorded the arrest. Thereafter, the defendant released a DVD and began an internet marketing service of his arrest. The Plaintiffs filed a complaint against Taylor and others including his publishing company among others for dissemination in the appropriation of the Plaintiffs likeness for commercial use. The Court went on to hold that his principal of appropriation for the Defendants advantage of the Plaintiffs likeness was a new field in legal juris prudence when the Court first addressed *Flake v. Greensboro News Company*, 212. N.C. 780, 195 S.E. 55 (1938). The cause of action asserted by the Defendant has developed as a result of the various decisions by our Courts over the last almost 50 years. As technology has developed the use of invasion of privacy claims, where if, a Defendant publishes an appropriation of a Plaintiff without their consent for money or advantage, the Plaintiff has such cause of action available in North Carolina.

North Carolina Rules of Pattern of Jury Instructions 800.75 sets forth the elements that must be found by the preponderance of the evidence by the trier of fact.

"did the Defendant appropriate the likeness of the Plaintiff for the Defendants own commercial use and benefit without the Plaintiff's consent.

- (1) That the Defendant appropriated the Plaintiffs likeness for the Defendants own commercial use and benefit and
- (2) That the Plaintiff did not consent to the Defendants appropriation of her likeness."

This is the cause of action set forth in the complaint filed in this matter in that the exhibits attached to the complaint set forth the locations of the commercial activity the number of Kebbie Buttons offered at the Haywood County Fair, the gun show where the Defendants attended with their Kebbie Buttons and that Eddie Cabe almost sold out of the Kebbie Buttons at the Hillbilly Jam in Maggie Valley to support the Plaintiff's allegation of her likeness being appropriated for Defendants and each of their own commercial use and benefit with Plaintiff's consent.,

While the Defendants have attempted to couch this in a First Amendment issue, it is clear that this cause of action is not grounded in libel or slander and has no connection to any advertising purposes of any defamation of claim none of the Defendants have been sued for defamation or slander.

Respectfully submitted this the Lay of March, 2018.

McLEAN LAW FIRM, P.A.

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Memorandum by placing a copy of same in the U.S. mail, properly addressed and postage prepaid upon the following:

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This the day of March, 2018.

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