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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID COOPER, an individual; DAVID
COOPER, doing business as SEXTASY;
DAVID COOPER, an individual doing
business as SHOW AND TELL; EFJ,
LLC, a Nevada limited liability company;
and INTERACTIVE MEDIA
COMMUNICATIONS, a Nevada limited
liability company,

Plaintiffs,

vs.

CLARK COUNTY NEVADA, a political
subdivision of the State of Nevada;
VIRGINIA VALENTINE, Clark County
Manager; JACQUELYN R.
HOLLOWAY, Director, Clark County
Department of Business; NANCY
HANCOCK, a Clark County Department
of Business employee; GARY
TORGERSON; a Clark County
Department of Business licensing
enforcement agent; DANIEL HIGGINS, a
Clark County Department of Business
licensing enforcement agent; BRUCE L.
WOODBURY, TOM COLLINS, CHRIS
GIUNCHIGLIANI, LAWRENCE
WEEKLY, SUSAN BRAGER, RORY
REID, CHIP MAXFIELD, Clark County
Commissioners; DOE DEFENDANTS 1
through 100 inclusive; and ROE
DEFENDANTS I through XX inclusive,

Defendants.

CASE NO: _____

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO 28 U.S.C. §1983**

[Jury Trial Demanded]

1 COME NOW the Plaintiffs, by and through their counsel, Lisa A.
2 Rasmussen, Esq., and hereby file this Complaint for monetary damages and injunctive
3 relief pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201 and 28 U.S.C. § 1331 against the
4 defendants named herein, Clark County, its Commissioners, and various Clark County
5 employees. The basis of Plaintiff's causes of action is that the Defendants violated his
6 federal rights pursuant to the United States Constitution and by doing so, implicated his
7 ability to compete with other similar businesses thereby exposing him to an economic
8 disadvantage as well as monetary damages.

9 **I.**

10 **JURISDICTION**

11 This Court has original subject matter jurisdiction over the federal
12 constitutional violations alleged in this Complaint pursuant to the provisions of 42 U.S.C.
13 § 1983 and 28 U.S.C. §§ 1341 and 1343. Pursuant to 28 U.S.C. § 1367(a), this Court has
14 supplemental jurisdiction over plaintiff's claims arising under state law. This Court has
15 jurisdiction to issue declaratory and/or injunctive relief pursuant to 28 U.S.C. § 2201 and
16 42 U.S.C. § 1983.

17 Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391.
18 The allegations that form the basis of this Complaint occurred in Clark County, Nevada,
19 thus, venue is proper in the unofficial southern division of this Court.

20 **II.**

21 **THE PARTIES**

22 1. Plaintiff DAVID COOPER is an individual who is and was at all
23 times relevant hereto a resident of Clark County, Nevada.

24 2. Plaintiff DAVID COOPER has also done business under the names
25 'SEXTASY' and 'SHOW AND TELL.'

26 3. Plaintiff EFJ, LLC is a Nevada limited liability company, whose
27 managing member is David Cooper.

28 4. Plaintiff INTERACTIVE MEDIA COMMUNICATIONS is a

1 Nevada limited liability company whose managing member is David Cooper.

2 5. Defendant CLARK COUNTY is a political subdivision of the State
3 of Nevada.

4 6. Defendant VIRGINIA VALENTINE, is and was at all times relevant
5 hereto the Clark County Manager and she is sued in her official capacity.

6 7. Defendant JACQUELINE R. HOLLOWAY, is and was at all times
7 relevant hereto the Director of the Clark County Department of Business, and she is sued
8 in her official capacity. The Department of Business is responsible for processing
9 business license applications, granting business licenses and denying business licenses.
10 Ms. Holloway oversees the day to day activities of the Department of Business. Her
11 business address is 500 Grand Central Parkway, Las Vegas, Nevada, 89106.

12 8. Upon information and belief, Defendant NANCY HANCOCK is and
13 was at all times relevant hereto the Assistant to the Director of the Clark County
14 Department of Business. Ms. Hancock, an employee of Clark County, is sued in her
15 official capacity. She is familiar with the processing of business license applications and
16 she is familiar with granting and denying business licenses to applicants. Her business
17 address is 500 Grand Central Parkway, Las Vegas, Nevada, 89106.

18 9. Upon information and belief, Defendant GARY TORGERSON is
19 and was at all times relevant hereto a licensing enforcement agent and/or inspector for the
20 Clark County Department of Business. Mr. Torgerson is sued in his official capacity. He
21 is familiar with licensing requirements and the permit application process. He is also
22 familiar with enforcement of licensing regulations in Clark County, Nevada. His
23 business address is 500 Grand Central Parkway, Las Vegas, Nevada, 89106.

24 10. Upon information and belief, Defendant DANIEL HIGGINS is and
25 was at all times relevant hereto a licensing enforcement agent and/or inspector for the
26 Clark County Department of Business. Mr. Mr. Higgins is sued in his official capacity.
27 He is familiar with licensing requirements and the permit application process. He is also
28 familiar with enforcement of licensing regulations in Clark County, Nevada. His

1 business address is 500 Grand Central Parkway, Las Vegas, Nevada, 89106.

2 11. Defendants BRUCE L. WOODBURY, TOM COLLINS, CHIP
3 MAXFIELD, SUSAN BRAGER, RORY REID, CHRIS GIUNCHIGLIANI and
4 LAWRENCE WEEKLY are the seven members of the Clark County Board of
5 Commissioners at all times relevant hereto. The Commissioners and Board are sued in
6 their official capacity. The Board of Commissioners is responsible for running the Clark
7 County government, including the hiring of a County Manager who is responsible for the
8 day-to-day administrative operations of the County government. Their business address
9 is 500 Grand Central Parkway, Las Vegas, Nevada, 89106.

10 12. Upon information and belief, DOE DEFENDANT 1, FNU LNU, is
11 and was at all times relevant hereto a female licensing enforcement agent and/or inspector
12 for the Clark County Department of Business. DOE DEFENDANT 1 is sued in her
13 official capacity. Her identity is not yet know to Plaintiff. Plaintiff will amend this
14 Complaint as is proper, following discovery. DOE Defendant 1 is familiar with
15 enforcement of licensing regulations in Clark County, Nevada. Her business address is
16 500 Grand Central Parkway, Las Vegas, Nevada, 89106.

17 13. The identities of DOE Defendants 2 through 100 are individuals
18 unknown to Plaintiff at this time. If appropriate, he will seek leave to name these Doe
19 Defendants as discovery permits.

20 14. The identities of ROE Defendants I through XX are entities
21 unknown to Plaintiff at this time. If appropriate, he will seek leave to name these entity
22 Roe Defendants as discovery permits.

23 15. The acts and omissions alleged herein occurred in Clark County,
24 Nevada between February 2008 and September 2008.

25 **III.**

26 **GENERAL FACTUAL ALLEGATIONS**

27 16. In January 2008, Plaintiff David Cooper purchased EFJ, LLC, a
28 Nevada Corporation.

1 17. EFJ, LLC was operating under the name Red Rooster III, located at
2 953 E. Sahara, in a multi-commercial use development known as “the Commercial
3 Center.”

4 18. Upon purchase and transfer of the assets of EFJ, LLC to Mr. Cooper,
5 EFJ, LLC held the following business licenses: A restaurant-category 2 license, and an
6 admission, non-resort license.

7 19. Clark County does not permit the transfer of business licenses from
8 one person to another when more than 50 percent of the entity changes ownership. *See*
9 Clark County Code (CCC) 6.04.070.

10 20. On or about February 13, 2008, Plaintiffs applied for the following
11 business licenses:

- 12 • Admissions fees, non-resort, license number
13 2000382.226.102;
- 14 • Restaurant, category 2, seating for 12 or more, license
15 number 2001285.702.
- 16 • Gift/Novelty, non-resort, license number
17 2001452.405.102;
- 18 • Book Sales, license number 2000153.145; and
- 19 • Video Sales/Rental, license number 2000171.146.

20 21. On or about April 1, 2008, Plaintiffs applied for the following
21 business licenses, under the business name INTERACTIVE MEDIA
22 COMMUNICATIONS, LLC:

- 23 • Banquet Sales
- 24 • Tobacco Sales

25 22. Upon the purchase of the business, Plaintiffs assumed a lease that
26 had been previously negotiated by the president of EFJ, LLC for the space located at 953
27 E. Sahara, Las Vegas, Nevada, Suite B-20.

28 23. After purchasing the corporation, Plaintiffs spent substantial time

1 and money renovating the space to enhance its visibility and use as a swinger's club.

2 24. Plaintiffs' renovations and upgrades necessarily included substantial
3 interior re-design and installation of fixtures, and work to the then-existing electrical and
4 plumbing to ensure code compliance within Clark County.

5 25. Plaintiffs were required to pass the following inspections prior to
6 obtaining his business license: building inspection, fire inspection and health inspection.

7 26. Plaintiffs' facility was inspected by the various Clark County
8 Departments (building, fire and health) in or about late March 2008. Each department
9 issued a passing grade on or about April 1, 2008. These inspections were necessary
10 prerequisites to a business license.

11 27. In April 2008, Plaintiffs provisionally opened for business pending
12 the business licenses. The name of the business was Sextasy.

13 28. Sextasy is located down the corridor and on the same property as
14 "The Green Door II." The Green Door is a well-known swinger's club.

15 29. The Green Door did at all times relevant hereto hold, and upon
16 information and belief still holds the following business licenses: restaurant-category 2,
17 tobacco, novelty sales, admissions non-resort and amusement machines.

18 30. The Green Door I previously occupied the space leased by EFJ, LLC
19 and ultimately assumed by Plaintiffs.

20 31. When the Green Door I occupied suite B-20, it conducted the same
21 business Plaintiffs intended to operate, that being a swinger's club.

22 32. Also located in the Commercial Center at that time were the Fantasy
23 Social Club, the Hushh Club and Entourage Gym. Upon information and belief, each of
24 these business are also the same type of businesses.

25 33. On or about April 14, 2008, Las Vegas Metropolitan Police
26 Department issued a citation to Plaintiff alleging that he violated Clark County Code
27 6.04.010, operating a business without a license. That case was ultimately dismissed.

28 34. In or about late May 2008, Plaintiff David Cooper was orally

1 advised by Terry Gordon, his landlord, that he would not be issued any of the business
2 licenses for which he applied. No written notice was provided to him in May 2008 and
3 this message was provided orally by Terry Gordon, not an agent of Clark County, but
4 rather the landlord to the EFJ, LLC lease.

5 35. On or about June 26, 2008, a letter authored by Jacquelyn Holloway
6 was hand-delivered to Plaintiffs. The letter stated that Mr. Cooper's license applications
7 were denied based on false and misleading statements pursuant to Clark County Code
8 6.04.090(g) and for failure to comply with 6.12.874, the restaurant category 2 licence. A
9 copy of the letter is attached hereto as Exhibit 1.

10 36. Plaintiff David Cooper filed a timely notice of appeal to the denial of
11 the business licenses in July 2008.

12 37. On or about September 9, 2008, Plaintiff David Cooper and counsel
13 argued Plaintiffs/Applicants' appeal to the Clark County Commissioners. They argued,
14 *inter alia*, that Plaintiffs were denied the same license that similar entities hold; that Mr.
15 Cooper did not provide false and misleading information on the application, which listed
16 "Sextasy" as the name of the proposed business; that Plaintiffs did have seating for 12 or
17 more; and that if they were denied a business license because they intended to open a
18 swinger's club, that the other swinger's clubs in the Commercial Center and/or in Clark
19 County should not be operating under the same licenses for which Plaintiffs applied.

20 38. On September 9, 2008, the Clark County Board of Commissioners
21 voted to uphold the denial of Plaintiff's business license applications. In doing so, they
22 stated that it was clear that Mr. Cooper was attempting to open up a swinger's club, or
23 sexually oriented business, and that the Clark County Code does not permit such
24 businesses, thereby making the license an impossibility.

25 39. As a result, Plaintiffs lost approximately \$100,000 in improvements,
26 as they were unable to earn money at the location as they had intended. They were also
27 evicted due to inability to pay rent, which cost Plaintiffs thousands of dollars in moving
28 and storage rental fees.

40. Additionally, Plaintiffs were placed at an economic disadvantage compared to their similarly situated competitors due to Defendants' collective failure and/or refusal to issue business licenses to Plaintiffs.

41. Upon information and belief, a business named Victory Hall is now occupying the space that Plaintiffs improved and upon further information and belief, the business is “sex related.”

IV. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF– DUE PROCESS VIOLATION–
Against All Defendants

42. The allegations in the proceeding paragraphs are incorporated herein by this reference as though fully set forth herein.

43. Plaintiffs applied for the business licenses in February 2008 and again in April 2008.

44. Clark County Code 6.04.090, provides that Clark County Department of Business must either issue or deny a license within 45 days of its application.

45. Plaintiffs were not notified regarding the denial of his business license applications until June 26, 2008, in violation of the requirement that the licenses be issued, granted, provisionally granted or denied within 45 days.

46. The failure to notify Plaintiffs in a timely manner caused ongoing damage to Plaintiffs because they continued to perform improvements, particularly cosmetic improvements, until late May 2008. Had they been timely notified, they would not have expended the substantial amount of money that making improvements in late April, May and June 2008.

47. Plaintiffs seek attorneys' fees at a reasonable hourly rate and costs of suit as authorized by statute and/or applicable law.

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**B. SECOND CAUSE OF ACTION– Due Process and Equal Protection--
Discriminatory Enforcement of the Clark County Code– Against All Defendants**

48. The allegations in the proceeding paragraphs are incorporated herein by this reference as though fully set forth herein.

49. The Defendants, and each of them, willfully denied Plaintiffs' business license applications. The stated basis for the denial, on appeal, was that a license could not be issued for the purpose of allowing him to operate a swinger's club and that he could not, as a result, be issued the licenses for which he applied.

50. The Defendants, and each of them, have knowingly permitted other similarly situated businesses to operate swinger's clubs with the same licenses sought by Plaintiffs.

51. The Defendants, and each of them, have never taken any action to revoke or rescind the licenses of any of the other swinger's clubs in Clark County, despite being on notice of their existence.

52. The failure to issue Plaintiffs the business licenses for which they applied, coupled with the fact that other persons were granted licenses and do in fact operate swingers clubs, has resulted in the discriminatory enforcement of a county ordinance against Plaintiffs.

53. The Defendants have an obligation to enforce the laws of Clark County in an equal and even-handed manner pursuant to the constitutions of the State of Nevada and the United States.

54. The Defendants actions violated Plaintiffs' federal constitutional rights in violation of 42 U.S.C. §1983.

55. Plaintiffs have been damaged as a result of the Defendants' discriminatory enforcement of the Clark County Code and their acts of omission in failing to issue them a business license, while proving licenses to their competitors who hold the same licenses.

56. Plaintiffs seek reasonable attorney's fees and costs of suit due to the

1 need to bring this lawsuit to seek recompense for their damages.

2 **C. THIRD CAUSE OF ACTION– INTERFERENCE WITH**
3 **ADVANTAGEOUS ECONOMIC RELATIONS– Against All Defendants**

4 57. The allegations in the proceeding paragraphs are incorporated herein
5 by this reference as though fully set forth herein.

6 58. Mr. Cooper purchased EFJ, LLC in January 2008, with the intention
7 of maintaining the same sort of business previously conducted at that location, albeit
8 vastly improved in terms of clientele and other intangible matters, including goodwill.

9 59. The conduct of the Defendants contributed to an immediate loss of
10 Plaintiffs’ investment and initial improvements, Plaintiffs’ income, future income and
11 other inchoate intangible assets.

12 60. As a result of Defendants’ interference with Plaintiffs’ advantageous
13 economic relations was willful and/or done with conscious disregard with the intent to/or
14 result of depriving Plaintiffs the opportunity to enjoy the benefits of their business. As
15 such, Plaintiffs are entitled to punitive damages in addition to compensatory damages.

16 61. Plaintiffs seek reasonable attorney’s fees and costs of suit due to the
17 need to bring this lawsuit to seek recompense for their damages.

18 **D. FOURTH CAUSE OF ACTION– CIVIL CONSPIRACY–**
19 **Against All Defendants**

20 62. The allegations in the proceeding paragraphs are incorporated herein
21 by this reference as though fully set forth herein.

22 63. Defendants and others unknown to Plaintiffs tacitly or explicitly
23 agreed and acted together in concert to accomplish an unlawful objective, including, *inter*
24 *alia*, the acts alleged in paragraphs 43 through 56, *supra*, and 62 through 66, *supra*, and
25 with intent to cause harm to Plaintiffs.

26 64. As a result of the actions of Defendants, Plaintiffs have suffered
27 economic loss, lost business opportunities, lost profits, and actual and special damages, in
28 an amount in excess of \$75,000 and to be proven at trial.

1 65. The actions of Defendants are characterized by fraud, oppression,
2 and malice as well as a conscious disregard of Plaintiffs' rights, and therefore Plaintiffs
3 are entitled to recover punitive damages.

4 66. By reason of the foregoing, it has been necessary for Plaintiffs to
5 obtain the services of an attorney to prosecute this action, and as a result, Plaintiffs are
6 entitled to recover their reasonable attorney's fees and costs of suit herein.

7 **E. FIFTH CAUSE OF ACTION– VAGUENESS AND OVERBREADTH**
8 **– Against Clark County**

9 67. The allegations in the proceeding paragraphs are incorporated herein
10 by this reference as though fully set forth herein.

11 68. The definition of a specified sexual activities as defined in the Clark
12 County Code, Section 30.08.030 is unconstitutionally vague on its face and as applied to
13 Plaintiffs in the context of a denial of their business license.

14 69. The definition of a specified sexual activity as defined in CCC
15 30.08.030 is unconstitutionally broad.

16 70. Plaintiffs seeks declaratory relief and asks this Court to find that
17 CCC 30.08.030 is both unconstitutionally vague and overbroad.

18 71. Plaintiffs seek reasonable attorneys' fees and costs of suit for having
19 to bring this action to challenge the constitutionality of CCC 30.08.030.

20 **F. REQUEST FOR INJUNCTIVE RELIEF**

21 72. The allegations in the proceeding paragraphs are incorporated herein
22 by this reference as though fully set forth herein.

23 73. Plaintiffs request that this Court issue injunctive relief either (a)
24 restoring his right to apply for obtain a business license under the categories for which he
25 sought licensing, or (b) revocation of the existing "swingers clubs" that are operating
26 under similar licenses and/or applications.

27 74. Plaintiffs seek reasonable attorneys' fees and costs of suit for having
28 to bring this action in order to seek injunctive relief.

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Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on all issues so triable.

1. A declaration that CCC 30.08.030 violates Plaintiff's due process rights under the Fourteenth Amendment to the United States Constitution.
2. A declaration that the definition of specified sexual activities contained in CCC 30.08.030 is unconstitutionally vague.
3. A declaration that the definition of specified sexual activities contained in CCC 30.08.030 is unconstitutionally overbroad.
4. Injunctive relief either (a) granting Plaintiffs the licenses for which they applied, or (b) revoking the licenses of similar swingers clubs who operate under similar licenses.
5. Monetary relief in an amount to be proven at trial.
6. Punitive damages.
7. Reasonable costs and attorney's fees.
8. Any other relief that this Court deems proper.

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