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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11
12 GENEVIEVE MORTON, an
13 individual,
14 Plaintiff
15 v.
16 TWITTER, INC., BIGTITS.CITY;
17 et. al.
18 Defendants.

2:21-CV-07145-GW-KSx
FIRST AMENDED COMPLAINT
1. COPYRIGHT INFRINGEMENT
2. RIGHT OF PUBLICITY, CAL. CIV. CODE § 3344
3. APPROPRIATION
DEMAND FOR JURY TRIAL

19 PLAINTIFF GENEVIEVE MORTON (“Morton” or “Plaintiff”), by and through
20 her attorney of record, Jennifer Holliday, submits this First Amended Complaint
21 and alleges against Defendant BigTits.City, and its agent, Doe Defendant 1
22 (collectively “Defendants”), upon personal information as to Plaintiff’s own
23 activities, and upon information and belief as to the activities of others, as follows:

24 **I. Jurisdiction and Venue**

25 1. This Court has exclusive subject matter jurisdiction over this action pursuant
26 to 28 U.S.C. §§ 1331 and 1338(a) because this is a claim for copyright
27 infringement arising under the Copyright Act for the United States, 17 U.S.C.
28

1 § 101, et. seq., and the Court has jurisdiction over the remaining causes of
2 action under 28 U.S.C. §1367.

3 2. This Court has personal jurisdiction over BigTits.city and its agent, DOE
4 DEFENDANT 1, because BigTits.city is a web-based company with no
5 physical location, and through its agent, entered into a contract with Twitter
6 in which it expressly consented to jurisdiction in the forum and expressly
7 waived any objection to personal jurisdiction in the forum. The claims
8 alleged in this Complaint arise out of commercial advertisements on
9 Twitter’s platform and purposeful displays and distribution of unauthorized
10 copies of copyrighted works featuring Plaintiff’s likeness in the State of
11 California and the Central District of California. Further, this Court has
12 jurisdiction over Defendant by reason of the fact that among other things: (a)
13 BigTits.city operates a website accessible in the County of Los Angeles; (b)
14 BigTits.city’s business purposely targets copyright holders and individuals,
15 like Plaintiff, with valuable property interests in the County of Los Angeles;
16 (3) Defendant BigTits.city is personally subject to jurisdiction of this Court
17 pursuant to the California Long-Arm statute, California Code of Civil
18 Procedure Section 413.10 and Federal Rule of Civil Procedure 4(e); and (4)
19 BigTits.city’s agent formed a binding contract with Twitter, Inc. through its
20 Terms of Service and Developer Agreement and expressly consented to
21 jurisdiction in California.

22 3. Venue is appropriate in this judicial district pursuant to 28 U.S. Code Section
23 1391(b)(3) because the harm arose when Defendants uploaded images and
24 text into Tweets and advertisements on Twitter’s platform and servers
25 located in this judicial district.

26 **II. Parties**

27 4. Plaintiff Genevieve Morton is an individual, a citizen of South Africa and a
28 Permanent Resident of the United States currently residing in California.

1 Ms. Morton is the registered owner of the copyrights in this action whether
2 by authorship as work-for-hire or by assignment of all rights by professional
3 photographer Derek Riker. Plaintiff is an internationally recognizable
4 professional model whose name, image and likeness (“The Morton Property
5 Rights”) have substantial value, and Morton’s business partially involves
6 creating, commissioning and selling and/or licensing copyrighted
7 photographs. Ms. Morton has maintained a Verified Account on Twitter.com
8 since 2009 under the username @genevievemorton and, at all relevant times,
9 had a following of over 83,000 users on Twitter.com and over 3.5 million
10 followers across other social media platforms. Plaintiff has appeared in
11 commercial advertisements for internationally recognizable, family-friendly
12 brands. Plaintiff achieved worldwide fame for her six consecutive
13 appearances in the Sports Illustrated Swimsuit Issue.

14 5. Plaintiff is informed and believes that Twitter defines itself in its Developer
15 Agreement as Twitter, Inc., a corporation headquartered in San Francisco,
16 California and Twitter International Unlimited Company, a company in
17 Ireland. Twitter offers both a social media platform (Twitter.com) and a
18 product: the Twitter API, that “enables programming access to Twitter in
19 unique and advanced ways” through “month-to-month contracts and scaled
20 tiers of access.” Access to Twitter’s API requires an application and approval
21 by Twitter.

22 6. Plaintiff is informed and believes and thereupon alleges that Defendant
23 BigTits.City is a web-based company that has no physical address and lists
24 no Designated Agent with the Copyright Office Directory. BigTits.City
25 operates at IP Address 172.64.34.200, a server located within the United
26 States. BigTits.City is registered through NameCheap, Inc. a company
27 located in the United States, and generates revenue through advertising.

28 7. Plaintiff is informed and believes Defendants indemnified Twitter for its own

1 misconduct pursuant to the Developer Agreement to which it was a party.

2 **FACTS**

3 8. Plaintiff is informed and believes, and thereon alleges, that BigTits.City’s
4 agent, Doe Defendant 1, created an account on Twitter.com numbered
5 843403883334586368 in March 2017 from IP address 188.234.30.139
6 through Twitter’s developer platform program with OAuth 1 consumer key
7 268278 and username @city_tits and used the account for the primary
8 purpose of advertising links to Defendant BigTits.City, a website that
9 features unauthorized copies of copyrighted photographs, including
10 Plaintiff’s copyrighted photographs, and unauthorized uses of The Morton
11 Property Rights. The @city_tits Twitter account openly and notoriously
12 claimed, at all relevant times, it was the “official Twitter account of the
13 BigTits.City website.” The BigTits.City website features advertising.

14 9. Plaintiff is informed and believes, and on that basis, alleges that Defendants
15 deliberately obfuscated identity and location information by falsely stating to
16 a domain registrar that it maintained an office and telephone number in
17 Iceland.

18 10. Plaintiff is the owner of all rights to photographs Registered with Copyright
19 Registration Number VA-2-211-724 and entitled “Love on the Rocks 15”
20 (“Infringed Image 1”), and another with Copyright Registration Number
21 VA0002210005 and entitled, “Artists Collection 16” (“Infringed Image 2”),
22 and another with Copyright Registration Number VA0002210005 and
23 entitled, “Private Island 10” (“Infringed Image 3”) (collectively “Infringed
24 Images”).

25 **a. Defendants copied, displayed, and distributed the Infringed Images, and**
26 **used The Morton Property Rights in connection with advertisements**
27 **without license or permission from Morton.**

28 11. On or about June 18, 2020, a substantially similar copy of Plaintiff’s

1 Infringed Image 1 featuring her image and likeness appeared without
2 Morton’s authorization in a Tweet (“Subject Tweet 1”) on the URL
3 https://twitter.com/city_tits/status/1273260487506120709 with the following
4 text: “**Genevieve Morton @genevievemorton #Girlswithbigtits**
5 **#genevievemorton**” and a hypertext link to BigTits.City where additional
6 unauthorized copies of Plaintiff’s copyrighted works and The Morton
7 Property Rights appear.

8 12. Morton submitted a DMCA-compliant Notice and Takedown Report (Report
9 #1) regarding Subject Tweet 1 to Twitter on July 23, 2020 through
10 Twitter.com’s DMCA reporting system.

11 13. Plaintiff is informed and believes that Twitter did not respond expeditiously
12 to Plaintiff’s Report #1 due to a cyberattack on Twitter that occurred in July
13 2020.

14 14. On or about September 10, 2020, a substantially similar copy of Plaintiff’s
15 Infringed Image 2 appeared without Ms. Morton’s authorization on a Tweet
16 (“Subject Tweet 2”) on the @city_tits Twitter feed at the URL
17 https://twitter.com/city_tits/status/1304069685680443394 with the following
18 text: “**Genevieve Morton @genevievemorton #Girlswithbigtits**
19 **#genevievemorton**” and a link to BigTits.City where additional infringed
20 works and works featuring unauthorized uses of the Morton Property Rights
21 appeared.

22 15. Subject Tweet 1 and Subject Tweet 2 are collectively referred to herein as
23 “Subject Tweets.”

24 16. On September 10, 2020, Morton submitted a DMCA-compliant Notice and
25 Takedown Report (Report #2) regarding Subject Tweet 2 to Twitter through
26 Twitter.com’s DMCA reporting system. Twitter assigned number
27 0172275586 to the report.

28 17. Plaintiff is informed and believes Twitter did not receive a DMCA

1 Counternotice from Bigtits.City in response to her DMCA Notices because
2 she was never notified of any Counternotice.

3 18. Twitter did not remove the Infringing Image 2 in Subject Tweet 2 until
4 October 19, 2020, and it did not delete Subject Tweet 2 or suspend the
5 @city_tits account at that time.

6 19. Twitter did not remove Infringing Image 1 in Subject Tweet 1 until October
7 28, 2020, and it did not delete Subject Tweet 1 or suspend the @city_tits
8 account at that time.

9 20. Subject Tweet 1 received at least 55 “likes,” and Subject Tweet 2 received at
10 least 12 “likes,” indicating that the Infringed Images were actually displayed
11 to at least 67 unique users.

12 **UNAUTHORIZED USAGE ON THE BIGTITS.CITY WEBSITE**

13 21. Subject Tweet 1 and Subject Tweet 2 included hyperlinks directing users to
14 the BigTits.City website.

15 22. Without authorization, Defendants used The Morton Property Rights and
16 copied, altered, displayed, and distributed a substantially similar copy of
17 Infringed Image 1 on <https://bigtits.city/pics/36/22453.jpg> from IP Address
18 172.67.162.144 located in the United States.

19 23. Without authorization, Defendants used the Morton Property Rights and
20 copied, altered, displayed, and distributed substantially similar copy of
21 Infringed Image 2 on <https://bigtits.city/pics/34/22452.jpg> from IP Address
22 172.67.162.144 located in the United States.

23 24. Without authorization, Defendants used the Morton Property Rights and
24 copied, altered, displayed, and distributed a substantially similar copy of
25 Infringed Image 3 on <https://bigtits.city/pics/6b/22454.jpg> from IP Address
26 172.67.162.144 located in the United States.

27 25. Defendants used The Morton Property Rights without authorization and
28 copied, altered, displayed and distributed Infringed Images alongside

1 additional professional photographic images, unowned by Plaintiff, featuring
2 Plaintiff’s likeness as well as additional pornographic photographs that did
3 not feature Plaintiff’s likeness, falsely implying Plaintiff appeared in said
4 photographs.

5 26. The BigTits.City website features the aforementioned unauthorized usage of
6 The Morton Property Rights and includes the text “Copyright 2022
7 BigTits.city.” At no time did Defendants have any license to copy, display,
8 alter, or distribute the Infringed Images, use the Morton Property Rights
9 claim any rights to the use of photographs featuring Plaintiff’s likeness.

10 27. Defendants do not include any information on BigTits.city on how to contact
11 the site to report copyright infringement or abuse.

12 **TWITTER TERMS OF SERVICE VIOLATIONS / NO LICENSE**

13 28. Plaintiff is informed and believes Twitter offered access to its services to
14 user @city_tits through Twitter’s Terms of Service and through its
15 Developer Agreement, and the terms of both agreements are incorporated by
16 reference.

17 29. Twitter’s Developer Agreement, effective March 10, 2020, specifically
18 defines Twitter as: ‘Twitter’ means Twitter, Inc., with an office located at
19 1355 Market Street, Suite 900, San Francisco, CA 91403, USA. If you enter
20 into this Agreement or an Order outside of the United States, Canada, or
21 Latin America, Twitter International Company with its registered offices at
22 One Cumberland Place, Fenian Street, Dublin 2, D02 AX07, Ireland (TIC) is
23 the contracting entity.

24 30. The Developer Agreement expressly prohibits the use of Twitter to violate
25 intellectual property rights, including copyright and trademark. The
26 Developer Agreement contains Commercial Use Restrictions prohibiting the
27 use of the Twitter API by or on behalf of a business or part of a product or
28 service that is monetized “including but not limited to website advertising...”

1 31. Twitter offered use of the Twitter API on different tiers, some of which
2 require payment to Twitter. Plaintiff is informed and believes Defendants
3 applied for and were issued a Developer Account and accessed the
4 Twitter.com platform directly through the Twitter API.

5 32. Twitter’s Terms of Service specifically state: *“By submitting, posting or*
6 *displaying Content on or through the Services, you grant us a worldwide,*
7 *non-exclusive, royalty-free license (with the right to sublicense) to use, copy,*
8 *reproduce, process, adapt, modify, publish, transmit, display and distribute*
9 *such Content in any and all media or distribution methods now known or*
10 *later developed (for clarity, these rights include, for example, curating,*
11 *transforming, and translating). This license authorizes us to make your*
12 *Content available to the rest of the world and to let others do the same. You*
13 *agree that this license includes the right for Twitter to provide, promote, and*
14 *improve the Services and to make Content submitted to or through the*
15 *Services available to other companies, organizations or individuals for the*
16 *syndication, broadcast, distribution, Retweet, promotion or publication of*
17 *such Content on other media and services, subject to our terms and*
18 *conditions for such Content use. Such additional uses by Twitter, or other*
19 *companies, organizations or individuals, is made with no compensation paid*
20 *to you with respect to the Content that you submit, post, transmit or*
21 *otherwise make available through the Service as the use of the Services by*
22 *you is hereby agreed as being sufficient compensation for the Content and*
23 *grant of rights herein.”*¹

24 33. Plaintiff has never granted Defendants a license to use the Infringed Images
25 or the Morton Property Rights. Therefore Defendants had no authorization to
26 grant a license or sublicense to Twitter, Inc. to copy, display, distribute or use
27 in any manner the Infringed Images.

28 ¹ Twitter’s Terms of Service are available at <https://twitter.com/en/tos> (visited Oct. 12, 2022)

1 34. Plaintiff is informed and believes that Defendants had access to her
2 copyrighted photographs from additional, unauthorized displays of her works
3 on a website, thefappeningblog.com. Plaintiff is informed and believes
4 Defendants had actual knowledge when they copied the Infringed Images
5 from the website that the copies were unauthorized and had been willfully
6 infringed.

7 35. Thefappeningblog.com claims to feature photographs of celebrities that have
8 been “leaked” from “iCloud hacks.” Thefappeningblog.com links directly to
9 “BannedSexTapes.com” that purports to be “The #1 Celebrity Hardcore
10 Mega Site on the Web,” featuring over 120,000 photographs and over 18,500
11 hours of video content. BannedSexTapes.com sells a membership at three
12 tiers for \$1, \$35.94, or \$71.94. Charges for the Membership to Banned Sex
13 Tapes recurs every thirty days at \$35.94 until cancelled. Plaintiff is informed
14 and believes the content on BannedSexTapes.com was obtained in violation
15 of the Computer Fraud and Abuse Act, and that the Morton Property Rights
16 and Infringed Images were used by Defendants as a bait-and-switch
17 fraudulent advertisement for this content.

18 **TWITTER AND THE DEVELOPER ACCOUNT**

19 36. Twitter had the right and ability to remove the Subject Tweets containing the
20 Infringed Images from all Twitter platforms, but Twitter did not remove the
21 Subject Tweets when it removed the Infringed Images or suspend the
22 @city_tits account, leaving the hyperlink to BigTits.City accessible
23 alongside The Morton Property Rights until Plaintiff filed a lawsuit.

24 37. Plaintiff is informed and believes Twitter failed to supervise, hire, or retain
25 one or more third-party vendor(s) who could competently respond to DMCA
26 notice and takedown requests and/or reported Tweets or enforce the
27 Developer Agreement.

28 38. Twitter claims its “worldwide network directly interconnects with over 3,000

1 unique networks in many datacenters worldwide.”

2 **CAUSES OF ACTION**

3 **COPYRIGHT INFRINGEMENT**

4 39. Plaintiff realleges Paragraphs 1-38 and further alleges:

5 40. Plaintiff is the creator and registered copyright owner the Infringed Images.

6 In the event that there is a mistake in the Certificates of Registration, Ms.
7 Morton claims ownership of all beneficial rights to Infringed Images by
8 assignment from photographer Derek Riker.

9 41. The Infringed Images are copyrightable subject matter under 17 U.S. Code
10 Section 102(a)(5), and Plaintiff is the registered copyright owner of Infringed
11 Images.

12 42. A substantially similar copy of Infringed Image 1 featuring Plaintiff’s image
13 and likeness appeared on Twitter and on BigTits.City without Plaintiff’s
14 authorization as alleged herein.

15 43. Plaintiff is informed and believes Defendants had access to unauthorized
16 copies of the Infringed Images from unauthorized displays of the Infringed
17 Images on TheFappeningblog.com.

18 44. Defendants reproduced Plaintiff’s Infringed Images featuring her image and
19 likeness through technological means without Plaintiff’s authorization in
20 violation of Plaintiff’s exclusive right to reproduce the Infringed Images.

21 45. Defendants embedded Plaintiff’s copyrighted photograph on Twitter through
22 the Twitter API without authorization in violation of Plaintiff’s exclusive
23 right to reproduce the Infringed Images.

24 46. Defendants displayed the Infringed Images on Twitter in violation of
25 Plaintiff’s exclusive right to display the Infringed Images.

26 47. Defendants distributed the Infringed Images on Twitter in violation of
27 Plaintiff’s exclusive right to distribute the Infringed Images.

28 48. Defendants created the Subject Tweets on Twitter using the Infringed

1 Images in violation of Plaintiff’s exclusive right to create derivative works.
2 49. Defendants directly profited off the copyright infringement by featuring
3 advertising on BigTits.City and driving traffic to thefappeningblog.com and
4 BannedSexTapes.com which sold memberships to unauthorized content.

5 **RIGHT OF PUBLICITY**

6 50. Plaintiff realleges paragraphs 1-49 and further alleges:

7 51. Defendants knowingly and willfully used Plaintiff’s commercially valuable
8 name, image, likeness, identity and Twitter verified account username
9 without her knowledge, consent, or authorization in the Subject Tweets for
10 the commercial purposes of promoting its Twitter account and driving user
11 traffic to BigTits.City featuring additional unauthorized uses of the Morton
12 Property Rights in violation of California Civil Code § 3344 and of the
13 Twitter Developer Agreement.

14 52. Specifically, Defendants used a Developer Account to post Tweets accessible
15 to the worldwide public that contained unauthorized commercial uses of The
16 Morton Property Rights for the purpose of attracting Twitter users, driving
17 valuable traffic and capturing valuable user data, promoting its website, and
18 linking to third-party websites where additional unauthorized uses of The
19 Morton Property Rights appeared alongside advertisements.

20 53. Ms. Morton suffered emotional distress from the unauthorized use of the
21 Morton Property Rights as expressed by headaches, nightmares, and physical
22 manifestations of anxiety and depression from being personally and
23 professionally falsely associated with advertising a pornography website.

24 54. Ms. Morton is informed and believes she lost valuable professional
25 opportunities as a result of the unauthorized use of The Morton Property
26 Rights by Defendants.

27 **APPROPRIATION OF NAME AND LIKENESS**

28 55. Plaintiff realleges paragraphs 1-54 and further alleges:

1 56. Defendants used Plaintiff Genevieve Morton’s name, image, likeness and
2 identity without her consent in the Subject Tweets and on BigTits.City as
3 alleged herein.

4 57. Defendants gained a commercial benefit by using Plaintiff’s name, image
5 and likeness by attracting Plaintiff’s followers on Twitter and her fans
6 worldwide to Defendants’ Twitter account and to BigTits.City where her
7 name appears alongside pornographic images that do not feature Plaintiff but
8 that could lead a reasonable person to believe the images featured Plaintiff.

9 58. Plaintiff was harmed by the nonconsensual uses of her name and likeness in
10 that it caused her to appear to viewers of the Subject Tweets in a commercial
11 use advertising a pornography website and, on BigTits.City, to appear in
12 pornography, thereby causing damage to Plaintiff’s personal reputation as
13 well as diminution in the value of Plaintiff’s name and likeness as a
14 professional model.

15 59. Plaintiff was further harmed by the nonconsensual uses of her name and
16 likeness by BigTits.City in that it caused Internet search engines to display
17 results that included pornography sites like BigTits.City to anyone searching
18 “Genevieve Morton” online.

19 60. Defendant’s conduct in deliberately using Plaintiff’s name, image and
20 likeness and identity without consent and in violation of the Twitter
21 Developer Agreement in connection with commercial advertisements for
22 pornography was a substantial factor in causing Plaintiff’s harm.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for relief as follows:

25 For an Order enjoining Defendants, their officers, agents, employees, temporarily
26 during the pendency of this action and permanently thereafter:

27 1. From infringing or contributing to the infringement by others the
28 copyright in Plaintiff’s Infringed Images or acting in concert with, aiding and

1 abetting others to infringe said copyrights in any way; and

2 2. From copying, duplicating, selling, licensing, displaying, distributing, or
3 otherwise using without Plaintiff's authorization copies of Plaintiff's works to
4 which Plaintiff is the owner of exclusive rights under the respective copyrights or
5 making derivative works based thereon; and

6 3. For an award of actual damages suffered by Plaintiff as a result of the
7 infringement and any profits of the Defendants attributable to the infringement of
8 Plaintiff's exclusive rights under copyright and to pay such damages to Plaintiff as
9 to this Court shall appear just and proper, or in the alternative, at Plaintiff's
10 election, statutory damages for infringement in an amount no less than \$150,000
11 per instance at a minimum of 67 instances, and any additional instances of
12 infringement discovered through the course of the litigation; and

13 A. For an award of damages under California Civil Code § 3344 in an
14 amount of \$10,000,000 but no less than \$750; and

15 B. For an award of damages according to proof at trial; and

16 C. For an award of attorney's fees pursuant to 17 U.S. Code Section 505; and

17 D. For an award of pre-judgment interest and post-judgment interest in the
18 maximum amount permitted by law;

19 E. For such other and further relief as the Court deems just and proper.

20 Plaintiff hereby requests a jury trial on all triable issues.

21 Dated this 26th day of October 2022.

22
23 /S/ Jennifer Holliday

24 Jennifer Holliday

25 ATTORNEY FOR PLAINTIFF
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