UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

SHANE HARRINGTON,

Plaintiff,

- versus -

HALL COUNTY BOARD OF SUPERVISORS, HALL COUNTY NEBRASKA, a municipal entity, JEO CONSULTING GROUP, INC., THE EVANGELICAL FREE CHURCH OF GRAND ISLAND, NEBRASKA, BAND OF MEN, THIRD CITY CHRISTIAN CHURCH, GRAND ISLAND DENTIST CENTER, and CHAD NABITY, SCOTT ARNOLD, GARY QUANDT, JANE RICHARDSON, DOUG LANFEAR, PAM LANCASTER, KEITH BAUMFALK, SHAY MCGOWAN, KENT MANN, individually and in their official capacities, MEGHA BHATT and DANNY BHATT, and JOHN JOE and JANE DOES 1 – 1,000,

Defendants.

Case No.:

COMPLAINT

STATEMENT OF FACTS

1. This $110 million Civil Rights and Defamation action arises out of Defendants' illegal campaign to stop native Nebraskan Shane Harrington from opening a sexually oriented business in Hall County, Nebraska.

2. Defendants are a self-described conservative religious group of Christians who believe their God is above the laws of the United States.

3. Defendants' actions are dangerous to the entire American society because they suggest that a governing authority can conspire with churches and use religion to justify breaking the law, violating our country's bedrock principle of separation of Church and State.

4. Defendants campaign of illegal conduct commenced in 2004 when Defendants adopted the current zoning ordinance, which effectively bans all sexually oriented businesses from operating in Hall County.

5. Defendant allowed a single sexually oriented business The Edge to operate in Hall County from 2004 to 2013 (possibly grandfathered in before the 2004 ordinance), but The Edge lost its liquor license in 2010 for having underage dancers and closed to the public in 2013. However, none of these activities are even remotely connected to Plaintiff as The Edge was owned and operated by Maria Davidson and her late husband Larry Davidson who were solely responsible for illegal activities occurring at The Edge and negative secondary effects posed to the surrounding community.

6. Defendant HALL COUNTY BOARD OF SUPERVISORS created, adopted and enforce the Hall County Zoning Resolution No. 04-0020, which was prepared by Defendant JEO COUNSULTING GROUP, INC. and approved, supported, sponsored, and endorsed by co-Defendants, unconstitutionally prohibiting Plaintiff, or anyone else, from opening and operating a sexually oriented businesses in Hall County, Nebraska.

7. Federal Courts throughout the United States, including the United States Supreme Court have consistently held that zoning resolutions may restrict, but cannot prohibit sexually oriented businesses. While the City of Grand Island recognized this fact in their statements to the media, Defendants have ignored the law and are in direct violation thereof.

8. The zoning resolution is unconstitutional as it fails to provide zoning for a sexually oriented business, adult entertainment center, or adult performing art center, by restricting such businesses to tiny industrial districts constituting less than 0.1% of the entire Hall County land mass, where there are in fact no available locations, and precluding such businesses from operating from 12:00 a.m. to 6:00 a.m.

9. Federal Courts have ruled that between 5% - 35% of a County's commercially zoned land must be approved for a sexually oriented business to comport with constitutional scrutiny and no Courts have ever approved a time restriction like that imposed by Defendants.

10. The effect of the zoning resolution is to deny Plaintiff, or anyone else, the right to open and operate an adult entertainment facility within Hall County, an unconstitutional prior restraint of free speech.

11. Defendant CHAD NABITY, the Regional Planning Director of Hall County, falsely told the Independent newspaper that "we have places where it can be done" and that Plaintiff could open a club in a "manufacturing or commercially zoned area in Grand Island," when in fact the zoning resolution restricts sexually oriented businesses to Industrial Districts only, and there are no available properties in those districts.

12. Additionally, a petition created, circulated, published, supported, promoted, adopted, endorsed and signed by Defendants states the following:

> "Petition to stop Shane Harrington from opening a strip club. We the undersigned citizens from the town of Grand Island Nebraska and surrounding communities petition the Grand Island City Council and Hall County Board of Supervisors to not allow Shane Harrington to bring a strip club to this area. A strip club would promote sexual violence, prostitution, a larger burden on the area law enforcement officials, and will tear down and destroy families and individuals. Additionally, whether intentional or not, the adult entertainment industry promotes the exploitation of women for the entertainment of others and opens the doors for potential trafficking of women. We demand that the Grand Island City Council and Hall County Board of Supervisors take any and all action necessary to protect the City of Grand Island Nebraska and all surrounding communities from suffering the negative consequences mentioned above."

13. On or about May 7, 2015, Defendants held a public hearing in Hall County regarding Plaintiff, without providing Plaintiff notice or an opportunity to be heard. At that hearing, the Petition was endorsed by Defendant HALL COUNTY BOARD OF SUPERVISORS and co-Defendants in the name of God.

14. None of Defendants have ever met Plaintiff and they know nothing about Plaintiff or his business, family, models and dancers, yet they embarked upon character assassination of Plaintiff without legal justification for the purpose of prohibiting an adult entertainment facility in Hall County, and to destroy Plaintiff's reputation and business.

15. Plaintiff, SHANE HARRINGTON, is a highly respected member of the Nebraska community whose family has resided in Nebraska for over a century.

16. Mr. Harrington has dozens of family members, including two children, as well as hundreds of friends and thousands of acquaintances throughout the State of Nebraska.

17. Plaintiff is the most respected professional in the adult entertainment industry in the Midwest and operates a highly reputable company with a 15-year unblemished record.

18. Plaintiff has earned millions of dollars, generating significant tax revenue for the State of Nebraska and has conducted numerous charity events.

19. Plaintiff's company has provided numerous bachelor parties and other private events for adults in Hall County and has received numerous requests from residents of Hall County to open an adult entertainment facility in Hall County.

20. Since February 2015, Plaintiff has attempted to secure a location for an adult entertainment establishment in Hall County, but due to the unconstitutional zoning resolution and defamatory acts of Defendants, Plaintiff is and has been precluded from doing so.

21. While Defendants have a First Amendment right to express their religious and moral views, their zoning resolution is unconstitutional, and their petition and campaign against Plaintiff goes well beyond protected speech into the arena of defamation, as well as civil rights and anti-trust violations.

22. Defendants have falsely accused Plaintiff of criminal conduct that has damaged Plaintiff's reputation, his business, and caused Plaintiff severe emotional distress.

23. Attributing the activities at The Edge to Plaintiff, is akin to attributing the acts of Christian Priests and Ministers who have molested thousands of children in their care to the named Defendants.

24. In the case of Shaker's (a juice bar and all nude strip club in a neighboring county open

until 5:00 a.m. where no alcohol is served), the Sheriff of Lancaster County where it is located informed Plaintiff that there have been hardly any complaints over the past 20 years, and the business has essentially operated without incident.

25. Similarly, Plaintiff's juice bar in Buffalo County has operated since April 3, 2015, without incident, and has been a tremendous success with customers and dancers, posing no negative effects on the surrounding community.

26. Plaintiff specifically prohibits any and all illegal activities and will continue to do so if allowed to open and operate a similar business in Hall County. The negative secondary effects posed by The Edge would not be posed by Plaintiff's business.

27. Any location obtained by Plaintiff will be outside the Grand Island City limits in a remote portion of Hall County well beyond 1,000 feet from any restricted areas or districts.

28. Plaintiff, his models, dancers, and customers, and a growing faction of the Nebraska community believe that nude dancing is valid form of entertainment and artistic expression.

29. Defendants petition and accompanying statements accuse Plaintiff's models and dancers of being prostitutes who are devalued through dancing, but Plaintiff's dancers love to perform, regard it as empowering and healthy, and make more money on a Saturday night than people make from minimum wage in an entire month, allowing them to go to school, care for their children and families, and otherwise be productive members of society.

30. All of Plaintiff's models, dancers, and contractors sign strict contracts requiring them to act lawfully, and no illegal activities are ever permitted by Plaintiff or anyone at his business.

31. Defendants have falsely imputed crimes of moral turpitude to Plaintiff, namely, they have stated that *Shane Harrington's* strip club would "promote sexual violence, prostitution, a larger burden on the area law enforcement officials, and will tear down and destroy families and individuals."

32. Additionally, defendant SHAY MCGOWAN told The Independent news that strip clubs, including that owned by Plaintiff, constitute the Felony of "sex trafficking," which is additionally defamatory.

33. Defendant individually, and collectively, have created, circulated, signed, published and promoted the aforementioned petition to members of their congregation, dental patients, businesses, property owners, real estate agents, and members of the Hall County community for the purpose of assassinating the character of Plaintiff and prohibiting a sexually oriented business in Hall County, to serve their religious and moral beliefs and advance their sect of the Christian religion.

34. Defendants' false accusations and defamation have been written and spoken to thousands of people, by way of personal transmittal and through the media, constituting defamation of character of Plaintiff.

35. Plaintiff's original real estate broker informed Plaintiff that he would not be able to find a location for Plaintiff due to the collective pressure and threats received by Defendants, their servants, agents, and employees, arising from the petition of Defendants and their associated wrongful conduct.

36. Thereafter, Plaintiff retained another real estate broker to find a suitable location and offered said broker a $10,000 bonus above the traditional broker's fee if they could find a location in Hall County.

37. Plaintiff's broker found a vacant property near exit Interstate 80 exit 312 on South Highway 281, where the Nine Bridge Family Restaurant was formerly located. Plaintiff and the property owner were in the process of negotiating a purchase price for said property while the property owners knew that Plaintiff intended to open a sexually oriented business.

38. However, as a result of Defendants' petition and associated defamation and wrongful

conduct, on or about May 11, 2015, the property owners informed Plaintiff's real estate broker that they could not sell the subject property to Plaintiff for any price.

39. Furthermore, Plaintiff's brokers advised Plaintiff that due to the defamatory petition and associated wrongful acts of Defendants, that Plaintiff could not purchase or lease any property in Hall County, as no individual or entity will enter into a sale or lease contract with Plaintiff as the defamatory petition has destroyed Plaintiff's reputation to the extent that no one in Hall County will sell or lease Plaintiff property for his business.

40. Defendant HALL COUNTY BOARD OF SUPERVISORS, and the individual constituents, have endorsed said petition through public statements including the following: Defendant PAM LANCASTER stated, "It really is vital that people – who believe in the Christian basis of life stand for them … I'm of a similar mind as well." Defendant DOUG LANFEAR stated, "I want to thank you for bringing your Christian values to the forefront … I want to thank you for getting this petition."

41. While governmental officials have a legal duty to remain objective in matters of public interest, Defendant HALL COUNTY BOARD OF SUPERVISORS and the individual constituents have discarded their legal duties out of adherence to their religious affiliations.

42. Additionally, Defendant KEITH BAUMFALK told the Grand Island Independent, "God put this on my heart with this strip club coming in… it's wrong in God's eyes."

43. The Constitution of the United States provides for a separation of Church and State and a Christian's interpretation of the Bible provides no authority to violate the laws of the United States.

44. Defendants' petition would have been entirely legal if they had simply directed it at strip clubs, sexually oriented businesses, or adult entertainment facilities generally, but by attributing illegal conduct to Plaintiff specifically, without any proof or probable cause, they have crossed

the line into defamatory conduct and otherwise illegal conduct.

45. Defendant THE EVANGELICAL FREE CHURCH OF GRAND, NEBRASKA, authorized and participated in the aforementioned civil rights violations and defamation by and through their leadership, including but not limited to President Lynn Rathjen, who resides at 3818 Meadowlark Circle, Grand Island, Nebraska 68803, Secretary Leanne Morris, who resides at 3940 Meadow Way Trail, Grand Island Nebraska 68803, Treasurer Nancy Kincanon, who resides at 2216 Woodridge Lane, Grand Island, Nebraska 68801, Director Deb Halm, who resides 2604 Cottage Street, Grand Island, Nebraska 68803, Director Tim Johnson, who resides at 317 Renee Road, Doniphan, Nebraska 68832, and Director Michael Leggette, who resides at 3111 Laramie Drive, Grand Island, Nebraska 68803, by creating, promoting, circulating, distributing, copying, publishing, signing and submitting the aforementioned petition individually, and on behalf of their Church.

46. Defendant THIRD CITY CHRISTAIN CHURCH authorized and participated in the aforementioned civil rights violations and defamation by and through their leadership, including but not limited to President Larry Gerges, who resides at 2510 Parkview Drive, Grand Island, Nebraska 68801, Secretary Gerry Ruttman, who resides at 2640 N. North Road, Grand Island, Nebraska 68803, Treasurer Marv Duryee, who resides at 8437 West Wood River Road, Wood River, Nebraska 68883, Director and Defendant KENT MANN, who resides at 3812 Norseman Avenue, Grand Island, Nebraska 68803, and Director Dennis Tolen, who resides at 139 Redwood Road, Grand Island, Nebraska 68803, by creating, promoting, circulating, distributing, copying, publishing, signing and submitting the aforementioned petition individually, and on behalf of their Church.

47. Defendant HALL COUNTY BOARD OF SUPERVISORS authorized and participated in the aforementioned civil rights violations, defamation and unconstitutional zoning resolution,

including but not limited to Hall County Board Chairman, Defendant SCOTT ARNOLD, and Hall County Supervisors GARY QUANDT, JANE RICHARDSON, DOUG LANFEAR, and PAM LANCASTER, as part of the custom and practice of Hall County, whose allegiance to God trumps their allegiance to the United States Constitution and the laws of the State of Nebraska.

48. Defendant HALL COUNTY NEBRASKA authorized and participated in the aforementioned defamation and unconstitutional zoning resolution, by and through the Hall County Board of Supervisors, County Attorney, and other governmental authorities operating under the color of law, as part of their custom and practice of discriminating against individuals and entities engaged in adult entertainment.

49. Defendants have engaged in a conspiracy to adopt and enforce an unconstitutional zoning resolution that violates the Constitution of the United States and are jointly and severally liable for the damages herein alleged.

50. Defendants have engaged in a conspiracy to violate Plaintiff's civil rights and defame Plaintiff and are jointly and severally liable for the damages herein alleged.

51. As a result of the foregoing, Plaintiff has suffered monetary damages, including lost income, estimated at $40,000 per month, as well as emotional and psychological injuries, entitling Plaintiff to compensatory damages in the amount of $10 million. Due to the extreme and outrageous nature of Defendants' conduct, Plaintiff requests punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

DEMOGRAPHICS

52. There are approximately 4,000 adult entertainment facilities (aka sexually oriented businesses, adult performing arts center, and/or strip clubs) in the United States servicing a population of approximately 324 million Americans; this equates to approximately 1 facility per

every 81,000 citizens.

53. Since the State of Nebraska has approximately 1.8 million citizens, to comport with the national average, the State of Nebraska would need 22 adult entertainment facilities. However, Nebraska falls well below the national average as the entire State of Nebraska has only 7 such businesses, 70% less than the national average: four in Lancaster County, two in Omaha, and one in Buffalo County.

54. Since the United States is approximately 3.8 million square miles, of which 77,000 square miles constitute the State of Nebraska, to comport with the national average by area, Nebraska would need approximately 75 adult entertainment facilities, as there are approximately 1 for every 1,000 square miles in the United States. By a geographic standard, Nebraska has over 90% less than the national average, with only one such facility for every 11,000 square miles.

55. To further illustrate, between Lincoln, Nebraska and Denver, Colorado, a distance of approximately 600 miles, there is only a single adult entertainment facility in Buffalo County, Nebraska.

56. Omaha is the most densely populated region of Nebraska. In addition to the two adult businesses in Omaha, there are additional adult businesses in Iowa, just minutes across the Omaha/Iowa border, making additional adult businesses in that region unnecessary.

57. Lincoln is the second most densely populated region of Nebraska. Lancaster County (the county that includes the City of Lincoln) has four adult entertainment facilities with strict prohibitions regarding adding additional adult facilities, making another facility in that county impractical.

58. Hall County is part of the Grand Island Metropolitan area which includes over 83,000 residents. This is the third most densely populated area in Nebraska after Omaha and Lincoln.

59. In the case of Hall County, there is no adult entertainment facility in Hall County or anywhere in the vicinity for at least 60 miles outside Grand Island city limits.

60. Due to the aforementioned demographics, Plaintiff's business in Hall County will offer services to over 100,000 Nebraska residents who would otherwise have to drive well over one hour to either Buffalo County or Lancaster County for adult entertainment, posing an unnecessary and unfair burden on adult members of the community who wish to enjoy adult entertainment.

61. Defendants, and other governing authorities in the State of Nebraska have colluded to restrict sexually oriented businesses as much or more than any State in the union to advance their religion, posing restrictions on commerce and censoring free speech.

62. Plaintiff's location on Highway 281, or a suitable alternative in the vicinity, is therefore an appropriate and necessary place for Plaintiff's adult entertainment facility in Hall County.

PARTIES

63. Plaintiff SHANE HARRINGTON is a resident of the State of Nebraska.

64. Defendant HALL COUNTY BOARD OF SUPERVISORS, is the local governmental entity operating under the authority of the State of Nebraska that adopted and enforces Hall County Zoning Resolution No. 04-0020, with offices located at 121 S. Pine Street, Grand Island, Nebraska 68801.

65. Defendant HALL COUNTY NEBRASKA is a non-incorporated municipal entity operates the County of Hall, Nebraska under color of law.

66. Defendant HALL COUNTY NEBRASKA is an incorporated municipal entity that owns and operates the County of Hall, Nebraska under color of law.

67. Defendant JEO CONSULTING GROUP, INC., is a consulting firm who prepared the Hall County Zoning Resolution No. 04-0020, with an office located at P.O. Box Wahoo,

Nebraska 68066.

68. Defendant THE EVANGELICAL FREE CHURCH OF GRAND ISLAND, NEBRASKA, is a domestic non-profit corporation arising under the laws of the State of Nebraska, with a principle office located at 2609 S. Blaine Street, Grand Island, Nebraska 68801, whose agent for service of process is Kent Kincanon,

69. Defendant BAND OF MEN is a non-incorporated group of individuals doing business at 2609 S. Blaine Street, Grand Island, Nebraska 68801.

70. Defendant THIRD CITY CHRISTIAN CHURCH is a domestic non-profit corporation arising under the laws of the State of Nebraska, with a principal office located at 4100 W. 13th Street, Grand Island, Nebraska, whose agent for service of process is Larry Gerdes.

71. Defendant GRAND ISLAND DENTIST CENTER is a non-incorporated domestic entity doing business at 2414 W. Faidley Ave., #101, Grand Island, Nebraska 68803.

72. Defendant CHAD NABITY is the Regional Planning Director for Hall County, sued in an individual and official capacity.

73. Defendant SCOTT ARNOLD is the Hall County Board Chairman, sued in an individual and official capacity.

74. Defendant GARY QUANDT, is a Hall County Supervisor, sued in an individual and official capacity.

75. Defendant JANE RICHARDSON is a Hall County Supervisor, sued in an individual and official capacity.

76. Defendant DOUG LANFEAR is a Hall County Supervisor, sued in an individual and official capacity.

77. Defendant PAM LANCASTER is a Hall County Supervisor, sued in an individual and official capacity.

78. Defendant SHAY MCGOWAN is a resident of the State of Nebraska, maintaining a place of business at 2414 W. Faidley Ave., #101, Grand Island, Nebraska 68803.

79. Defendant KEITH BAUMFALK is a resident of the State of Nebraska, Town of St. Paul.

80. Defendant KENT MANN is a Director of THIRD CITY CHRISTIAN CHURCH, maintaining an address at 3812 Norseman Avenue, Grand Island, Nebraska 68803.

81. Defendants MEGHA BHATT and DANNY BHATT are the owners of the Nine Bridge Family Restaurant on South Highway 281 in Hall County adjacent to USA Inns located at 7501 South Highway 281, Hall County, Nebraska.

82. JOHN DOE and JANE DOE 1 – 1,000 are those individuals who signed the defamatory petition and otherwise participated in its circulation, promotion and publication.

JURISDICTION

83. This case arises under the Constitution of the United States of America under the First Amendment Establishment and Free Speech clauses, the Sherman and Clayton anti-trust acts, the due process and equal protection clauses of the Fourteenth Amendment, and other Federal Causes of action as applied to local governmental entities through 42 U.S.C.A. § 1983.

84. This court has personal jurisdiction over Defendants pursuant to 28 U.S.C. § 1391(b)(2), as the wrongdoing alleged in this complaint took place in the State of Nebraska and Defendants are doing business in the State of Nebraska with registered agents for service of process located in the State of Nebraska.

85. This court has supplemental jurisdiction over the Nebraska State law claims asserted in this complaint pursuant to Title 18 U.S.C. § 1367(a) as, "they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.

VENUE

86. Venue is proper in the District of Nebraska pursuant to Title 28 U.S.C.A. Section 1391(e),

which authorizes that a civil action may be brought in a judicial district in which a substantial part of the events occurred.

SECTION 1983 VIOLATIONS

87. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..." 42 U.S.C.A Section 1983.

FIRST CAUSE OF ACTION

VIOLATION OF THE FIRST AMENDMENT ESTABLISHMENT CLAUSE

SEPARATION OF CHURCH AND STATE

88. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

89. Defendants have violated the Establishment Clause by conspiring with governmental entities under the color of law to inflict and impose their conservative Christian values on Plaintiff, punish Plaintiff for not sharing in their religious beliefs, and to otherwise damage Plaintiff as described throughout this complaint.

90. Plaintiff has tax payer standing as well as standing based upon Defendants' direct persecution of Plaintiff for failure to comply with Defendants' conservative Christian beliefs.

91. Defendants' conduct does not have a secular purpose, Defendants' primary purpose is to advance religion, and Defendants' conduct involves excessive entanglement between government and religion.

92. The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."

This prohibition applies to states by virtue of the 14th Amendment to the U.S. Constitution and to judicial as well as legislative functions. N.A.A.C.P. v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958).

93. A burden upon religion exists where the state, or agent thereof, "conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs...." 450 U.S. at 717-18, 101 S.Ct. at 1432. Palmer v. Palmer, 249 Neb. 814, 817, 545 N.W.2d 751, 754-55 (1996)

94. Defendants, due to their religion, believe the naked human form is shameful and "wrong in the eyes of God," whereas Plaintiff, his models, dancers, and customers, and a growing faction of the Nebraska community, including residents of Hall County, believe that nude dancing is valid entertainment and protected artistic expression.

95. As a result of having different religious beliefs than Defendant (Defendants are devout conservative Christians; Plaintiff is a modern liberal Christian), Plaintiff has been persecuted, discriminated, defamed, humiliated, and denied due process, equal protection, and free speech and otherwise harmed and damaged by Defendants, through the prohibition of opening and operating a sexually oriented business in Hall County, violation of Plaintiff's civil rights, and through the defamation of Plaintiff by Defendants.

96. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

SECOND CAUSE OF ACTION

SHERMAN ACT ANTI-TRUST VIOLATIONS

97. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

98. ”Section 1 of the Sherman Act prohibits “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States.” To establish a Section 1 violation, a plaintiff must allege: “(1) concerted action between at least two legally distinct economic entities; (2) that constitute an unreasonable restraint of trade either per se or under the rule of reason.”

99. ”Section 2 of the Sherman Act makes it unlawful to “monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States.” 15 U.S.C. § 2.

100. The Sherman Antitrust Act of 1890 has been characterized as “a charter of freedom,” Appalachian Coals, Inc. v. United States, 288 U.S. 344, 359, 53 S.Ct. 471, 77 L.Ed. 825 (1933). For nearly ninety years it has engraved in law a firm national policy that the norm for commercial activity must be robust competition. The most frequently invoked section of the Act is the first, which forbids contracts, combinations, or conspiracies in restraint of trade. But the prohibition of § 1 is incomplete. In § 2 of the Sherman Act, Congress made it unlawful to “monopolize, or attempt to monopolize, or combine or conspire . . . to monopolize.”

101. The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

102. Defendants control, regulate and dictate policies for zoning and conditional use permits in Hall County, Nebraska with regard to all commercial conduct, including sexually oriented businesses.

103. Defendants therefore control all businesses that operate within Hall County and have

complete discretion of who to accept or deny the ability to compete in the market of Hall County in any industry.

104. Through this monopolization of trade, Defendants openly dictate their conservative Christian values as a basis for approving or denying a business the opportunity to operate in their county.

105. Defendants enforce their monopoly and restraint of trade through boycotts, blacklists and concerted refusals to deal with Plaintiff.

106. Defendants' monopolization is illegally implemented through a boycott of Plaintiff's business and other individuals and entities in the same industry, resulting in diminished output in the adult entertainment industry, diminished choices for consumers, and damages to Plaintiff and Plaintiff's business.

107. Wherefore, Plaintiff requests equitable relief requiring Defendants' to allow Plaintiff to open and operate a sexually oriented business in Hall County, Nebraska, as well as compensatory damages, treble damages, attorney's fees and the costs of this action.

THIRD CAUSE OF ACTION

CLAYTON ACT ANTI-TRUST VIOLATIONS

108. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

109. Two sections of the Clayton Act permit private parties to institute actions under the federal antitrust laws. In relevant part, § 4 of the Clayton Act, 15 U.S.C. § 15, states that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States ..., and shall recover threefold the damages by him sustained." Section 16 of the Clayton Act, 15 U.S.C. § states that "any person ... shall be entitled to sue for and have injunctive relief ... against threatened loss or damage by a violation of the antitrust laws."

110. "Under Section 4 of the Clayton Act, a plaintiff "does not necessarily" need to allege and "prove an actual lessening of competition in order to recover," so long as competition is likely to decrease, although "the case for relief will be strongest where competition has been diminished." Under Section 16 of the Clayton Act, a private plaintiff has standing to seek injunctive relief where it adequately alleges "threatened loss or damage of the type the antitrust laws were designed to prevent.

111. Defendants control, regulate and dictate policies for zoning and conditional use permits in Hall County, Nebraska with regard to sexually oriented businesses.

112. Defendants enforce their monopoly and restraint of trade through boycotts, blacklists and concerted refusals to deal with Plaintiff as a result of religious reasons.

113. Defendants' monopolization is illegally implemented through a boycott of Plaintiff's business and other individuals and entities in the same industry, resulting in diminished output in the adult entertainment industry, diminished choices for consumers, and damages to Plaintiff and Plaintiff's business.

114. Wherefore, Plaintiff requests equitable relief requiring Defendants' to allow Plaintiff to open and operate a sexually oriented business in Hall County, Nebraska, as well as compensatory damages, treble damages, attorney's fees and the costs of this action.

FOURTH CAUSE OF ACTION

FIRST AMENDMENT FREE SPEECH VIOLATIONS

115. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

116. Defendants' zoning resolution and petition violate the First Amendment by unlawfully infringing upon Plaintiff's protected speech.

117. "The 1st Amendment to the U.S. Constitution, made applicable to the states through the 14th Amendment, requires that the state "make no law ... abridging the freedom of speech." The

parameters of the constitutional right to freedom of speech are the same under both Neb. Const. art. I, § 5, and the U.S. Constitution. Pick v. Nelson, 247 Neb. 487, 528 N.W.2d 309 (1995). See, also, State v. Simants, 194 Neb. 783, 236 N.W.2d 794 (1975), reversed on other grounds sub nom. Nebraska Press Assn. v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976).

118. The United States Supreme Court has ruled that non-obscene nude dancing is "expressive conduct ... within the outer ambit of the First Amendment's protection." Erie v. Pap's A. M., 529 U.S. 277, 289, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000). See, also, Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991). Vill. of Winslow v. Sheets, 261 Neb. 203, 209, 622 N.W.2d 595, 601 (2001)

119. "The Supreme Court has recognized, (however), that **totally nude dancing is expressive conduct that is entitled to some measure of First Amendment protection**. See Barnes v. Glen Theatre, Inc., 501 U.S. 560, 565–66, 581, 587–88, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991) (eight of nine Justices taking this position). The state cannot impermissibly infringe on the plaintiffs' right to engage in that constitutionally-protected activity." Farkas v. Miller, 151 F.3d 900, 902 (8th Cir. 1998)

120. "The First Amendment protects "live entertainment, such as musical and dramatic works," Schad v. Borough of Mount Ephraim, 452 U.S. 61, 65, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981), **and artistic expression containing nudity or simulated sexual conduct**. See Southeastern Promotions Ltd. v. Conrad, 420 U.S. 546, 550, 557–58, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (Hair is protected speech despite "group nudity and simulated sex"); Doran v. Salem Inn, Inc., 422 U.S. 922, 933, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975) ("**artistic performances involving nudity have "unquestionable artistic and socially redeeming significance**"). Ways v. City of Lincoln, Neb., 274 F.3d 514, 518 (8th Cir. 2001)

121. Defendants refer to God and quote scripture in support of their unlawful conduct, while

ignoring the Constitution of the United States and the laws of the State of Nebraska.

122. As a result of the foregoing, Defendants have violated Plaintiff's First Amendment right to Free Speech.

123. Plaintiff therefore requests a temporary restraining order and declaratory judgment enjoining Defendants from enforcing their zoning resolution as prior restraint of free speech, and that Plaintiff be granted compensatory damages in the amount of $10 million, punitive damages in the amount of $100 million, together with attorney's fees and the costs of this action.

FIFTH CAUSE OF ACTION

EQUAL PROTECTION VIOLATIONS UNDER FOURTEENTH AMENDMENT

AND NEBRASKA STATE CONSTITUTION

124. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

125. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Nebraska State Constitution Section I-3. Similarly states, "Due process of law; equal protection. No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws."

126. "'[T]he constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause....'" *Johnson v. Crooks*, 326 F.3d 995, 999 (8th Cir.2003) (quoting *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)). Mann v. City of Lincoln, Neb., No. 8:08CV431, 2008 WL 5423885, at 3 (D. Neb. Dec. 30, 2008)

127. Defendants have denied Plaintiff equal protection of the law by isolating him as a "class of one" in their defamatory petition which was accepted, adopted, and published by Defendants

and the individual constituents.

128. Clearly, Plaintiff was denied equal protection of the law as the Defendants have targeted him by name in their petition, without reference to any other individuals or entities.

129. This denial of equal protection of the law resulted in financial losses as well as physical and emotional distress and damage to Plaintiff's reputation.

130. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

SIXTH CAUSE OF ACTION

FOURTEENTH AMENDMENT AND NEBRASKA CONSTITUTION

DUE PROCESS VIOLATIONS

131. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

132. The Fourteenth Amendment to the United States Constitution and the Nebraska State Constitution entitle Plaintiff to due process of law with regard to obtaining a license or permit to operate an adult entertainment facility.

133. Generally, "[t]he exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function." Sommerfield v. Helmick, 57 Cal.App.4th 315, 320, 67 Cal.Rptr.2d 51, 54 (1997). See, also, J K & J, Inc. v. Nebraska Liquor Control Commission, supra. In First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 566, 192 N.W.2d 736, 739 (1971), Stoneman v United Nebraska Bank, 254 Neb 477, 484, 577 NW2d 271, 277 [1998]

134. "Where an administrative body acts in a quasi-judicial manner, due process requires notice and an opportunity for a full and fair hearing at some stage of the agency proceedings."

Stoneman v. United Neb. Bank, 254 Neb. 477, 577 N.W.2d 271 (1998); City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996). Troshynski v Nebraska State Bd. of Pub. Accountancy, 270 Neb 347, 355, 701 NW2d 379, 386 [2005]

135. Defendants conducted a hearing in Hall County regarding Plaintiff without providing Plaintiff notice or an opportunity to be heard.

136. At this hearing, Defendants expressed their intention to deny Plaintiff a conditional use permit to open and operate an adult entertainment facility, tarnishing and prejudicing the judicial process.

137. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

SEVENTH CAUSE OF ACTION

DEFAMATION

138. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

139. "Defamation is of two types. There are words that are actionable per se, that is, in themselves, or words may be actionable per quod, that is, only on allegation and proof of the defamatory meaning of the words used and of special damages. See *K Corporation v. Stewart*, 247 Neb. 290, 526 N.W.2d 429 (1995). Spoken or written words are slanderous or libelous per se only if they falsely impute the commission of a crime involving moral turpitude, an infectious disease, or unfitness to perform the duties of an office or employment, or if they prejudice one in his or her profession or trade or tend to disinherit one." *Matheson v. Stork*, 239 Neb. 547, 477

N.W.2d 156 (1991). Hatcher v McShane, 12 Neb App 239, 245, 670 NW2d 638, 644 [Neb Ct App 2003]

140. Defendants, individually and collectively, have falsely imputed crimes of moral turpitude to Plaintiff, namely, they have stated that *Shane Harrington's* strip club would "promote sexual violence, prostitution, a larger burden on the area law enforcement officials, and will tear down and destroy families and individuals," and these statements were circulated and published to thousands of individuals in Hall County and throughout the State of Nebraska.

141. Defendants have committed both libel and slander per se as a result of their statements and publications.

142. Plaintiff has suffered damages as a result of Defendants' conduct by way of a decrease in patrons and sales due to Defendants' false allegations regarding Plaintiff, as well as damages to his reputation and a prohibition from opening and operating his business in Hall County.

143. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and costs.

EIGHTH CAUSE OF ACTION

NEGLIGENT HIRING, TRAINING, AND SUPERVISION

144. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

145. "The Nebraska Supreme Court recognizes claims for both negligent hiring and negligent supervision." Claar v. Archdiocese of Omaha, No. 8:07CV156, 2007 WL 4553919, at 2 (D. Neb. Dec. 18, 2007)

146. Defendants were negligent, careless, and reckless in hiring, training, and supervising all individually named Defendants in this complaint, and all directors, supervisors, and employees, named herein, as such individuals are permitted and encouraged to engage in a custom and

practice of unconstitutional conduct; such individuals are not trained in Constitutional law, including but not limited to First Amendment free speech rights, Due Process rights, and Equal Protection rights; such individuals are not reprimanded for illegal conduct and are in fact complimented and commended for illegal conduct; such individuals are not required to consult with attorneys before taking legal action; such individuals are encouraged to commit illegal acts in furtherance of their religious beliefs; and because such individuals are permitted and encouraged to use the Church and God as a defense to illegal conduct.

147. As a result of the foregoing, Plaintiff has suffered damages at the hands of unqualified individuals appointed to the HALL COUNTY BOARD OF SUPERVISORS, their employees, agents, servants, and fellow Church members.

148. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

NINTH CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

149. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

150. The elements of tortious interference with a business relationship or expectation are: "(1) the existence of a valid business relationship or expectancy, (2) knowledge by the interferer of the relationship or expectancy, (3) an unjustified intentional act of interference on the part of the interferer, (4) proof that the interference caused the harm sustained, and (5) damage to the party whose relationship or expectancy was disrupted." Huff v Swartz, 258 Neb 820, 825, 606 NW2d 461, 466 [2000]

151. Plaintiff opened an adult entertainment establishment, Paradise City, in Buffalo County, Nebraska involving multiple contracts with multiple parties.

152. Defendants were and are aware of Plaintiff's ownership of said facility and publicly defamed Plaintiff in an effort to damage and/or destroy Plaintiff's business.

153. Defendants petition, and the circulation and publication thereof, was designed to prevent Plaintiff from opening an adult entertainment establishment in Hall County, and to otherwise damage and destroy Plaintiff's current business by falsely attributing illegal conduct to Plaintiff.

154. Plaintiff has suffered damages as a result of Defendants' conduct by way of a decrease in patrons and sales due to Defendants' false allegations regarding Plaintiff, as well as damages to his reputation.

155. Plaintiff had also entered into negotiations to purchase a property and building for Plaintiff's business. As a result of Defendants conduct, Plaintiff was an is precluded from purchasing said property or any other property in Hall County.

156. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

TENTH CAUSE OF ACTION

INFLICTION OF EMOTIONAL DISTRESS

157. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

158. To recover for intentional infliction of emotional distress, a plaintiff must prove (1) intentional or reckless conduct (2) that was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community and (3) that the conduct caused emotional distress so severe

that no reasonable person should be expected to endure it. See *Brandon v. County of Richardson*, 261 Neb. 636, 624 N.W.2d 604 (2001). Roth v Wiese, 271 Neb 750, 761, 716 NW2d 419, 431 [2006]

159. Defendants' petition and the statements made in conjunction with its circulation, distribution, and publication constitute intentional and reckless conduct, outrageous and extreme in character, resulting in severe emotional distress to Plaintiff.

160. As a result of the foregoing, Plaintiff has suffered severe emotional and mental distress, including depression, loss of sleep, and other psychological injuries, entitling Plaintiff to compensatory and punitive damages in an amount to be determined at trial.

161. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

ELEVENTH CAUSE OF ACTION

NEGLIGENCE

162. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

163. Defendants were negligent, careless and reckless in preparing, adopting, and enforcing their zoning resolution which effectively prohibits the operation of sexually oriented businesses in Hall County in violation of the United States Constitution.

164. Defendants were negligent, careless, and reckless in naming Plaintiff in their petition, when it would have had the same force and effect without naming a particular individual.

165. Defendants were negligent, careless, and reckless in failing to consult with an attorney or

attorneys prior to circulating, promoting, and publishing their petition.

166. Defendants were negligent, careless, and reckless in attributing criminal conduct to Plaintiff without proof, evidence, or probable cause.

167. Defendants were negligent, careless, and reckless in allowing their employees, representatives, officers, directors, and other individuals to create, circulate, and promote a defamatory petition that assassinated Plaintiff's character in a public forum.

168. Plaintiff therefore requests compensatory damages in the amount of $40,000 per month, expectation damages of $10 million, punitive damages in the amount of $100 million to punish the Defendants and deter such conduct in the future, together with attorney's fees and the costs of this action.

REQUEST FOR EQUITABLE RELIEF

169. Plaintiff re-alleges every paragraph set forth above as though fully set forth herein.

170. Plaintiff requests equitable relief requiring Defendants to redact Plaintiff's name from their petition and requiring Defendants to sell Plaintiff the previously offered site at fair market value, or an alternative site in Hall County for Plaintiff's business.

171. Plaintiff's has a right to be free of defamation per se, damage to Plaintiff's reputation is irreparable and growing daily, and monetary damages are not sufficient alone to adequately compensate Plaintiff and make him whole.

172. Plaintiff therefore requests a temporary injunction precluding Defendants from using Plaintiff's name in their petition and requiring Defendants to allocate a property in Hall County for Plaintiff's business, and granting such other and further relief as this Court deems just and proper.

INJUNCTIVE RELIEF STANDARD

173. Plaintiff requests a Preliminary Injunction pursuant to FRCP Rule 65(a)(1) and

Declaratory Judgment pursuant to FRCP Rule 57 and 28 U.S.C. Section 2201(a).

174. "The factors to be weighed in deciding whether to grant or deny preliminary injunctive relief are: (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest. Dataphase Systems, Inc. v. C L Systems, Inc., 640 F.2d 109, 114 (8th Cir.1981). "No single factor in itself is dispositive; rather, each factor must be considered to determine whether the balance of equities weighs toward granting the injunction." United Indus. Corp. v. Clorox Co., 140 F.3d 1175, 1179 (8th Cir.1998). Groene v. Seng, No. 4:06CV3153, 2006 WL 5680261, at 1 (D. Neb. June 29, 2006)

175. "[I]n the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship." City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 757, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). Jake's, Ltd., Inc. v. City of Coates, 284 F.3d 884, 889-90 (8th Cir. 2002)

176. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality). See also Marcus v. Iowa Public Television, 97 F.3d 1137, 1140 (8th Cir.1996) Groene v. Seng, No. 4:06CV3153, 2006 WL 5680261, at *3 (D. Neb. June 29, 2006)

177. The United States Supreme Court has ruled that: "While "[p]rior restraints are not unconstitutional per se ... **[a]ny system of prior restraint ... comes to this Court bearing a heavy presumption against its constitutional validity**." Southeastern Promotions, Ltd. v. Conrad, supra, 420 U.S., at 558, 95 S.Ct., at 1246. See, e.g., Lovell v. Griffin, 303 U.S. 444, 451–*452, 58 S.Ct. 666, 668–*669, 82 L.Ed. 949 (1938); Cantwell v. Connecticut, 310 U.S. 296, 306–*307, 60 S.Ct. 900, 904–*905, 84 L.Ed. 1213 (1940); Cox v. New Hampshire, 312 U.S.

569, 574–*575, 61 S.Ct. 762, 765, 85 L.Ed. 1049 (1941); Shuttlesworth v. Birmingham, 394 U.S., at 150–*151, 89 S.Ct., at 938–*939. **Our cases addressing prior restraints have identified two evils that will not be tolerated in such schemes. First, a scheme that places "unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship**." Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 757, 108 S.Ct. 2138, 2143, 100 L.Ed.2d 771 (1988). See Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948); Niemotko v. Maryland, 340 U.S. 268, 71 S.Ct. 328, 95 L.Ed. 280 (1951); Kunz v. New York, 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280 (1951); Staub v. City of Baxley, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958); Freedman v. Maryland, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965); Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); Shuttlesworth v. Birmingham, supra; Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984). "'**It is settled by a long line of recent decisions of this Court that an ordinance which ... makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms**.' " (emphasis added) Shuttlesworth, supra, 394 U.S., at 151, 89 S.Ct., at 938–*39 (quoting Staub, supra, 355 U.S., at 322, 78 S.Ct. at 282). FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225©26, 110 S. Ct. 596, 604©05, 107 L. Ed. 2d 603 (1990) holding modified by City of Littleton, Colo. v. Z.J. Gifts D©4, L.L.C., 541 U.S. 774, 124 S. Ct. 2219, 159 L. Ed. 2d 84 (2004)

178. Wherefore, Plaintiff request injunctive relief enjoining Defendants' enforcement of unconstitutional provisions of its zoning resolution that act as a prior restraint on Plaintiffs' right of free speech, that Defendants by required to redact Plantiff's name from their petition, and that

Defendants be required to allocate a suitable location in Hall County for Plaintiff's business.

NUDE DANCING IS PROTECTED SPEECH UNDER THE FIRST AMENDMENT

179. "The 1st Amendment to the U.S. Constitution, made applicable to the states through the 14th Amendment, requires that the state "make no law ... abridging the freedom of speech." The parameters of the constitutional right to freedom of speech are the same under both Neb. Const. art. I, § 5, and the U.S. Constitution. Pick v. Nelson, 247 Neb. 487, 528 N.W.2d 309 (1995). See, also, State v. Simants, 194 Neb. 783, 236 N.W.2d 794 (1975), reversed on other grounds sub nom. Nebraska Press Assn. v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976).

180. The U.S. Supreme Court has ruled that non-obscene nude dancing is "expressive conduct ... within the outer ambit of the First Amendment's protection." Erie v. Pap's A. M., 529 U.S. 277, 289, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000). See, also, Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991). Vill. of Winslow v. Sheets, 261 Neb. 203, 209, 622 N.W.2d 595, 601 (2001)

181. "The Supreme Court has recognized, (however), that **totally nude dancing is expressive conduct that is entitled to some measure of First Amendment protection**. See Barnes v. Glen Theatre, Inc., 501 U.S. 560, 565–*66, 581, 587–*88, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991) (eight of nine Justices taking this position). The state cannot impermissibly infringe on the plaintiffs' right to engage in that constitutionally-protected activity." Farkas v. Miller, 151 F.3d 900, 902 (8th Cir. 1998)

182. "The First Amendment protects "live entertainment, such as musical and dramatic works," Schad v. Borough of Mount Ephraim, 452 U.S. 61, 65, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981), **and artistic expression containing nudity or simulated sexual conduct**. See Southeastern Promotions Ltd. v. Conrad, 420 U.S. 546, 550, 557–58, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (Hair is protected speech despite "group nudity and simulated sex"); Doran v. Salem

Inn, Inc., 422 U.S. 922, 933, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975) ("**artistic performances involving nudity have "unquestionable artistic and socially redeeming significance**"). Ways v. City of Lincoln, Neb., 274 F.3d 514, 518 (8th Cir. 2001)

DEFENDANTS TIME RESTRICTIONS OF SEXUALLY ORIENTED BUSINESSES FAIL TO MEET THE CONSTITUTIONAL STANDARD OF INTERMEDIATE SCRUTINY

183. "It is undisputed intermediate scrutiny applies to the hours-of-operation provision." Fantasyland Video, Inc. v. Cnty. of San Diego, 373 F. Supp. 2d 1094, 1106 (S.D. Cal. 2005) aff'd in part, rev'd in part and remanded sub nom. Tollis, Inc. v. Cnty. of San Diego, 505 F.3d 935 (9th Cir. 2007) and aff'd, 505 F.3d 996 (9th Cir. 2007)

184. Content neutral time, place, or manner regulations by contrast are tested by intermediate scrutiny. Id. at 642, 114 S.Ct. 2445. They must be "narrowly tailored to serve a significant governmental interest" and allow for "ample alternative channels for communication." Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) Phelps-Roper v. City of Manchester, Mo., 697 F.3d 678, 686 (8th Cir. 2012)

185. Defendants time restriction of Plaintiff's proposed adult entertainment facility is not "narrowly tailored" and therefore does not satisfy the intermediate scrutiny standard.

186. While Defendants admittedly have a "significant governmental interest" in curbing secondary effects associated with a sexually oriented business, there is no evidence or study provided by Defendants to demonstrate that Plaintiff's operation of a juice bar with nude dancing after midnight in a remote location outside Grand Island City limits poses any dangerous or negative effects upon the community,

187. In the case of the prior sexually oriented club The Edge, operating in Hall County from 2004 to 2013, the negative secondary effects were related to alcohol sales and bad ownership/

management, which have no bearing on Plaintiff and his proposed business.

188. In addition, Defendants' zoning resolution does not allow for ample alternative methods of communication as all adult entertainment establishments are prohibited from operating from 12:00 a.m. to 6:00 a.m.

189. Lastly, Defendants are falsely claiming that their time restriction serves the purpose of regulating secondary effects of sexually oriented businesses when in fact this is simply a pretext for suppressing free speech.

190. In the Renton case, the Supreme Court ruled that, "Renton has not used "the power to zone as a pretext for suppressing expression," id., at 84, 96 S.Ct., at 2459 (POWELL, J., concurring), but rather has sought to make some areas available for adult theaters and their patrons, while at the same time preserving the quality of life in the community at large by preventing those theaters from locating in other areas. This, after all, is the essence of zoning." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 54, 106 S. Ct. 925, 932, 89 L. Ed. 2d 29 (1986). Since Defendants have made no areas available for sexually oriented businesses, they have zoning as a pretext for suppression of freedom of speech.

191. "(T)he First Amendment requires (only) that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 54, 106 S. Ct. 925, 932, 89 L. Ed. 2d 29 (1986) The effect of the subject ordinance in the present case is to deny Plaintiffs a reasonable opportunity to open an adult entertainment facility.

192. Restrictive provisions regarding adult entertainment facility advertising have been struck down by the 8th Circuit: "**The state argues that its ultimate goal is to reduce the adverse secondary effects of sexually oriented businesses by limiting the presence of sexually oriented businesses**. Under that theory, restricting the amount of advertising by the affected

businesses would reduce the number of customers that patronize the affected business, thus reducing profits, and ultimately forcing the affected business to close. **Although there may be some evidence that the statute directly and materially advances the state's asserted interest, the statute fails under the final Central Hudson step because it is not narrowly tailored to meet its asserted goals**." Passions Video, Inc. v. Nixon, 458 F.3d 837, 842 (8th Cir. 2006)

HALL COUNTY IS REQUIRED TO ALLOW AT LEAST ONE LOCATION FOR A SEXUAL ORIENTED BUSINESS

193. Based upon United States Supreme Court and other Federal decisions, a governing body must provide between approximately 6% - 35% of all commercially zoned land for a sexually oriented business to be constitutional: "Under the ordinance, **sexually oriented businesses have access to 35% of the City's land zoned for commercial uses**, which includes both developed and undeveloped land... Because the ordinance provides Holmberg with potential relocation sites in accessible **commercially zoned** areas, we conclude the ordinance does not unreasonably limit alternative avenues of communication. See Alexander v. City of Minneapolis, 928 F.2d 278, 283–84 (8th Cir.1991).Holmberg v. City of Ramsey, 12 F.3d 140, 144 (8th Cir. 1993)

194. "While Peterson contests the validity of the zoning ordinance in Lyon County and the exact acreage which is zoned for adult entertainment uses, he does not dispute that there exist areas within the county for such use. Peterson's own expert, Bruce McLaughlin, states that 204.26 (or **32.22%) of the total acres zoned for commercial use in Lyon County are available for adult entertainment uses**. This availability would provide Peterson with a reasonable alternative for operating an adult entertainment business in the county. See Alexander v. City of Minneapolis, 928 F.2d 278 (8th Cir.1991) (concluding an **ordinance that permitted access to at least 6.6% of the total acreage of commercial land left open reasonable alternative avenues for communication**). Accordingly, the zoning ordinances in question do

not violate Peterson's constitutional rights relating to the operation of his adult entertainment business.Peterson v. City of Florence, Minn., 727 F.3d 839, 843©44 (8th Cir. 2013)

195. 6.75 percent of the areas in which these businesses could locate was available under the ordinance and that there were 97 available relocation sites. This percentage is comparable to the "more than five percent" in Renton and the 6.6 percent in Alexander, which were held to provide reasonable alternative avenues of communication. Indeed, the appellant United Arcade applied for and received a conditional use permit to relocate to one of those areas. Ambassador Books & Video, Inc. v. City of Little Rock, Ark., 20 F.3d 858, 864 (8th Cir. 1994)

196. Considering the entire record in the light of the applicable legal principles, we cannot say that the district court committed clear error in accepting, as it did, the township's evidence that 27 "easily developed" sites are available to sexually oriented businesses. And we agree with the district court's conclusion that 27 sites-roughly one for every 900 residents of the township-provide adequate alternative channels for expression of the sort proposed by the plaintiffs. Bronco's Entm't, Ltd. v. Charter Twp. of Van Buren, 421 F.3d 440, 452 (6th Cir. 2005), as amended on reh'g (Sept. 23, 2005)

197. In the present case, Defendants offer no locations for sexually oriented businesses, and the Industrial Districts they are restricted to constitute less than 0.1% of Hall County land.

198. Wherefore, Plaintiff requests an order requiring Defendants to approve Plaintiff's rezoning and conditional use permit for a sexually oriented business in Hall County, Nebraska, at the proposed site on Highway 281, or an alternative site in Hall County.

COMPENSATORY DAMAGES

199. Defendants are liable to Petitioners for compensatory damages proximately caused by their unconstitutional Zoning Resolution: "Ramsey ordinance no. 90–7 violated the first amendment because it left open no alternative avenues of communication... Although content-

neutral (in this sense), it was constitutionally defective in that it left no location in the City where plaintiffs could operate their adult business. See Renton, 475 U.S. at 50, 106 S.Ct. at 930; Young v. American Mini Theatres, Inc., 427 U.S. at 78–79, 96 S.Ct. at 2456 (Powell, J., concurring); Schad v. Mt. Ephraim, 452 U.S. 61, 75–76, 101 S.Ct. 2176, 2186, 68 L.Ed.2d 671 (1981). Monell v. New York City Dep't of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), **the City may be held liable under 42 U.S.C. 1983 for damages proximately caused by its unconstitutional ordinance**." Schneider v. City of Ramsey, 800 F. Supp. 815, 823 (D. Minn. 1992) aff'd sub nom. Holmberg v. City of Ramsey, 12 F.3d 140 (8th Cir. 1993) (emphasis added)

ATTORNEYS FEES AND COSTS

42 U.S.C.A Section 1988(b)

200. Owner of an adult entertainment company received attorney's fees and costs for litigating an unconstitutional ordinance effecting sexually oriented businesses in Nebraska: "the city challenges every aspect of the district court's award of fees and costs, except for the downward adjustment to reflect incomplete success at trial. The city argues in particular that the district court abused its discretion in choosing an hourly rate without submission of evidence by the moving party. Ways responds that the district court acted within the scope of its discretion. Randolph v. Rodgers, 170 F.3d 850 (8th Cir.1999). Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) guides courts to start with "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." The district court adopted at least one hourly rate recommended by the city and chose other hourly rates favorable to it in order "to capture [the] attention" of plaintiff's counsel. **The district court's award of fees and costs reflects its long experience with hourly rates and its careful scrutiny of the fee request, and it was well within the scope of its discretion**." Ways v. City of Lincoln, Neb., 274 F.3d

514, 520 (8th Cir. 2001)

201. Plaintiff therefore requests attorney's fees and the costs of this action.

PRAYER FOR RELIEF

202. Petitioner prays for the following relief:

A) Temporary Restraining Order enjoining Defendants from enforcing complete prohibitions on sexually oriented businesses;

B) Temporary Restraining Order enjoining Defendants from enforcing complete prohibitions on sexually oriented businesses in Commercial Districts;

C) Temporary Restraining Order enjoining Defendants from restricting operating hours of sexually oriented businesses that do not sell alcohol to the public;

D) Declaratory Judgment stating that the Hall County Zoning Resolution provision regarding sexually oriented business operating hours is unconstitutional prohibition of Freedom of Speech, Freedom of Assembly, Due Process and Equal Protection of the law;

E) Declaratory Judgment providing ample opportunity for Plaintiff to open and operate an adult entertainment establishment in Hall County, outside Grand Island City limits;

F) Order declaring Defendants violated the Establishment Clause of the First Amendment;

G) Order declaring Defendants violated the Sherman Act and Clayton Act;

H) Order declaring that Defendants violated Plaintiff's First Amendment rights of free speech;

I) Order declaring that Defendants violated Plaintiff's Equal Protection rights;

J) Order declaring that Defendants violated Plaintiff's Due Process rights;

K) Order declaring that Defendants defamed Plaintiff through their petition and related

conduct;

L) Order declaring that Defendants were negligent in their hiring, training, and supervision of employees, servants, and agents;

M) Order declaring that Defendants tortiously inferred with Plaintiff's business relationships;

N) Order declaring that Defendants intentionally inflicted emotional distress upon Plaintiff;

O) Order declaring that Defendants were negligent resulting in damages to Plaintiff;

P) Order enjoining Defendants from circulating a petition with Plaintiff's name and requiring Defendants to redact Plaintiff's name from any prior petitions;

Q) Order requiring Defendants to sell Plaintiff the Nine Bridge Family Restaurant or another suitable location in Hall County at fair market value to be operated as a sexually oriented business, or provide a suitable alternative in Hall County;

R) Compensatory damages in the amount of $10 million;

S) Punitive damages in the amount of $100 million to punish Defendants and deter such conduct in the future;

T) Attorney's fees and costs of this action.

JURY TRIAL REQUEST

Plaintiffs request a trial by jury on all issues so triable.

REQUEST FOR PROMPT REVIEW

Plaintiffs request a hearing within 72 hours of filing as a result of Defendants unconstitutional prior restraint of free speech.

May 15, 2015
Lincoln, Nebraska

Respectfully submitted,

/S/ Glen D. Witte

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