UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPEAL NO. 11-56082

SHIRLEY JONES, on Behalf of
herself and All Others Similarly Situated

Plaintiffs-Appellants

v.

CORBIS CORPORATION,

Defendant-Appellee.

On Appeal from the United States
District Court for the Central District of California, Eastern District
Case No. 10-cv-08668-SVW

OPENING BRIEF OF APPELLANTS

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STATEMENT OF JURISDICTION

The District Court had jurisdiction pursuant to 28 U.S.C. §§1332(c)(1) and 1332(d): diversity of citizenship. On June 2, 2011, the District Court granted Corbis Corporation ("Corbis") Summary Judgment on the common law and statutory rights of publicity claims filed by Shirley Jones ("Shirley" or "Plaintiff"). Plaintiff timely filed a notice of appeal on June 27, 2011. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 as to the District Court's final judgment that disposes of all claims with respect to both parties.

ISSUES PRESENTED FOR REVIEW

1) Whether a reasonable jury could find that Plaintiff's appearances at a red carpet event did not constitute her consent for Corbis' offering her pictures taken at the event for purchase around the world on its websites without her agreement.

2) Whether Corbis should have been awarded attorneys' fees and costs of $357,532.91.

STATEMENT OF THE CASE

On November 12, 2010, Plaintiff filed a class-action complaint against Corbis. [ER Vol. II, 129] On March 7, 2011, Plaintiff moved for partial summary judgment claiming Corbis did not obtain Plaintiff's consent to offer her photographs to be purchased. [ER Vol. II, 99].

On April 6, 2011, Corbis filed a cross-motion for summary judgment, arguing Shirley's red carpet appearance constituted implied consent for its offer to the world to purchase from it her photographs at red carpet appearances. [ER Vol. II, 159].

On June 2, 2011, the District Court entered final judgment granting summary judgment in Corbis' favor. [ER Vol. I, 1]. On September 24, 2011, the District Court entered an Order awarding Corbis attorneys' fees and costs of $357,532.91. [ER Vol. I, 4].

STATEMENT OF FACTS

Corbis offers Shirley's pictures to be purchased around the world for commercial purposes without her permission. [ER Vol. II, 129-130] Shirley has been a star actress and singer on and off stage for over six decades. *Id.* She was raised in rural Pennsylvania, but her talent for music and on-stage performance was spotted early in her childhood. *Id.* At the age of eighteen, she was crowned "Miss Pittsburgh." *Id.* A few years later, she moved to New York in pursuit of her Broadway dreams – with only $100 in her pocket. *Id.* In the Big Apple she succeeded, rising quickly to become one of the most sought-after Broadway stars. *Id.*

Throughout the 1950s and 1960s, Shirley starred in film adaptations of Broadway musicals, including *Oklahoma!*; *Carousel*, *April Love*; *The Music Man*;

The Courtship of Eddie's Father; *Fluffy*; and *Maggie Flynn*. *Id.* Her stunning performance in *Elmer Gantry* also won her an Academy Award for Best Supporting Actress in 1960. *Id.*

Moving from the silver screen to the small screen in the 1970s, Shirley starred as the female lead in the one-time iconic television show *The Partridge Family*, which became an instant hit in the first season and was subsequently screened in over 70 countries. *Id.* One of the songs performed by her in the show, *I Think I Love You*, reached number one on the Billboard Hot 100 music chart, making Shirley only the second person in history to ever win an Oscar award and a number-one hit on the Chart. *Id.*

In 1986, Shirley was enshrined on the Hollywood Walk of Fame. In 2006, she received both the Emmy Award and the Screen Actors Guild Award nominations for her supporting performance in the television film *Hidden Places*. *Id.* In 2010, Shirley, together with her husband Marty Ingels, attended two awards receptions on invitation – the 9th Annual Movies For Grownups Awards and the 8th Annual TV Land Awards. *Id.* On both occasions, she stepped on the red carpet and posed before professional photographers. *Id.* It was months later she first discovered that approximately 10 photographs depicting her at the two red-carpet events were being solicited for purchase on Corbis' websites. *Id.*

Although having had no contact with or knowledge of Corbis before, Shirley soon learned that Corbis is an online business that sells, over the Internet, photographs of celebrities like her to any interested buyers, for a fee. [ER Vol. II, 132] Though spending a lifetime building her fame and identity to sustain her livelihood based on these efforts, Corbis exploits her persona, for profit, without her consent and without paying her compensation. Before filing this litigation, Plaintiff initially sought to participate in a similar lawsuit against Corbis before the same District Court, *Alberghetti et al. v. Corbis,* No. 2:09-cv-05735 (C.D. Cal. filed Aug. 8, 2009), now on appeal before this Court, in case numbers 10-56400 and 10-56311. Her request was denied. She then filed this litigation which was assigned to the same District Court Judge on November 12, 2010. Convinced that she had never given Corbis permission to sell her photographs, Shirley filed a class-action complaint in the District Court against Corbis for violation of her rights of publicity under common law and California's statute. [ER Vol. II, 128].

The District Court entered summary judgment in favour of Corbis finding that no reasonable jury could conclude Shirley's appearance at two red carpet events did not constitute consent to Corbis to offer those pictures for purchase to anyone wishing to purchase them for a listed price. [ER Vol. 1, 1]. The District Court also entered an award of attorney's fees of $357,532.91 in favor of Corbis

and against Shirley. [ER Vol. I, 4]. Shirley now seeks review in this Court as a matter of right.

SUMMARY OF ARGUMENT

The District Court erred by granting Corbis' cross-motion for summary judgment because a reasonable jury could find that Shirley's appearance at two red carpet events did not constitute consent by her to allow Corbis to offer for sale or sell photographs taken of her at these events on its internet websites without her permission and without compensating her. Likewise, the District Court erred in awarding Corbis attorney's fees of $357,532.91 in favor of Corbis and against Shirley.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment *de novo*. *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011) (internal citation omitted). Summary judgment is not appropriate if, "viewing the evidence in the light most favorable to the nonmoving party and drawing all justifiable inference in its favor," there are genuine issues of material fact left to be resolved by a trier of fact. *Id*.

ARGUMENT

I. The District Court erred in concluding Plaintiff's knowledge that red carpet photographers may distribute photographs constituted consent for Corbis to commercially exploit, worldwide, these photographs without her consent.

Under California law, a Defendant may not exploit a person's common-law or statutory rights of publicity unless the person consents to exploitation. *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1088 (9th Cir. 2002). In *Solano*, the plaintiff, who was featured on the cover of the defendant's adult magazine, sued the defendant magazine publisher for misappropriation of his likeness in violation of statutory and common law. *Id.* at 1080-1081. This Court reversed the District Court's grant of summary judgment in favor of the defendant because genuine issues of material fact precluded summary judgment for the magazine on the issue of whether the plaintiff consented to the defendant's use of his image on the adult magazine. *Id.* at 1088. In *Solano*, this Court ruled that enough disputed evidence existed for a jury determination. There, the defendant purchased Plaintiff's picture from a photo stock house similar to Corbis. The defendant argued that the Plaintiff voluntarily posed for the photographs. The District Court granted summary judgment based upon the defense argument. Just like in this case, the stock company (Corbis here) informed the purchaser (the defendant) that the Plaintiff had not executed a release for his image. This court reversed the District Court.

Here, Corbis does not dispute that Shirley never expressly consented to have Corbis sell her pictures. [ER Vol. I, 13]. Corbis' argument, which the District Court accepted, is that Plaintiff's appearance at the two red carpet events was enough. It ruled that no reasonable jury could reach *any* conclusion other than the

appearances authorized Corbis to sell, worldwide, these pictures to any purchaser for any price without Shirley's express consent. Citing *Newton V. Thomason*, 22 F.3rd 1455 (9th Cir. 1994), the District Court found as a matter of law that Plaintiff "has not objected to such sales and the record makes clear that any objection would be contrary to industry customs given the circumstances". But nowhere does the record suggest that Shirley never objected to such Corbis sales or offers for sale "contrary to industry customs". The record clearly demonstrates that she never heard of Corbis until shortly before she initiated this litigation. [ER Vol. II, 99]. Plaintiff first discovered Corbis was offering for sale her photographs on or about May 7, 2010. Likewise, the record is absent that any such objection would be "contrary to industry customs". *Id*. Her declaration stated that she never consented to Corbis' offer for sale of her pictures. *Id.* When Corbis engages in this type of exploitation it competes with Shirley Jones for her own sale of her pictures from which she derives income. Events *at which she sells* her pictures are called signing events. Corbis' sales and offers for sale dilutes her market [*See* transcript of Shirley Jones at 133:21-134:25 and page 234].[1]

[1] Jones deposition transcript was filed with Corbis' response to Plaintiff's Motion for Partial Summary Judgment. [ER Vol. II, 98-122]. Also see recent articles demonstrating the compensation received by celebrities for attending and being photographed at events. *See Chicago Sun-Times*, November 2, 2011 and November 6, 2011 (stating that Kris Humphries and Kim Kardashian made $9 million from their wedding pictures and exposure alone).

That the District Court found Plaintiff's knowledge of photographers taking pictures of her at red carpet events rose to the level of implied consent as a matter of law, allowing Corbis to exploit her on its websites worldwide, is puzzling. Nevertheless, the District Court summarily ordered that the red carpet appearances were a green light for Corbis to sell her pictures around the world for profit.

Perfect 10, Inc. v. Talisman Communications, Inc., 2000 U.S. Dist. LEXIS 4564 (C.D. Cal. 2002) is a well reasoned opinion addressing this issue of implied consent. In that case, Perfect 10 hired four models to pose for photographs to be posted on its website, perfect10.com. The models assigned and transferred their rights of publicity to Perfect 10, ***and Perfect 10 only***. The defendant, Talisman Communications, retrieved photos from Perfect 10's website and posted them on its website for the purpose of advertising and soliciting purchases of Talisman's goods and services. The court found that Talisman violated the models' rights of publicity because it posted the pictures without prior consent, license or permission of Perfect 10. *Id*. at 8-9. *Perfect 10* ruled that the mere act of assigning rights of publicity to one entity does not allow an unrelated third party to appropriate the pictures without prior consent. Indeed, the record in this case is absent *any* evidence that Shirley Jones assigned her rights of publicity to Corbis or *anyone*,

other than in connection with a specific movie or event. Those assignments were *in writing.*

The District Court cited *Newton v. Thomason*, 22 F.3d 1455 (9th Cir. 1994) as support for its summary judgment (see page 6 *supra.*) But in that case Newton communicated directly with the defendant over the use of his name in a TV series. *Id.* Here, Shirley has testified in her deposition that she did not know Corbis existed and that she did not know when her picture first appeared without her consent for solicitation or sale on the Corbis websites. [ER Vol. II, 129]. The District Court's reliance on *Newton* is puzzling. First, the plaintiff in *Newton* admitted he was excited about the defendant using his name and that "he did not expect [the defendant] to believe he objected to the use of his name." *Id.* Second, the *Newton* plaintiff, with full knowledge that the defendant planned to use his name, did not raise any objection until six months after his knowledge of such use, and only then, because the defendant refused to buy a song created by the plaintiff as a theme song. *Id.* As stated, unlike in *Newton*, Corbis does not dispute that Shirley was in fact unwilling to have her photographs sold by it. In *Newton*, the evidence was undisputed that the plaintiff was subjectively willing to have his name used by the defendant notwithstanding the change of mind later. Further, unlike *Newton*, Shirley had no prior communication with or knowledge of Corbis and never expressed any opinion on Corbis' sale of her photographs until the

commencement of this litigation. Indeed, Corbis never consulted Shirley on its sales attempt.

In *Michael Pohle, v. Cheatham*, 724 N.E.2d 655 (Ind. Ct. App. 2000), the court found that consent is an intentional relinquishment of a known right. It requires both knowledge of the existence of the right and the intention by an affirmative act, not mere silence, acquiescence or inactivity, to constitute consent. That court held the trier of fact could ***not*** reasonably infer the plaintiff's conduct constituted consent for publication of photographs. It held that in the heat of passion the Plaintiff simply consented to being privately photographed by her husband and that this limited consent did not justify an inference that the Plaintiff intended to waive her right to complain about the public distribution of her photographs.

Lane v. MRA Holdings LLC., 242 F.2nd 1205 (2002) was also presented to the District Court as authority by Corbis. But in that case the plaintiff voluntarily posed in the nude and placed no limitations on the use of her photos which she knew would be in a magazine as her companion did the same thing. Moreover, all parties discussed the publication with the photographer. No such thing occurred here. At a very minimum, a reasonable jury could find Shirley's presence at a red carpet event would not constitute consent for Corbis to offer her pictures around the world for purchase.

We understand that "in determining whether conduct would be understood by a reasonable person as indicating consent, the customs of the community are to be taken into account." *Mitchell v. Baltimore Sun Co.*, 883 A.2d 1008, 1016 [Md. App. Ct, 2005). We also understand the District Court considered the Declaration of Frank Trapper, one of the photographers who took Plaintiff's photographs at the red-carpet events. His declaration stated it is the custom and practice in Hollywood that celebrities appear at red-carpet events and pose for photographers who would then distribute the photographs *for the benefit of the events and the celebrities*. [ER Vol. II, 63-64] (emphasis added). But the District Court refused to recognize that a reasonable jury could find that Trapper's testimony meant that "for the benefit of the events and the celebrities" means that the "event" would benefit and the "celebrity" would be compensated for any further use of the photographs. Instead the District Court found that the only conclusion a reasonable jury would make would be that the appearance allowed Corbis to offer Shirley's photos to be sold to anyone worldwide, for profit.

The District Court did not consider that a reasonable jury would be presented with evidence that Corbis' commercial sale of a celebrity's picture to 3rd parties results in *nothing* for the celebrity and would also be presented with evidence that Shirley was *never* compensated by the sale of or offer for sale of her photograph by Corbis. [Case 2:09-cv-05735 McClean's testimony] *See*, *e.g.*

Mitchell v. Baltimore Sun Co., 883 A.2d 1008, 1016 (holding that, while it is customary for close friends and relatives to visit one's home uninvited, it is not customary for strangers to do so). Moreover, a reasonable jury would be presented with evidence that Corbis had knowledge of what "consent" really means. Saliently, Corbis *requested* consent for the exploitation of the rights of publicity in the commercial world when corresponding with the Estate of James Brown [ER Vol. II, 57]. The correspondence from Corbis soliciting the consent and authorization from the appointed administrator of the James Brown Estate was to utilize his picture in a Sony video game. That correspondence speaks volumes about Corbis' ability to understand the concept of consent and to obtain same before exploiting a celebrity.

Unfortunately, the District Court, instead of construing evidence in a light most favorable to the non-movant Shirley Jones as required, construed all evidence against her. The District Court found her voluntary appearance before photographers a blank-check for Corbis to sell her photographs. [ER Vol I, 13]. It is also interesting that the District Court had previously criticized implementation of § 3344 in *Alberghetti* (see page 4, *supra*.)

II. A reasonable jury could conclude that neither the Hollywood custom nor the notice at the red-carpet event entitles Corbis to sell Shirley's pictures.

The record demonstrates that one red carpet event posted a notice referred to by the District Court (ER Vol. 1, 14) informing attendees that by walking on the red carpet, celebrities would be "photographed and recorded," and that their "name, voice and likeness" would be used *in connection with the red-carpet* event. That notice was relied upon by the District Court to summarily conclude implied consent for Corbis to sell Shirley's pictures worldwide. (See p. 7 *supra*) *Declaration of Trapper*, ¶ 6, *Declaration of Teetzel*, ¶ 6; *also Jones Deposition*, 157: 17-158:10. *See*, *e.g. Cohen v. Facebook, Inc.*, 2011 WL 3100565 at *4 (N.D. Cal. 2011) (holding that, although Facebook's terms of use impliedly waives Facebook users' consent for Facebook using their photographs for certain purposes, the consent-waiver does not permit Facebook to use the photographs for *any* purpose whatsoever.) In *Cohen*, users of the Facebook website brought a putative class action against Facebook, alleging it misappropriated users' names and likenesses for its own commercial purposes to promote "friend finder" service, in violation of a variety of common law and statutory theories. *Id.* The District Court held that Facebook users did not consent for the website to use their names and likenesses to promote service, as required by common law cases and statutory misappropriation statutes. *Id.*

This Court's decision in *Solano* seems to be controlling (see p. 5 above). The plethora of disputed evidence in this case is similar to that in *Solano*. In both the

record evidence allows a jury to conclude that the defendants unreasonably interpreted the plaintiffs' conduct as implied consent. In this case, the red carpet notice mentioned previously was held by the District Court as giving Corbis blanket permission to sell Jones' photographs to whomever it likes. We submit a reasonable jury could conclude otherwise. *McCabe v. Village Voice, Inc.*, 550 F. Supp. 525, 529 (E.D. Pa. 1982) (citing *Restatement (Second) of Torts* § 892A(4)) ("Conduct in excess of that consented to is not protected by the consent.") Again, just like in *Solano*, disputed evidence demonstrates the District Court erred.

III. The District Court's Order as to attorney's fees and costs should not stand in the event this Court does not reverse outright.

A. Defendant's Lodestar figure is unreasonable

Under California law, a court faced with a motion for attorney's fees begins by deciding "the reasonable hours spent" on the case and multiplying that number by "the prevailing [hourly] rate for private attorneys in the community conducting [litigation] of the same type." *Ketchum v. Moses*, 17 P.3d 735 (Cal. 2001).

The key consideration in determining the reasonableness of the time spent "is the necessity and usefulness of the conduct for which compensation is sought." *Thayer v. Wells Fargo Bank, N.A.*, 92 Cal. App. 4th 819, 846 (2001).

The District Court had previously evaluated Defendant's proposed attorney's fees, in *Alberghetti v. Corbis Corp.*, No. 2:09-cv-05735, Dkt. No. 122, at 18 (C.D. Cal. Jul. 22, 2010). It there questioned the counsel for Defendant's

credibility and billing judgment because the block-billing method "raised serious questions about the accuracy and reasonableness of [its] submissions." *Id*. To be sure, block-billing was done in this case. Nevertheless, counsel for Defendant continued to engage in questionable billing practices here.

B. Defendant should not recover fees in connection with its opposition to class certification because the number of hours billed were unreasonable.

Defendant's counsel billed over *ninety* hours in connection with its Opposition to Plaintiff's Motion for Class Certification, despite the fact that it borrowed heavily from its previous opposition to class certification in *Alberghetti*. According to Exhibit E to its Motion for Attorneys' Fees and Costs, [ER Vol. II, 55-56]. Defendant's counsel spent over sixty-four hours to "draft", and over twenty-four hours to "revise," a pleading that relied heavily on the research and drafting already completed in its *Alberghetti* Opposition to Class Certification. (*See generally,* Exhibit E to Defendant's Memorandum In Support of Its Motion for Attorney's Fees and Costs. *Id*. To illustrate how similar its opposition in this case was to its opposition in *Alberghetti*, more than half of the forty cases cited by Defendant in its Opposition to Class Certification in this case were cited by Defendant in its *Alberghetti* Opposition. (*See* Defendant's Opposition to Class Certification, forty cases cited in the *Jones* Opposition to Class Certification were

available at the time Defendant filed its Opposition to Class Certification in *Alberghetti*.) [ER Vol. II, 69-72]. Defendant compared the Shirley's class certification motion to the one in *Alberghetti* over ten times, and cited the District Court's ruling on the *Alberghetti* motion fourteen times. In all, Defendant referred to the *Alberghetti* case over twenty-five times, which in itself illustrates the similarity of the two cases and motions for class certification. Defendant's amount of time spent on a single pleading, given the fact that Defendant had already researched and briefed the same issue in the previous and related case, is manifestly unreasonable. In this context, it strains credulity to believe that ninety hours on this single pleading is reasonable. We believe the District Court abused its discretion in allowing $129,621.15 in fees and costs in connection to this pleading. [ER Vol. II, 12].

C. Defendant did not establish reasonableness of its paralegal rates.

Defendant did not meet its burden of showing the reasonableness of the rates as it pertains to the work done by its paralegals. *See Ketchum,* 17 P.3d at 746. Defendant provided no evidence that $135, $162, and $243 were reasonable rates for its paralegals. [ER Vol. II, 7]. In fact, the requested rates lie in stark contrast to the District Court's assessment in its *Alberghetti* Order Granting Attorneys' Fees of $125 per hour. *See Alberghetti*, Case 2:09-cv-05735, Dkt. No. 122 (C.D. Cal.

filed Jul. 22, 2010). Because Defendant failed to meet its burden of showing the reasonableness of its rates, the District Court's award should be reversed.

In the alternative, several of the entries for paralegal work do not appear to be necessary or even connected to the litigation. Exhibit D shows 8.8 hours spent "updating deposition tracking index" for a total of $1188.00. [ER Vol. II, 52-53]. This type of work is best characterized as "house-keeping," and not necessary to the disposition of litigation. There are numerous other questionable entries for Defendant's paralegal work: Ex. D, Page 36: 7.9 hours spent "Opposition Motion Filings" for $947.70; Ex. D, Page 38: 4.5 hours spent "Cite Check Motion for Filing" for $607.50; Ex. D Pages 32-33: a combined 14 hours over two days spent "Cite Check Briefs; File Preparation" for $1,836.00; Ex. D, Pages 28, 30-34: 51.7 hours spent "Preparing Exhibits" for $12,563.10. [ER Vol. II, 50, 52, 46-47, 42, 44-46]. Plaintiff requests that this Court reverse any fees for those entries, totaling $17,142.30, as questionable or not necessary to the present litigation.

D. Defendant should not recover fees for redacted entries because it cannot demonstrate that the work is necessary or useful to the resolution of the dispute.

Defendant redacted thirty-four entries in its billing statement, citing attorney-client privilege. The total in fees for these entries is $9,634.50. Plaintiff had no way of knowing what the subject of those activities were, and therefore could not determine whether they were reasonably incurred. Attorney-client

privilege notwithstanding, it is Defendant's burden to demonstrate its costs and fees were reasonably incurred. By redacting many of its entries, Defendant was unable to satisfy that burden as to those entries. Therefore, Plaintiff requests this Court reverse the District Court's award for those entries.

E. Defendant should not have been awarded fees in connection with its First Amendment Argument because the District Court had already found Defendant's use is not protected by the First Amendment.

Defendant should not have recovered fees and costs in connection with its First Amendment argument because the District Court had already ruled that the First Amendment does not protect Defendant's conduct. In an order denying Defendant's Motion to Dismiss in *Alberghetti v. Corbis*, the District Court stated, "Defendant's use is therefore not protected by the First Amendment." *Alberghetti*, Case 2:09-cv-05735, Dkt. No. 34 (C.D. Cal. filed Oct. 27, 2009). Defendant chose to present over twenty-four hours to the District Court for researching and drafting an argument on First Amendment protection for an argument that was rejected by the Court. Defendant's decision to research and argue First Amendment protection was not "necessary and useful" to the resolution of this dispute, and was therefore not reasonably incurred. *See Thayer*, 92 Cal. App. 4th at 846. The total in fees for the work devoted to the First Amendment issue is $10,666.60. Accordingly, Plaintiff requests this Court to reverse the District Court's award for fees connected to that issue.

On August 24, 2011 the District Court awarded Defendant $29,825.55 as a part of its total award to Defendant on that day of $354,532.91 in fees and costs. The sum of $29,825.55 was allocated, and not reduced by the District Court, for the preparation of the initial Petition for attorneys' fees and costs. Defendant sought an additional $11,719.80 for preparation of its reply in support of its Petition for fees.

Of this additional amount being sought, Mr. Theis Finlev, a junior associate, billed at the rate of $310.50 per hour, spent a total of 11.3 hours on preparation of the reply plus another 3.9 hours on preparation of the declaration and exhibits to the reply, plus another 4.8 hours reviewing and revising the reply. Kathryn Fritz, a partner at the Defendant's law firm billed at $643.50 per hour billed 1.8 hours reviewing the work of Mr. Finlev. Thus, a total of 21.8 hours, or approximately 2 ½, days was spent by attorneys for Corbis preparing a reply in support of its request for approximately $11,800 in additional attorneys' fees, which are sought to be recovered from Plaintiff. We believe 2 ½ days of lawyers' time to prepare this reply was not a reasonable expenditure by the named lawyers. Ultimately it was within the District Court's discretion to determine whether or not that amount of time is reasonable. In that regard, the District Court abused its discretion.

IV. CONCLUSION

If the District Court's Order is allowed to stand, a vibrant Hollywood industry would suffer a chilling effect. Whenever a celebrity appears voluntarily at

a red-carpet event, Corbis could sell the celebrity's photographs to anyone in the world for any purpose whatsoever. We believe the District Court's rulings eviscerate the purpose of Rights of Publicity law.

For the above reasons, the District Court's grant of summary judgment in Corbis' favor should be reversed as well as its award of attorney's fees and costs.

Respectfully submitted,
on behalf of the Plaintiffs,

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EXHIBIT A

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Local Rule 28-2.6, counsel certifies that there is a related case pending before this Court, appeal nos. 10-156400 and 10-156311 as *Anna Maria Alberghetti et al. v. Corbis Corporation*,

CERTIFICATE OF CONFORMITY

I certify under penalty of perjury that Plaintiffs' initial brief is proportionally spaced, has a typeface of 14 points or more and contains 4,564 words.

Executed on December 5, 2011 at Chicago, Illinois

s/Arthur S. Gold
Arthur S. Gold