

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARRIE MALEC,

Plaintiff,

v.

MTV NETWORKS COMPANY, VIACOM,
INC., NICOLE "SNOOKI" POLIZZI, JENNI
"JWOWW" FARLEY, and OTHER
UNIDENTIFIED EMPLOYEES OF
CORPORATE DEFENDANTS,

Defendant(s).

No: 10-CV-4092

Judge Grady

Magistrate Nolan

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES the Plaintiff, CARRIE MALEC, by and through her attorney, Blake Horwitz, Esq. of The Blake Horwitz Law Firm, Ltd., and in Response to Defendants' Motion to Dismiss, states the following:

INTRODUCTION

On May 6, 2010, the Plaintiff was present at Tantra nightclub in Miami, Florida, where MTV Networks Company and Viacom were videotaping an episode of "Jersey Shore". See Plaintiff's Corrected Complaint at Law, filed July 1, 2010 (herein "Comp") at ¶14. Jersey Shore is a reality show that is notorious for exploiting outrageous behavior. Episodes typically involve fighting, excessive drinking and also feature unsuspecting citizens being beaten by cast members. Comp., ¶12.

At the nightclub, Plaintiff was innocently dancing with a cast member. Plaintiff had never seen "Jersey Shore" and did not know she was being set up to be battered by another cast

member. Comp., ¶15. After the dance, Plaintiff signed an appearance release form generated by MTV Networks and Viacom. (“release”, See attached Exhibit A). The release contained a forum selection clause which stated the release would be enforced in accordance with the laws of the State of California with exclusive jurisdiction and venue in California. The release also contained a provision that purported to immunize Defendant from liability for any future physical aggression from the cast of “Jersey Shore.” Exhibit A, p.1.

Based on various legal theories, the three possible venues for litigation in this matter are Florida, California and Illinois. All states prohibit releases which waive liability for future intentional torts as they violate public policy.

On May 6th, 2010, “Jersey Shore” cast member and Defendant Nicole “Snooki” Polizzi accosted Plaintiff after Plaintiff signed the release form in the nightclub Tantra at approximately 12:00 a.m. Comp., ¶16. Ms. Polizzi then made disparaging remarks towards Plaintiff, attempting to initiate a confrontation with Plaintiff. Shortly thereafter, both Ms. Polizzi and another cast member, Defendant Jenni “JWOWW” Farley, assaulted and battered Plaintiff. *Id.* Defendant MTV Networks Company videotaped the assault and battery for the purpose of airing the beating on television to generate a profit. Comp., ¶17. Invoking the forum selection clause in the release, Defendants Viacom Inc. and MTV Networks have filed a motion to dismiss for improper venue. Defendants are seeking to enforce a release that violates public policy regardless of which venue is chosen. Defendant’s motion must be denied. If not denied, a precedent would be set which enforces releases and forum selection clauses that violate public policy of the forum state.

STANDARD OF REVIEW

In ruling on a motion to dismiss under Rule 12(b)(3) for improper venue, the court takes all allegations in the complaint as true unless contradicted by affidavit. *Interleave Aviation*

Investors II (Aloha) LLC v. Vanguard Airlines, Inc., 262 F.Supp.2d 898, 913 (N.D.Ill. 2003). In addition, the court must resolve any factual conflicts in the parties' submissions in favor of the Plaintiff and must draw any reasonable inferences from those facts in the Plaintiff's favor. *See, e.g., Nagel v. ADM Investor Srvs., Inc.*, 995 F.Supp. 837, 843 (N.D.Ill.1998). Under a 12(b)(3) analysis, a forum selection clause will be unenforceable if it is shown by the resisting party to be unreasonable under the circumstances. *Bonny v. The Soc'y of Lloyd's*, 3 F.3d 156, 159 (7th Cir.1993) Courts will consider forum selection clauses unreasonable under the circumstances when: (1) they were agreed to as a result of fraud, undue influence or unequal bargaining power; (2) the selected forum is so gravely difficult and inconvenient as to deprive the complaining party of its day in court; or (3) enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought. *Id.*

I. ARGUMENT

Illinois is the proper venue for this matter because in federal diversity jurisdiction cases, venue is proper where any defendant is subject to personal jurisdiction. In this case, Defendant MTV Networks is subject to personal jurisdiction in Illinois in the form of general jurisdiction because they maintain a business office in Illinois, which displays a continuous and systematic relationship with Illinois.

Defendants' forum selection clause should not be enforced because the entire release violates Florida's public policy of prohibiting contractual clauses which waive liability for future intentional torts. Florida also prohibits the enforcement of forum selection clauses where they contravene the public policy of the forum state in which suit is brought. Here, the forum selection clause contravenes the public policy of the forum state because Illinois also prohibits contractual clauses which attempt to waive liability for intentional torts. Possible forum states

Florida and California also prohibit these clauses. Additionally, the prohibited clause cannot be severed from the rest of the release agreement because the prohibited clause goes directly to the essence of the contract. Finally, the release is also unenforceable because it is both procedurally and substantively unconscionable.

Federal law dictates the requirements for proper venue. *Citadel Group Ltd. v. Washington Reg'l Med. Ctr.*, No. 07-CV-1394, 2008 WL 5423553, at *2 (N.D.Ill.Dec.29, 2008). For cases such as this one, in which diversity serves as the basis of jurisdiction, the relevant statute, 28 U.S.C. § 1391(a), provides three forums in which venue is proper:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or where a substantial part of property that is the subject of the action is situated, and (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought. *Id.*

II. ILLINOIS IS A PROPER VENUE FOR THIS CASE

Defendants argue that Illinois is not a proper venue because they contend Illinois has no connection to the incident at issue in this case. Defendants are mistaken. Venue is proper in a diversity case where a defendant corporation is subject to personal jurisdiction in the state in which the court sits. *Mckia-Coy v. Horseshoe Hammond, LLC*, 2008 WL 4326468, at *2 (N.D.Ill.Sept.17, 2008)(Holding that Illinois is proper venue in diversity jurisdiction case where Defendant Indiana company is subject to personal jurisdiction in Illinois); *Chemical Waste Management v. Sims*, 870 F. Supp 870, 876 (N.D.Ill.1994).

As this Court is aware, there are two types of personal jurisdiction: general and specific. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414-16, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); see also *Hyatt Int'l v. Coco*, 302 F.3d at 707, 713 (7th Cir.2003). General jurisdiction

exists when the defendant has “continuous and systematic” contacts with the forum state. *Helicopteros*, 466 U.S. at 416, 104 S.Ct. 1868; *Hyatt Int'l*, 302 F.3d at 713. If such contacts exist, “the court may exercise personal jurisdiction over the defendant even in cases that do not arise out of and are not related to the defendant's forum contacts.” *Hyatt Int'l*, 302 F.3d at 713. These contacts amount to the defendant’s having a “constructive presence” in the forum state to such a degree that it would be fundamentally fair to require it to answer in the forum state. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir.2003).

When a court's subject matter jurisdiction is based on diversity of citizenship the court may exercise personal jurisdiction over a defendant only if personal jurisdiction would be proper in an Illinois court. See *Hyatt Int'L*, 302 F.3d at 713. Accordingly, the district court looks to the Illinois long-arm statute, which contains a "catch-all" provision allowing Illinois state courts to assert personal jurisdiction to the maximum extent permitted by the Illinois and United States Constitutions. See 735 ILCS 5/2-209(c).

Because "there is no operative difference between the limits imposed by the Illinois Constitution and the federal limitations on personal jurisdiction.", the Court must determine whether exercising personal jurisdiction over a defendant comports with federal due process protections. *Hyatt Int'l*, 302 F.3d at 715. Under the Due Process Clause, before an out-of-state defendant may be required to defend a case in the forum state, it must have "minimum contacts" with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed.95 (1945). It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus

invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

Here, Defendants are subject to general personal jurisdiction in Illinois because Defendant MTV Networks Inc. maintains a business office at 401 North Michigan Avenue in Chicago, Illinois, which is responsible for MTV's regional advertisement sales¹. In *Adams ex rel. Adams v. Harrah's Maryland Heights Corp.*, a case involving a Missouri casino, the Illinois Appellate Court held that the casino was subject to general jurisdiction in Illinois because the casino directed fliers, brochures, and coupons to Illinois residents. 789 N.E.2d 436, 439 (Ill.App.5 Dist.2003). In that case, the Court found that the defendant purposefully directed its activities toward Illinois residents and the casino maintained continuous and systematic business contacts with Illinois that were sufficient to support the assertion of general jurisdiction over the casino. *Id* at 440.

In *Tranzact Technologies Inc. v. OneWorldsite.com*, a court in this district held that a Delaware corporation was subject to general jurisdiction in Illinois because the corporation maintained a business office in Illinois. 2002 WL 122515, at *2 (N.D.Ill.Jan 30, 2002). Similarly in the instant case, MTV Networks is subject to general jurisdiction in Illinois because it has maintained a regional advertising office in Illinois which displays a systematic and continuous business relationship with the state of Illinois. By targeting Illinois residents through regional advertisements, MTV Networks has purposefully availed itself of the laws of Illinois and can reasonably expect to be haled into court in Illinois.

¹ MTV Networks office in Illinois verified by Illinois Secretary of State Website:
<http://www.ilsos.gov/corporatellc/CorporateLlcController>.

Additionally, the facts of this case show a clear and defined interest for Illinois being the proper venue. The Plaintiff is a resident of Illinois. There are twenty witnesses who reside in Illinois. See Exhibit C. Plaintiff went to Tantra nightclub in Miami, Florida, which was filled with tourists from other states. Exhibit B, p.1. Further, Defendants' knowingly had these tourists sign an appearance release form with a forum selection clause attempting to drag them across the country to California for any possible litigation. Given the totality of all of those factors and general fairness principles, Illinois is the proper forum for this matter.

III. THE FORUM SELECTION CLAUSE IS UNENFORCEABLE

Defendants also argue that Illinois would be an improper venue because Plaintiff signed a release containing an exclusive venue jurisdiction clause providing that venue is only proper in California. However, this release is unenforceable because it attempts to contract against liability for an intentional future tort, which contravenes Florida law, the substantive law that governs this issue in this case.

In diversity cases, choice of law issues must be resolved by applying the choice of law rules of the forum state. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938). Illinois applies the "most significant relationship" test of the Restatement (Second) of Conflict of Laws to determine the applicable law in tort actions. *See Ingersoll v. Klein*, 46 Ill.2d 42, 262 N.E.2d 593 (1970); see also *In Re Air Crash Disaster*, 644 F.2d 594 at 611(7th Cir. 1981). As applied in Illinois, this test presumes that the local law of the state where the injury occurred governs the rights and liabilities of the parties unless another state has a "more significant relationship" to the occurrence or parties involved. *Ingersoll, supra*, 262 N.E.2d at 595. In determining whether another state has a more significant relationship than the place of injury, the court looks at factors such as the place where the conduct giving rise to the

place of injury, the court looks at factors such as the place where the conduct giving rise to the injury occurred, the domicile, residence, nationality, place of incorporation, and place of business of the parties and the place where the relationship between the parties is centered. *Id.*

The beating took place in Florida and that is where the agreement was entered into. Also, Defendants were conducting business in Florida by filming “Jersey Shore” in Miami, Florida. Therefore, under Illinois choice of law rules, Florida state law should govern the viability of the release agreement and the forum selection clause in the instant case.

Florida public policy disallows the enforcement of contracts where parties have contracted against liability for their own fraud or other intentional torts. *Oceanic Villas v. Godson*, 148 Fla. 454, 4 So.2d 689 (1941); *Mankap Enter., Inc. v. Wells Fargo Alarm Servs.*, 427 So.2d 332, 333-34 (Fla. 3d DCA 1983)(holding an exculpatory clause unenforceable against intentional misrepresentation because it attempted to contract against liability for an intentional tort). The case of *Cerniglia v. Cerniglia* further narrowed that rule to disallow the enforcement of contracts against liability for *future* intentional torts. 679 So.2d 1160, 1164-65 (Fla.1996). In the instant case, Defendants attempted to contract against liability for their future intentional torts with the following provision:

“You understand and acknowledge that you will be in close physical proximity to other participants who may, by virtue of the Program, or for other reasons, act unpredictably, including without limitation, exhibiting physical or verbal aggression toward you or other participants.”
Ex. A, p.1.

Another pertinent section of the release states:

“You hereby agree, on behalf of yourself and your heirs, next of kin, spouse, guardians, legal representatives, employees, executors, administrators, agents, successors and assigns, to release Producer, MTV Networks, their respective licensees, designees, successors, and assigns and each of their respective officers, directors, employees, contractors, partners, shareholders, representatives, members and agents, as well as any other participants in the Program, from all liability and obligations to you for any and all nature whatsoever, whether now known or

unknown, suspected or unsuspected, and whether or not concealed or hidden, arising out of in connection with the exercise of the Rights granted above, including, without limitation, any claims of injury, illness, damage, loss or harm to you and your property, or your death..." Ex. A, p.2.

After Plaintiff signed the purported release, Defendants Ms. Polizzi and Ms. Farley assaulted and battered Plaintiff. Under Florida law, Defendants cannot contract against liability for future intentional torts. Therefore, in the instant case, there is a clear violation of Florida public policy and the release is unenforceable.

In addition, Florida law prohibits forum selection clauses or choice of law provisions where they contravene the public policy of the forum in which suit is brought. See *Mazzoni Farms v. E.I. Dupont De Nemours and Company*, 223 F.3d 1275, 1283 (11th Cir.2000); *First Pacific Corporation v. Sociedade de Empreendimentos*, 566 So.2d 3, 3 (Fla. 3d DCA 1990), (Court applying Florida law held a forum selection clause placing jurisdiction in the Bahamas unenforceable because the clause violated the forum state's public policy of contracting against liability for fraudulent inducement). Here, as the Court is aware, the forum state is Illinois. In Illinois, similar to Florida, a term exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy. *Cadek v. Great Lakes Dragaway, Inc.*, 843 F. Supp. 420 (N.D.Ill. 1994). Thus, in the instant case, the forum selection clause is unenforceable because it contains a provision which attempts to contract against liability for an intentional tort, which contravenes both Illinois and Florida public policy. If this Court finds that Defendants' release does not explicitly waive liability for future intentional torts, Defendants also cannot apply the release in a fashion that waives liability for future intentional torts. Either way, Defendants' attempt to release away future intentional torts is futile and the forum selection clause is unenforceable.

If this Court finds that the proper forum is California, the analysis would not change because California law also finds clauses which attempt to contract against liability for an intentional tort unenforceable. *Baker Pacific Corp. v. Suttles*, 220 Cal.App.3d 1148, 1154, 269 Cal.Rptr. 709 (Cal.Ct.App. 1st Dist.1990). Therefore, whether Florida, Illinois, or California is deemed the proper forum, the forum selection clause in this case is unenforceable because it contravenes the public policy of the forum state.

IV. THE PROHIBITED CLAUSE CANNOT BE SEVERED FROM THE REST OF THE RELEASE AGREEMENT

The unenforceable provision (where Defendants attempt to contract against liability for intentional tort) in Defendant's release agreement cannot be severed from the agreement because the unenforceable provision is directly tied to the purpose of the contract, which is Plaintiff's appearance on "Jersey Shore". Under Florida contract law, an unenforceable provision which violates public policy renders the whole contract unenforceable where that provision is interdependent to the other terms and goes to the very essence of the contract. *Local No. 234 of United Association of Journeymen v. Henley & Beckwith*, 66 So.2d 818, 820, (Fla. 1953). In that case, the Florida Supreme Court found an entire employment contract unenforceable because it contained a "closed shop agreement" which violated public policy and was essential to the employment contract as a whole. *Id.* Similarly here, the provision signed by Plaintiff contained an unenforceable provision which violated public policy by attempting to contract against liability for an intentional tort. Moreover, this provision is essential to the appearance release agreement as a whole because Plaintiff was assaulted and battered while being filmed for an episode of "Jersey Shore". Thus, this provision is indivisible from the entire release agreement

and the forum selection clause contained within the release agreement is rendered unenforceable as well.

Similarly, in Illinois, Courts will not enforce a contract with a portion severed when that severed portion goes to the contract's essence. *Del Monte Fresh Produce, N.A., Inc. v. Chiquita Del Monte Fresh Produce, N.A., Inc. v. Chiquita Brands Intern, Inc.*, 616 F.Supp.2d 805, 812 (N.D.Ill.2009). According to California law, severability of a contract depends on whether the offending clause is collateral to the main purpose of the agreement. *David v. O'Melvany & Myers*, 485 F.3d 1066, 1072 (9th Cir.2007). Again, since the prohibited clause is central to the appearance agreement in this case, both Illinois and California would also find the clause indivisible from the rest of the release agreement, and thus the forum selection clause is unenforceable.

V. THE RELEASE AGREEMENT IS UNCONSCIONABLE

Finally, the release agreement is unenforceable because it is unconscionable. Florida courts support a determination of unconscionability where the contract is both procedurally and substantively unconscionable. *Belcher v. Kier*, 558 So.2d 1039 (Fla. 2d DCA 1990). The procedural component of unconscionability relates to the manner in which the contract was entered and it involves consideration of such issues as the relative bargaining power of the parties and their ability to know and understand the disputed contract terms. *Id.*; (Holding contract unconscionable because it was "adhesion contract", which did not afford the customer a realistic opportunity to bargain). Substantive unconscionability is established when the terms of the contract are unreasonable and unfair. *Kohl v. Bay Colony Club Condominiums, Inc.*, 398 So.2d 865, 868 (Fla. 4th DCA 1981). Here, the appearance release agreement is procedurally unconscionable because it was tendered to Plaintiff in the darkness of a nightclub and the release

was written in extremely small font (See Exhibit B). The release agreement is likewise substantively unconscionable because it attempts to contract against liability to an intentional tort, which is a violation of public policy in Illinois, Florida, and California, among other states. Further, the release agreement is unreasonable because it attempts to force Plaintiff to travel across the country to California to defend suit with regards to the forum selection clause contained in the release agreement. Thus, the release agreement is unconscionable and the forum selection clause is rendered unenforceable.

Additionally, the release is unconscionable according to Illinois and California law. In Illinois, a contract is procedurally unconscionable where a contract deprives a party of meaningful choice or refers to a situation where a contractual term is so difficult to find, read or understand that the plaintiff cannot be aware of agreeing to it. *Frank's Maintenance Inc. v. C.A. Roberts Co.*, 86 Ill.App.3d 980, 408 N.E.2d 403, 410 (1980). In Illinois, a contract is substantively unconscionable where terms are inordinately one-sided, overly harsh, and the Court looks to the overall fairness of the obligations imposed by the bargain. *Id.* Here, the small font of the release combined with the darkness of the nightclub at the time the release was signed renders the release procedurally unconscionable according to Illinois law. A release which violates public policy by attempting to waive liability for future intentional torts is fundamentally unfair, and thus the release is substantively unconscionable as well. Thus, the release is unconscionable according to Illinois law.

Finally, under California law, unconscionability also has both a procedural and a substantive aspect; procedural aspect is manifested by: (1) oppression, which refers to an inequality of bargaining power resulting in no meaningful choice for the weaker party; or (2) surprise, which occurs when the supposedly agreed-upon terms are hidden in a document, while

substantive unconscionability refers to an overly harsh allocation of risks which are not justified under which the contract is made. *Soltani v. Western & Southern Life Ins. Co.*, 258 f.3d 1038 (9th Cir. 2001). Here, the release is procedurally unconscionable because Defendants' hid terms attempting to waive liability for intentional torts in an appearance release form in extremely small font. Again, the release was also given to Plaintiff in the darkness of a nightclub at approximately 12:00a.m. See Exhibit B, 1. Likewise, the release is substantively unconscionable because the contract attempts to allocate future risk of an intentional tort, which is against California's public policy. Thus, the release is unconscionable in California as well. Regardless of whether Florida, California, or Illinois law is applied, the release is unenforceable because it is unconscionable.

WHEREFORE, PLAINTIFF respectfully request Defendants' Motion to Dismiss for Improper Venue should be denied.

s/ Blake Horwitz
Blake Horwitz
THE BLAKE HORWITZ LAW FIRM
Two First National Plaza
20 S. Clark, #500
Chicago, IL 60603
(312) 676-2100
(312) 372-7076 (Facsimile)

EXHIBIT A

DATE May 2 LOCATION SIGNED Toronto
SHOOT DAY 1/21 PRODUCER NAME Torge
DESCRIPTION _____ HAIR COLOR Black CLOTHING white t-shirt
SHOW NAME B-2

3200

Got in a fight ~~with~~ w/ SUBJECT

APPEARANCE RELEASE

THIS RELEASE (this "Release") shall confirm that Paul White ("you"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted permission in perpetuity throughout the universe to Double Fine, LLC, and its successors, assignees, licensees and designees (collectively, "Producer") to use reproduce, record, transmit, broadcast, exploit, publicize, exhibit, depict, simulate and portray your name, likeness, silhouette, personality, appearance, performance, conversation, sound, phrases, quotes, depiction, portrayal, photograph, and voice, as well as any performance of music compositions (collectively, your "Likeness") in and in connection with the television project, currently entitled "Jersey Shore" (the "Program") and the advertising, promotion, exhibiting and other exploitation of the Program, and any and all ancillary rights associated therewith, by any and all means, media, devices, processes and technology of any nature whatsoever whether now known or hereafter devised (the "Rights"). Producer shall be the sole owner of all right, title and interest in and to all films, photographs, photographs and recordings produced hereunder, including all copyrights therein, and any extensions and/or renewals thereof.

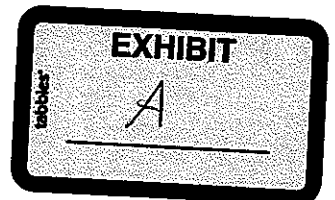
You hereby agree, on behalf of yourself and your heirs, next of kin, spouse, guardians, legal representatives, employees, executors, administrators, agents, successors and assigns, to release Producer, MTV Networks ("MTVNY"), their respective licensees, designees, successors, and assigns and each of their respective officers, directors, employees, contractors, partners, shareholders, representatives, members and agents, as well as any other participants in the Program, from all liability and obligations to you of any and all nature whatsoever, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, arising out of or in connection with the exercise of the Rights granted above, including, without limitation, any claims of injury, illness, damage, loss or harm to you or your property, or your death, and any claims of breach of contract, breach of any statutory or other duty of care owed under applicable laws, libel, defamation, slander, invasion of privacy, right of publicity or personality, misappropriation, intentional infliction of emotional distress, negligent infliction of emotional distress, infringement of copyright, or any other right and expense respecting this Release and the Rights granted by you herein.

You acknowledge and understand that the nature of the Program is such that Producer, for dramatic purposes, may make certain misrepresentations to you and others, which misrepresentations may relate to any and all topics of every kind and nature whatsoever (including without in any way limiting the generality of the foregoing the other participants). You acknowledge that while such conduct might otherwise constitute an actionable tort, you have freely and knowingly consented to such conduct. You further acknowledge and understand that your participation in the Program may lead to emotional strains and pressures on you, your friends, your co-workers and/or your family, before, during and after your participation in the Program. Accordingly, you understand that in and in connection with the Program, you may reveal and/or relate, and other parties may reveal and/or relate information about you of a personal, private, sexual, surprising, defamatory, disparaging, embarrassing and/or unfavorable nature that may be actual or fictional. You further understand that your Likeness in the Program, and your actions and the actions of others displayed in the Program, may be disparaging, embarrassing or of an otherwise unfavorable nature and may expose you, your friends, your co-workers and/or your family to public ridicule, humiliation or condemnation. You understand and acknowledge that you will be in close physical proximity to other participants who may, by virtue of the Program, or for other reasons, act unpredictably, including without limitation, exhibiting physical or verbal aggression toward you or other participants. You specifically acknowledge that you are currently pregnant and that you are therefore exposing yourself to an increased level of risk by choosing to participate. You are voluntarily participating in the Program and related activities with full knowledge, appreciation and understanding of the personal risks involved and hereby agree to accept any and all risks of participating in the Program.

You agree that you shall be entitled to no additional consideration as a result of the exercise of the Rights granted herein and that Producer may rely upon this Release in preparing and exploiting the Program. You also understand and agree that this Program is a non-union production and there will be no residual, or any other type of payment due in connection with your participation in this Program. Notwithstanding anything to the contrary contained herein, to the extent that you are rendering any musical performances in connection with the Program and you are currently a party to an exclusive recording agreement in effect with a record company with which Producer (and/or any of its affiliates) has negotiated certain terms and conditions that are applicable to any such musical performances, this Release shall be subject to such applicable terms and conditions, unless otherwise authorized by such record company. In the event of a conflict between the terms of this Release and the terms of any agreement between Producer (and/or any of its affiliates) and your record company, the terms of the agreement between Producer (and/or any of its affiliates) and your record company shall control.

Notwithstanding anything to the contrary contained herein, Producer shall not commercially release any audio or audiovisual products intended for home consumer use which embody any performance of musical compositions in the Likeness, without Producer obtaining any necessary approvals that may be required by your record label, if applicable.

Initial: Paul White



6093

You agree that, at no cost to Producer, you have secured, or will secure (and/or will arrange with any respective publisher and/or third party owner to secure) all rights, including, without limitation, synchronization rights necessary for Producer to use any musical composition(s), written, co-written and/or performed by you that is contained within the Program, to the extent that you control such rights. Notwithstanding the foregoing, nothing in this Release shall affect your right, or the right of any authorized publisher or co-writer, to collect public performance royalties.

This Release shall also serve to confirm that you warrant and represent that you have all right, title and interest in and to the Rights granted hereunder, that you have the full right, power and authority to enter into this Release, and that Producer's exercise of the Rights shall not violate or infringe any rights of any third party.

Furthermore, you agree to indemnify and hold Producer harmless from and against any and all claims, liabilities, damages, costs and expenses, including attorneys' fees actually incurred, arising out of or in any way connected with a breach of any representation, warranty or agreement made by you hereto.

You acknowledge that you shall be limited to an action for money damages for any breach of this agreement by Producer and you shall not be entitled to equitable or injunctive relief and in all events shall you be permitted to prevent or inhibit the broadcast, exhibition, distribution or other exploitation of any of Producer's productions, including but not limited to the Program.

The Rights granted herein include the right to use excerpts or stills from the Program which may contain the Likeness in any other television or motion picture production, internet production, publication, or recording. You further irrevocably agree that Producer may use and license others to use the Likeness for advertising, publicity, marketing, promotional and commercial tie-in purposes in connection with the Program and/or any other works based upon the Program, all allied ancillary and subsidiary rights therein and thereto (including, without limitation, merchandising and commercial tie-in rights); or any other use of the Program, as well as in or in connection with promotional materials for MTVN, its programming services, affiliates and sponsors, other MTVN programs and for the institutional purposes of the cable industry generally, in all media now known or hereafter devised.

This Release shall be construed and enforced in accordance with the laws of the State of California applicable to agreements of this nature and you hereby consent to the exclusive jurisdiction and venue of said State. You are familiar with and do hereby waive the provisions of Section 1342 of the California Civil Code (and similar provisions of other jurisdictions) which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

You understand that Producer shall have no obligation to produce, distribute or otherwise exploit the Program, and that if used, your Likeness need not be recognizable. All creative decisions regarding the use of your Likeness shall be at the sole discretion of Producer.

This Release sets forth our entire agreement with respect to the subject matter hereof and may not be modified unless in writing signed by both parties. Producer shall have the right to assign all of the rights granted herein to any person or entity.

You hereby warrant and represent that you have every right to execute this Release on your own behalf and to grant the Rights granted hereunder. You acknowledge that you have read this Release prior to signing it and that you fully understand its contents.

ACCEPTED AND AGREED:

DATE

NAME: (Please Print)

DATE OF BIRTH

SIGNATURE

ADDRESS

TELEPHONE

SOC. SEC. #

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARRIE MALEC,

Plaintiff,

v.

MTV NETWORKS COMPANY, VIACOM,
INC., NICOLE "SNOOKI" POLIZZI, JENNI
"JWOWW" FARLEY, and OTHER
UNIDENTIFIED EMPLOYEES OF
CORPORATE DEFENDANTS,

Defendant(s).

No: 10-CV-4092

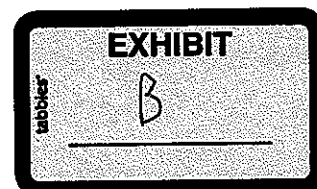
Judge Grady

Magistrate Nolan

AFFIDAVIT

I, CARRIE MALEC, under oath state:

1. On May 6th, 2010, I signed Defendants' appearance release agreement at approximately 12:00 a.m.
2. When I signed Defendants' appearance release agreement on May 6th, 2010, the release agreement was difficult to read because the lighting was extremely dark and the agreement was typed in very small font.
3. Prior to being approached to sign the appearance release agreement, I was socializing with a male cast member of the MTV Network show "Jersey Shore."
4. When signing the appearance release agreement, I was only told by Defendant MTV Networks that I was to sign the appearance release agreement so I could be shown on television.
5. On May 6th, 2010, I was with numerous other tourists at Tantra, a nightelub in Miami, Florida, where the incident occurred.



AUG-24-2010 02:35 FROM:JEFFREY LAMORTE ORLA 17083640405

TO:13123727076

P.1/1

6. There are numerous other individuals in Illinois who are aware of the pain, suffering, and humiliation this incident has caused me.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct. Executed this 23rd day of August, 2010 at 3:35am


CARRIE MALEC

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARRIE MALEC,

Plaintiff,

v.

MTV NETWORKS COMPANY, VIACOM,
INC., NICOLE "SNOOKI" POLIZZI, JENNI
"JWOWW" FARLEY, and OTHER
UNIDENTIFIED EMPLOYEES OF
CORPORATE DEFENDANTS,

Defendant(s).

No: 10-CV-4092

Judge Grady

Magistrate Nolan

PLAINTIFF'S DISCLOSURES PURSUANT TO F.R.C.P. 26(a)(1)

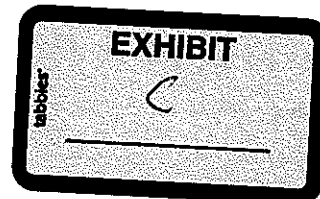
NOW COMES the Plaintiff, by and through The Blake Horwitz Law Firm, and hereby makes the following initial disclosures pursuant to the Federal Rules of Civil Procedure.

Rule 26(a)(1) disclosures:

- A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claim or defenses, unless solely for impeachment, identifying the subjects of the information.

Occurrence Witnesses: These witnesses have direct knowledge relative to the occurrence.

Carrie Malec
9421 Tramore Lane
Mokema IL 60448



Amanda Blaszak
Chicagoland area¹, IL

Kelly Ortiz
Chicagoland area, IL

Colleen Krueger
111 San Carlos Rd.
Minooka, IL 60447

Post Occurrence Witnesses: These witnesses have knowledge regarding physical and/or emotional injuries Plaintiff sustained, as well as the publication of incident over the internet.

Chris Malec (Husband)
9421 Tramore Lane
Mokema IL 60448

Rachel Delestowick
19235 Wolf Rd
Mokema, IL 60448

Christina Papadatos
17222 Deerview Drive
Orland Park, IL 60467

Kelly Beaurain
2630 StoneWall Ave
Woodwridge, IL 60517

Michelle Mullaney
8949 Silverdale Drive
Orland Park, IL 60462

Mary Fugger
Chicagoland area, IL

¹ Certain witnesses did not want to disclose exact addresses for privacy reasons, but they will be made available to Defense Counsel upon request.

Joanna Ruddy
Chicagoland area, IL

Joyce and Ron Spano
211 Begonia Drive
Matteson, IL 60443

Corrin Maali
10128 Harnew Rd East
Oak Lawn, IL 60453

Angelica Costa
Chicagoland area, IL

Jeffrey Lamorte,
Chicagoland area, IL

Amy Planera
1910 Heather Way
Unit 19
New Lenox, IL 60451

Patty Cerniuk
Chicagoland area, IL

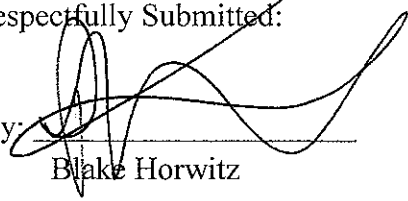
Sara Skowron
4607 N Sheridan #204
Chicago, IL 60640

Patti Wasek
Chicagoland Area, IL

Investigation continues regarding the names and contact information for the above witnesses. Witnesses did not want to disclose phone numbers for privacy reasons, however they will be made available to Defense Counsel upon request.

Respectfully Submitted:

By:


Blake Horwitz

Attorney for the Plaintiff
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Chicago, IL 60603
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