

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**CASE NO.: 5:08-CV-360-OC-10-GRJ**

**CENTRAL FLORIDA MULTIMEDIA, INC.,  
a Florida corporation,  
d/b/a Fantasy Gentlemen's Club,**

**Plaintiff**

**vs.**

**LAKE COUNTY, Florida,  
a political subdivision of the State of Florida,  
and NICHOLAS MAGRONE**

**Defendant.**

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**AMENDED COMPLAINT FOR DECLARATORY  
AND PRELIMINARY INJUNCTIVE RELIEF  
AND DEMAND FOR JURY TRIAL**

Plaintiff, CENTRAL FLORIDA MULTIMEDIA, INC., a Florida corporation, d/b/a Fantasy Gentlemen's Club, brings this Complaint pursuant to 42 U.S.C. § 1983, seeking emergency injunctive and declaratory relief and compensatory damages for the violation of its rights under the First, Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution. Plaintiff challenges the

constitutional validity of the Lake County Adult Entertainment Code, Ordinance 2000-106, and seeks a judgment declaring the licensing provisions of the Lake County Adult Entertainment Code to be facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution and unconstitutional as applied to Plaintiff.

Plaintiff also seeks preliminary and permanent injunctive relief against the use of an adult entertainment license unlawfully issued by Defendant LAKE COUNTY to Defendant NICHOLAS MAGRONE, Plaintiff's landlord, despite a long-term lease agreement which requires Plaintiff to operate an adult entertainment club at the premises at issue. In addition, Plaintiff seeks to prosecute those who unlawfully conspired to issue an adult-entertainment license to Defendant MAGRONE, Plaintiff's landlord, and to root out political corruption in Lake County. Further, Plaintiff asks this Court to permanently enjoin the enforcement of the challenged Lake County Adult Entertainment Code.

Plaintiff respectfully submits that this case is a textbook example of why discretion must be limited to rein in abuse in decision-making involving free speech.

## **JURISDICTION**

1. This suit is brought pursuant to 42 U.S.C. § 1983, which provides:  
  
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 ....
2. This Court has jurisdiction over the subject matter, which is a civil rights action involving a constitutional question.
3. This case arises under the Constitution of the United States, and this Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.
4. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202.
5. This Court has supplemental relief over Plaintiff's state law claims under 28 U.S.C. § 1367.
6. The rights sought to be protected in this cause of action arise and are secured under the First and Fourteenth Amendments to the United States Constitution and Article I, §§ 4 and 9 of the Florida Constitution.

#### **PARTIES**

7. Plaintiff, CENTRAL FLORIDA MULTIMEDIA, Inc. (hereinafter "CFM") is a Florida corporation doing business as Fantasy Gentlemen's Club

(hereinafter "FANTASY"), at 215 U.S. 27 in Lake County, Florida. Plaintiff is the entity beneficially interested in the relief herein sought and seeks to invoke the jurisdiction of this Court on account of the facts and matters herein stated.

8. Defendant LAKE COUNTY is a political subdivision of the State of Florida, acting through its Board of Commissioners.

9. All references to Defendant LAKE COUNTY are, *inter alia*, understood to include any and all departments, agents, officials, and employees of Defendant LAKE COUNTY.

10. Unless otherwise noted, the acts of these agents, officials and employees were done under color of state law and pursuant to ordinances, regulations, custom and usages of Defendant LAKE COUNTY and its divisions pursuant to official custom, habit and/or policy of Defendant LAKE COUNTY.

11. Defendant NICHOLAS MAGRONE (hereinafter "MAGRONE") is a resident of Lake County, Florida. He conducts business in Lake County, Florida, through various corporate names and trusts, including but not limited to Citrus State Mortgage, Inc.; Friends & Family Investments, Inc.; and Mount Dora Real Estate Co. He is the owner of the property located at 215 U.S. 27, Lake County, Florida, and is landlord to Plaintiff CFM. *See* lease between Plaintiff and Citrus State Mortgage, attached hereto as Exhibit "B."

#### VENUE

12. Venue is appropriate in the Middle District of Florida, Ocala Division. Plaintiff CFM does business in Lake County, Florida, Defendant LAKE COUNTY is located there, and Defendant MAGRONE lives and does business there. All of the acts and omissions complained of herein occurred and will continue to occur in the Ocala Division of the Middle District of Florida.

### **FACTUAL ALLEGATIONS**

13. Plaintiff CFM owns and operates a “gentlemen’s club” or “adult performance establishment” located at 215 U.S. 27, Lake County, Florida, where dancers engage in First Amendment protected non-obscene adult-oriented speech through expressive dance. The performers wear coverings over portions of their anatomy, as specified and required under the Lake County Adult Entertainment Code. Plaintiff’s business establishment also included a small section where Plaintiff sold a small amount of First Amendment protected non-obscene adult-oriented magazines and DVDs for take-home purposes only. Defendant LAKE COUNTY seized all the DVDs and 24 *Hustler* magazines.

14. Upon information and belief, Plaintiff CFM is the only establishment purveying exotic partially nude non-obscene First Amendment protected expressive dancing in Lake County.

15. This expressive activity is performed before a consensual audience, all over the age of 18 years, desirous of receiving and enjoying the message

conveyed by the entertainer of normal human sexual interest and sensual subtleties.

16. The adult materials offered for sale constituted approximately 5 percent of Plaintiff's overall floor space and less than 5 percent of sales.

17. Plaintiff holds a 2COP beer and wine license and serves alcoholic beverages at its establishment.

18. At all times material hereto, Plaintiff CFM held all permits and licenses required to operate its business.

19. Plaintiff believes that providing this form of expressive communication to the public is a beneficial social activity, which enhances individuals' conscious ability to assimilate and consider various issues involving sexual candor and the interest in human sexuality that all human beings have to a greater or lesser degree. Plaintiff considers this expression to enhance the appreciation of the human body, with an emphasis on the consideration of popular contemporary concepts of physical attractiveness and the stimulating and entertaining aspects of same, which are clear characteristics of a normal and healthy interest in human sexuality.

20. On November 7, 2000, Defendant LAKE COUNTY enacted Ordinance 2000-106, which is a comprehensive licensing, regulatory and zoning ordinance for adult entertainment and sexually oriented businesses in Lake

County. Pursuant to Section 3-20, the ordinance is known as the Lake County Adult Entertainment Code.

21. On October 7, 2003, Defendant LAKE COUNTY enacted Ordinance 2003-85, amending the zoning regulations for adult-oriented businesses.

22. Any adult entertainment establishment existing prior to the adoption of the Lake County Adult Entertainment Code and not meeting all its requirements is considered a non-conforming use. *See* Section 3.07.03 of the Lake County Land Development Regulations.

23. Plaintiff CFM's location is recognized as a non-conforming use pursuant to Section 3.07.03 of the Code of Lake County, Florida, Appendix E.

24. Plaintiff CFM faces the prospect of imminent closure for not having obtained a renewal of its adult entertainment license or a new license and for not having applied for and/or obtained an adult bookstore license. Plaintiff CFM also stands to lose the location's non-conforming use status if it is not licensed for one year. Plaintiff CFM was unable to obtain a license because Defendant MAGRONE, as the landlord, refused to sign a required affidavit and Defendant LAKE COUNTY refused to accept an earlier affidavit signed by Defendant MAGRONE at the time the lease was signed and accepted By Defendant LAKE COUNTY for the issuance of Plaintiff's initial October 27, 2007, license. In addition, Defendant LAKE COUNTY claims that Plaintiff would not allow an

inspection of the premises although the inspection was allegedly for the purpose of issuing a license to Defendant MAGRONE, who arranged the inspection and accompanied the inspectors without giving Plaintiff the advance notice required by the lease. Defendant LAKE COUNTY also claimed the inspection was “routine” and on behalf of Plaintiff; however, the inspection was for the purpose of granting a license to Defendant MAGRONE.

25. Plaintiff CFM held an adult entertainment license issued by Defendant LAKE COUNTY on October 27, 2005, which was provided in the form of a letter. A copy of the license is attached hereto as Exhibit “A.”

26. Plaintiff CFM’s President previously was an attorney who limited his practice to First Amendment licensing, zoning and obscenity cases nationally for approximately 15 years. Plaintiff’s President has never before seen an adult license issued in the form of a letter.

27. Plaintiff’s lease was to commence on October 1, 2005, or as soon as the prior tenant vacated the building, and to end on September 30, 2008. Plaintiff’s lease also provides five (5) additional three-year periods. A true and correct copy of the lease is attached hereto as Plaintiff’s Exhibit “B.”

28. Plaintiff CFM applied for an adult entertainment license immediately after signing the lease.

29. Plaintiff’s adult entertainment license was issued October 27, 2005.

30. Plaintiff CFM was first allowed to operate its business June 24, 2006.
31. Plaintiff CFM's adult license expired on September 30, 2006.
32. Plaintiff CFM's adult license expired after only *two (2) months'* use.
33. Plaintiff CFM was not notified by Lake County that its license had expired.
34. The prior tenant, Sensation Entertainment Xtravaganza (also known as and hereinafter referred to as "SEX") d/b/a Roxies Show Bar was alleged by Defendant MAGRONE, the landlord, and his attorney to be a hold-over tenant.
35. Defendant MAGRONE coincidentally was a both an officer and a shareholder in SEX as well as the landlord.
36. Defendant MAGRONE and his lawyer, Harry Hackney, failed to disclose to Plaintiff that SEX had two (2) remaining five-year options on its lease and failed to disclose to one of Defendant MAGRONE's own lawyers much less the court in the more recent eviction case against SEX about the remaining 10 years of option periods in SEX's lease.
37. Defendant MAGRONE previously filed an eviction case against SEX, which resulted in the filing of bankruptcy by SEX in 2001. The eviction case is styled *Magrone v. Sensational Entertainment Xtravaganza*, Case No. 2001-CA-19;

the bankruptcy case is styled *In re: Sensational Entertainment Xtravaganza*, Case No. 01-02-817-6B1. A memorandum of law filed in bankruptcy court by Defendant MAGRONE's lawyers recognized the validity of SEX's lease option periods.

38. To get rid of the prior tenant, SEX, which had an apparently valid long-term lease and of which Defendant MAGRONE was an officer and shareholder, Defendant MAGRONE next tried to dissolve SEX. That case is styled *Magrone v. Sensational Entertainment Xtravaganza, Inc.*, Case No. 2005-CA-003305.

39. To solve his dilemma of being a minor shareholder in SEX and unable to deadlock the corporation himself, Defendant MAGRONE purchased additional stock from his cousin Ben Ardito to give Defendant MAGRONE a total of 50% of SEX. As part of the settlement of Case No. 2005-CA-003305, Defendant MAGRONE also had Mr. Ardito file a quit-claim deed to the club property, which he and Defendant MAGRONE were litigating over ownership and which had been fraudulently transferred with the intent to give it back to Mr. Ardito so that Plaintiff's landlord could fraudulently show enough equity to open another mortgage office location in South Florida, according to testimony in the eviction case turned bankruptcy case against SEX. *See Ardito v. Citrus State Mortgage, Inc.*, Case No. 2004-CA-2158; *In re: Sensational Entertainment*

*Xtravaganza*, Case No. 01-02-817-6B1. Defendant MAGRONE was personally sanctioned by the bankruptcy court for holding the first shareholders' meeting immediately after the prior tenant's son was tragically killed, during the automatic stay period. New officers and directors were voted in while the prior tenant was mourning his son. The meeting also authorized SEX to fire the attorney representing SEX in the bankruptcy case.

40. Defendant MAGRONE previously had acquired 50% of the stock in SEX. To settle his case with the prior tenant, SEX, Defendant MAGRONE pressured prior operator Carl Joseph Larsen to sell his 50% of the stock in SEX, so that Defendant MAGRONE became the 100% owner of SEX and 100% owner of the real property.

41. Defendant MAGRONE then dropped the eviction case against SEX and tried to continue to operate the business by muscling out Plaintiff, by illegally changing the locks on the door on two separate occasions and, on the second occasion, putting in his own employees to run the club for a time when Defendant MAGRONE knew Plaintiff's president was out of town. In addition, Defendant MAGRONE filed two frivolous lawsuits against Plaintiff to force it out of business. *Citrus State Mortgage v. Wasserman*, Case No. 2006-CA-888, claimed that Plaintiff could not obtain a liquor license, which would be a breach of the lease, although Plaintiff's landlord knew that was not true and Plaintiff

speedily obtained a liquor license prior to the hearing. *Citrus State Mortgage v. Central Florida Multimedia*, Case No. 07-CC-1192, contended that Plaintiff owed a large sum of back rent; Defendant MAGRONE did the same thing to the prior tenant, forcing it into bankruptcy. In the eviction lawsuit against CFM, the circuit judge found not only that Plaintiff did not owe back rent but also that Plaintiff was overpaying the amount of rent. The court required Plaintiff to pay its rent to the registry of the Court, where Defendant MAGRONE has been collecting this reduced sum for more than a year.

42. Defendant MAGRONE then alleged that he owned 100% of SEX, Inc. d/b/a Roxies and, therefore, he could simply assume its lease and invalidate Plaintiff's lease without any type of court hearing if he dropped the eviction case against SEX, Inc.

43. Previously, Defendant MAGRONE had the lawyer who put the contract together provide a modification agreement seeking a release of liability for Plaintiff not being able to take possession of the subject property and for cancellation of the lease. Plaintiff refused to sign the proposed modification agreement.

44. Because it was *nine (9) months* before Plaintiff was finally allowed to officially occupy the premises after a transition period, Plaintiff's adult license had expired without his knowledge. *See Plaintiff's Exhibit "A."*

45. Defendant LAKE COUNTY issued Plaintiff's adult license was issued in the form of a letter and no notice was provided to Plaintiff that it was time to renew the license when it had expired because the person who issued such license moved away and others were unfamiliar with the process. When Plaintiff originally went to renew its license, Plaintiff was told by the growth management department of the County that all files dealing with the property had been lost except for a 1978 Conditional Use Permit allowing for a mobile home and a shed on the property.

46. Once Plaintiff became aware that its adult performance establishment license had expired and that the renewal period also had expired, Plaintiff's president arranged a meeting with the County Manager, who has the ultimate decision-making authority under the Lake County Adult Entertainment Code, along with the County Attorney and Deputy County Attorney. In that meeting, the County Manager agreed to renew Plaintiff's Adult Performance Establishment License.

47. Despite her agreement to renew Plaintiff's license, the County Manager subsequently approved issuing a license to Defendant MAGRONE.

48. Plaintiff's president knew, under First Amendment jurisprudence, that Plaintiff did not need to obtain a *facially unconstitutional* license from the outset but complied to try and get along.

49. Plaintiff's president told the County Manager, County Attorney and Deputy County Attorney that the Lake County Adult Entertainment Code licensing scheme was *facially unconstitutional* and that Plaintiff was not required to obtain a license pursuant to the Eleventh Circuit's decision in *Fly Fish, Inc. v. City of Cocoa Beach*, 337 F.3d 1301 (11th Cir. 2003); *Lady J Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1363 (11th Cir. 1999) (decided down prior to the enactment of the Lake County Adult Entertainment Code); *see also FW/PBS v. City of Dallas*, 493 U.S. 215 (1990). The Deputy County Attorney's notes from the meeting contain a handwritten note to read the *Fly Fish* decision.

50. Plaintiff's president is a former attorney and has been eligible to apply for a law license for the past several years but so far has not chosen to do so. Plaintiff's president informed county officials that when he regained his license he would point out other provisions of the Lake County Adult Entertainment Code that are unconstitutional and explained that it would be in Plaintiff's economic self-interest for Defendant LAKE COUNTY to have a constitutional adult ordinance which would limit competition from opening in close proximity and set up clear guidelines under which Plaintiff could operate.

51. Intending to be a good citizen of the community, Plaintiff -- upon originally signing the lease and paying advance rent, taxes and security deposit -- applied for and received an adult entertainment license even though he could have completely *ignored* the licensing scheme as *facially unconstitutional*.

52. What was intended to be a brief transition period after Defendant MAGRONE bought out SEX was strung out by Defendant MAGRONE from 30 days to approximately 120 days. During that time, Defendant MAGRONE kept all of the club's monies which were to go to renovations and operating expenses. He refused to provide an accounting or to pay the club its share of the proceeds and for expenses advanced by Plaintiff's president. Upon information and belief, Defendant MAGRONE personally kept approximately \$50,000 from the club's proceeds and \$17,000 from hurricane insurance proceeds that were specifically designated for repairs to the building.

53. Defendant MAGRONE (who is a long-time real estate broker who should know better) changed the locks on the building and attempted to persuade Plaintiff's manager to side with him against Plaintiff. On or about June 19, 2006, Defendant MAGRONE brazenly cut off the locks of the building and installed his own employees. On June 24, 2006, Defendant MAGRONE found out that Plaintiff had retaken the building despite the landlord's security guards. The Lake County Sheriff's Department was called to the club and communicated

with one of the security guards, who claimed he was an Orlando police officer and represented to sheriff's deputies that Defendant MAGRONE had a court order preventing Plaintiff from entering the building. The deputies demanded to see the court order, which turned out to be a letter from Defendant MAGRONE's attorney informing Plaintiff that it was a protected settlement letter and the agreements between Defendant MAGRONE and Plaintiff were terminated. In an effort to peacefully resolve things, Plaintiff agreed to close down until it obtained an occupational license which Lake County Sheriff's Deputy Sgt. Thornton said would be required for Plaintiff to operate its business. Plaintiff's employees videotaped the June 24 incident.

54. Defendant MAGRONE next contacted Defendant LAKE COUNTY to try to prevent Plaintiff from obtaining an occupational license so Defendant MAGRONE could take over the club. Defendant MAGRONE had previously boasted to Plaintiff's president that he had good political contacts in Lake County.

55. At first, Plaintiff did not rush to renew its adult license because Plaintiff relied on the word of the County Manager that she would renew its adult license and also because Defendant LAKE COUNTY did not want to change its *facially unconstitutional* Adult Entertainment Code. Defendant LAKE COUNTY has not made necessary changes to its adult licensing scheme

for more than two years after Plaintiff's president made county officials aware of prior court rulings finding virtually identical ordinances unconstitutional.

56. Plaintiff later discovered through a public records request that years ago Defendant MAGRONE also refused to sign an affidavit which would have allowed the prior tenant to obtain an adult license.

57. The prior operator, Sensational Entertainment Xtravaganza, Inc., (of which Defendant MAGRONE was a shareholder and officer) never applied for or obtained an adult license in the *six years* that it operated after the enactment of the Lake County Adult Entertainment Code without being penalized.

58. Immediately after taking over the business, Plaintiff began to suffer a rash of vandalism at the club. Shortly thereafter, Plaintiff was burglarized several times in a few weeks.

59. Shortly thereafter, Plaintiff's president was robbed and then shot in the chest at point-blank range as he returned home late at night on or about December 9, 2007. He was hospitalized for some time and then convalesced at home for a short time after that. The robber asked for deposits for the club and when Plaintiff's president said he would cooperate if the robber didn't hurt him, the robber told him it didn't matter because he was going to kill him. The robber immediately shot Plaintiff's president; the bullet grazed his heart, aorta and esophagus and exited his body through his liver.

60. While Plaintiff's president was in the hospital, Defendant MAGRONE's new representative, Larry Rozen, came to the club and told the employees he was the new owner of the club. Immediately after Plaintiff's president returned to work, Rozen came to the club and told Plaintiff's president that he would kill him if he refused to sell the business to Rozen on behalf of Defendant MAGRONE. Rozen also stated that he would file all the administrative complaints he could come up with.

61. About a week after Plaintiff's president was released from the hospital, he received notice from code enforcement that Plaintiff was in violation of the Lake County code for operating an adult nightclub with an expired license and that Plaintiff needed a license to sell adult merchandise.

62. Plaintiff has applied several times for a renewal of its license and has made several attempts to renew it, all of which were rejected as incomplete.

63. While Plaintiff's application for renewal was pending, Defendant MAGRONE applied for his own adult license at the same location where he had granted Plaintiff a long-term lease. In making this application, Defendant MAGRONE acted through the former operating corporation of the prior club he had purchased, SEX.

64. Plaintiff's renewal was returned as incomplete and Plaintiff was informed that it would now have to apply for a new license, which was also

rejected based on the refusal of Plaintiff's landlord to sign a new affidavit<sup>1</sup> for Plaintiff to operate an adult business at that location as required by the lease.

65. Plaintiff's application was never formally and/or finally denied. Therefore, Plaintiff had no opportunity to pursue for administrative remedies and/or judicial review.

66. Plaintiff's lease contains a provision specifically requiring that the property be used as an adult entertainment club and for the sale of other adult materials. *See* Commercial Lease Agreement, Exhibit "B," para. 6.

67. Obtaining a new license (even if the requisite affidavit could be obtained from the landlord) would require Plaintiff to bring an older, non-conforming use up to current code. Defendant MAGRONE's attorney informed the county by letter that Defendant MAGRONE would not sign a new affidavit authorizing Plaintiff to obtain a license for an adult entertainment establishment.

68. Defendant MAGRONE's application for an adult license did not include a copy of Plaintiff's lease.

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<sup>1</sup> An applicant who is not the owner of the real property where the adult entertainment will take place is required to produce a notarized statement evidencing that the owner of the real property has approved of or consented to the application for an adult entertainment license. Lake County Adult Entertainment Code, Section 3-29(b)(11).

69. Defendant MAGRONE's application for an adult license did not include a copy of Plaintiff's lease and was, therefore, incomplete and false and misleading. Defendant LAKE COUNTY knew that Defendant MAGRONE had sued Plaintiff in an attempt to invalidate the lease but had not prevailed. The application was denied and Defendant LAKE COUNTY sent the matter to a special master to decide who had the right to a license; however, the matter was continued for two months so that Defendant MAGRONE could obtain a license and evict Plaintiff. The only other choices Defendant LAKE COUNTY had were to file for an injunction, which it agreed not to do because that would have required naming Defendant MAGRONE as a party, or to refer the matter to law enforcement. *See* Section 3-46 of the Lake County Adult Entertainment Code.

70. Defendant MAGRONE then re-applied for an adult entertainment license, using a different corporate name, and that application was granted despite the promises of Defendant LAKE COUNTY to renew Plaintiff's license and Plaintiff's long-term lease, occupational license, liquor license and health permit and its still-pending license renewal application. Defendant LAKE COUNTY issued Defendant MAGRONE a *transferred* license even though he had applied for a *new* license. The processing of Defendant MAGRONE's application took six months despite the requirement in the Lake County Adult Entertainment Code that a decision be made within 30 days. *See* Section 3-31.

## ALLEGATIONS COMMON TO BOTH COUNTS

71. Sections 3-28 and 3-29(a) of the Lake Adult Entertainment Code prohibit the operation of an adult entertainment establishment without a valid adult entertainment license.

72. Section 3-46 of the Lake Adult Entertainment Code provides: "The provisions of this article may be enforced by a suit brought by the county in the circuit court to restrain, enjoin or prevent a violation of this article or by criminal prosecution as provided in Section 125.69, Florida Statutes."

73. Defendant LAKE COUNTY has the immediate and present ability to enforce the above-referenced ordinances.

74. All conditions precedent to the bringing of the action have been performed, waived or excused.

75. The Lake County Adult Entertainment Code is an unconstitutional prior restraint on freedom of expression. In particular, the Lake County Adult Entertainment Code establishes a licensing scheme which prohibits constitutionally protected speech in the absence of a permit. The granting of a permit can be withheld arbitrarily by the licensing authority so that Plaintiff's right to a permit is illusory. Plaintiff alleges the following particulars:

a. The permitting review process allows the County Manager (or his or her designee) unbridled discretion in determining whether to grant or

deny a license. In particular, the following factors are not sufficiently limited or defined to prevent arbitrary decision-making:

(1) The County Manger is authorized to deny an application if it “contains material false information or is incomplete.” Section 3.31(c)(1)(a). However, the term “material” is not defined.

(2) The County Manger is authorized to deny an application if “[t]he granting of an application would violate a statute or ordinance or an order from a court of law that effectively prohibits the applicant from obtaining an adult entertainment license.” Section 3.31(c)(1)(d). A virtually identical provision was declared unconstitutional in *Fly Fish, Inc. v. City of Cocoa Beach*, 337 F.3d 1301 (11th Cir. 2003).

(3) The County Manger is authorized to deny an application if “[t]he applicant has failed to comply with a provision of the state statutes, including Chapter 607, Florida Statutes (regarding corporations), Chapter 620, Florida Statutes (regarding partnerships) or section 865.09, Florida Statutes (regarding fictitious names).” Section 3-31(c)(1)(b). A virtually identical provision was declared unconstitutional in *Fly Fish, Inc. v. City of Cocoa Beach*, 337 F.3d 1301 (11th Cir. 2003).

b. The 30-day time period specified for the County Manager to grant or deny a permit is illusory. *See* Section 3-31(a)(1). While an applicant is

permitted to open without a license if no decision has been rendered within 30 days, the County Manager or his or her designee can thereafter deny the license at any time he or she chooses and direct the closure of the business prior to judicial review. A **conditional** right to open does not satisfy constitutional requirements. *Lady J Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1363 (11th Cir. 1999) (decided down prior to the enactment of the Lake County Adult Entertainment Code); *Redner v. Dean*, 29 F.3d 1495 (11th Cir. 1994) (same); *see also Florida Video Xtra, Inc., v. City of Kissimmee*, Case No. 96-449-CIV-ORL-22 (M.D. Fla. 1996). Copies of these cases are contained in the legislative record that Defendant LAKE COUNTY allegedly relied on to support the enactment of the Adult Entertainment Code. In order to rely on these cases and a model ordinance of the licensing scheme, it is presumed that some county official read these cases. Subsequent to enactment of the Lake County Adult Entertainment Code, virtually identical language was again held **facially unconstitutional** in *Fly Fish* – even though the Plaintiff in *Fly Fish* never even applied for a license. *Fly Fish*, 337 F.3d at n.24.

c. Section 3-31 of the Lake County Adult Entertainment Code does not establish a specified brief period of time in which licenses or license renewals are to be determined.

d. In the event that a license renewal is denied, the Lake County Adult Entertainment Code fails to preserve the *status quo ante* pending judicial review; that is, Section 3-31(a)(1) allows for the closure of an existing adult business by administrative action without Court approval of the permitting decision.

e. The Lake County Adult Entertainment Code violates due process on its face because it fails to provide the requisite protections for license applications, renewals, suspensions and revocations. *See, e.g., Freedman v. Maryland*, 380 U.S. 51 (1965).

f. The Lake County Adult Entertainment Code is not content-neutral, but is instead a mode of censorship, regulation and control of certain specific kinds of speech and expressive conduct.

76. The Lake County Adult Entertainment Code is unconstitutionally overbroad on its face in that it prohibits, arbitrarily and unreasonably, certain constitutionally protected speech and has a chilling effect on constitutionally protected communications in violation of the First Amendment to the United States Constitution. The Lake County Adult Entertainment Code is not narrowly tailored to protect the asserted government interest.

77. Section 3-29(b)(11) of the Lake County Adult Entertainment Code requires the applicant to submit a notarized statement from the property owner

evidencing the owner's approval of the use of the property for an adult business. This requirement allows for an unconstitutional delegation of authority to the landlord and grants the landlord a "heckler's veto" in violation of the First Amendment to the United States Constitution.

78. Section 3-29 of the Lake County Adult Entertainment Code is unconstitutional as applied in that the application form for an adult entertainment license requires that the landlord execute the notarized statement. The application form provides for an unconstitutional delegation of authority to the landlord and grants the landlord a "heckler's veto" in violation of the First Amendment to the United States Constitution. Plaintiff respectfully submits that this case is an extreme example of a "heckler's veto" causing or creating a prior restraint.

79. The Lake County Adult Entertainment Code purports to make the granting of a privilege (the adult entertainment license) contingent on the surrender of constitutional rights and liberties. In particular Section 3-28(d) states that applying for or holding the requisite license constitutes consent to all of the provisions of the Code (presumably including those provisions which are unconstitutional).

80. Section 3-47 of the Lake County Adult Entertainment Code seeks to impose vicarious criminal responsibility on operators of adult businesses

regardless of intent or the actual ability of an operator to prevent or control an offense, in violation of the Fifth Amendment of the United States Constitution and Article I, Section 9, of the Florida Constitution. In particular, the Lake County Adult Entertainment Code allows an operator to be incarcerated if he has “reason to know” of an offense. This *mens rea* requirement is insufficient. See *Lady J Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1367 (11th Cir. 1999).

81. Section 3-47 creates a presumption of knowledge of a violation which may result in the revocation of a license. Such a presumption violates the *Freedman* requirement that the government bear the burden of proof in license proceedings affecting First Amendment interests. See, e.g., *Freedman v. Maryland*, 380 U.S. 51 (1965).

82. The Lake County Code provides that if a non-conforming use loses its status if that use is discontinued for a one-year period. See Code of Lake County, Florida, Appendix E, Section 3.11.00. Plaintiff’s business currently qualifies as a non-conforming use pursuant to Section 3.07.03 of that code.

83. Lake County Adult Entertainment Code violates Plaintiff’s right to Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution because it invidiously discriminates between Plaintiff’s business and all other commercial uses in Lake County.

84. The discrimination against Plaintiff's business in violation of the Fourteenth Amendment cannot withstand heightened scrutiny.

85. The Plaintiff has suffered and will continue to suffer damages in that its civil rights have been violated, it has suffered economic losses and Plaintiff's president has been threatened with criminal prosecution if it exercises its First Amendment rights.

86. Plaintiff has retained the undersigned as its attorney to represent it in this action and has agreed to pay her a reasonable fee, which fee Defendant must pay pursuant to 42 U.S.C. § 1989.

#### **COUNT I**

##### **(Injunctive Relief - Federal Constitutional Claims)**

Plaintiff CENTRAL FLORIDA MULTIMEDIA, INC., d/b/a Fantasy Gentlemen's Club, realleges and incorporates paragraphs 1 through 86 herein, and further alleges as follows:

87. This is an action for preliminary and permanent injunctive relief brought under this Court's general jurisdiction and pursuant to the applicable portions of Title 28, United States Code.

88. The Lake County Adult Entertainment Code violates Plaintiff's First Amendment rights, as well as its Fifth and Fourteenth Amendment rights of Equal Protection and Due Process, as more particularly set forth hereinabove.

89. Plaintiff has a clear legal right to provide exotic entertainment to consenting adult patrons without being forced to comply with an unconstitutional licensing scheme.

90. Plaintiff has a clear legal right not to be subject to discriminatory zoning and licensing laws which violate its right of Equal Protection.

91. Plaintiff is suffering irreparable injury and is threatened with irreparable injury in the future by reason of the Lake County Adult Entertainment Code and Plaintiff has no plain, adequate nor complete remedy to protect its constitutional rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

92. Plaintiff faces the prospect of criminal prosecution, the immediate loss of its business and the violation of its civil rights and liberties as a result of the Lake County Adult Entertainment Code should an injunction not issue. Plaintiff has no adequate remedy at law.

93. The harm which would be suffered by the Plaintiff without an injunction – the loss of its constitutional rights – exceeds any conceivable harm that LAKE COUNTY would suffer if it were prohibited from enforcing a facially unconstitutional ordinance.

94. A permanent injunction, prohibiting the enforcement of the Lake County Adult Entertainment Code, would not be contrary to the public interest.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff CENTRAL FLORIDA MULTIMEDIA, INC.,  
d/b/a Fantasy Gentlemen's Club, prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court enter an injunction permanently prohibiting the Defendant and its various agents and employees from enforcing the Lake County Adult Entertainment Code;
- C. That this Court award Plaintiff its recoverable costs, including a reasonable attorney's fee pursuant to 42 U.S.C. § 1988; and
- D. That this Court award Plaintiff all other relief in law and in equity to which it may be entitled.

## **COUNT II**

### **(Declaratory Relief - Federal Constitutional Claims)**

As a second and separate Count, Plaintiff CENTRAL FLORIDA MULTIMEDIA, INC., d/b/a Fantasy Gentlemen's Club, realleges and incorporates paragraphs 1 through 86, of its Complaint and further alleges as follows:

- 95. This is an action for declaratory relief pursuant to Title 28, United States Code, § 2201.

96. Plaintiff is uncertain as to its rights and remedies under the Lake County Adult Entertainment Code and under the Constitutions of the United States and the State of Florida.

97. Plaintiff has a right to have this Court declare its rights under the First, Fifth and Fourteenth Amendments as those rights are restricted and infringed by the Lake County Adult Entertainment Code.

98. Plaintiff believes and herein alleges that the Lake County Adult Entertainment Code is unconstitutional on its face and as applied against Plaintiff.

**WHEREFORE**, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court enter a judgment declaring the Lake County Adult Entertainment Code to be unconstitutional under the First, Fifth and Fourteenth Amendments;
- C. That this Court award Plaintiff money damages for infringement of its constitutional rights pursuant to under 28 U.S.C. § 1983.
- D. That this Court award Plaintiff its recoverable costs, including a reasonable attorney's fee pursuant to 42 U.S.C. § 1988; and

E. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

### COUNT III

#### **(Tortious Interference with a Business Relationship)**

As a third and separate Count, Plaintiff CENTRAL FLORIDA MULTIMEDIA, INC., d/b/a Fantasy Gentlemen's Club, realleges and incorporates paragraphs 1 through 86, of its Complaint and further alleges as follows:

99. This is an action for tortious interference with a business relationship.

100. Plaintiff had an existing business relationship with Defendant MAGRONE, through their Commercial Lease Agreement, and also had an existing relationship with Defendant LAKE COUNTY, through the licenses and other approvals issued for the operation of Plaintiff's business.

101. Defendant LAKE COUNTY had knowledge of the adverse relationship between Plaintiff and Defendant MAGRONE.

102. Defendant MAGRONE had knowledge of the relationship between Plaintiff and Defendant LAKE COUNTY.

103. Defendant LAKE COUNTY intentionally and unjustifiedly interfered with the relationship between Plaintiff and Defendant MAGRONE by

reneging on its promise to renew Plaintiff's adult entertainment license, by granting an adult entertainment license to Defendant MAGRONE for use at the premises leased by Plaintiff and by other acts and omissions.

104. Defendant MAGRONE intentionally and unjustifiedly interfered with the relationship between Plaintiff and Defendant LAKE COUNTY by attempting to block the issuance of an occupational license to Plaintiff, by applying twice for an adult entertainment license for use at the premises leased by Plaintiff (one of which was granted), and by other acts and omissions.

105. Plaintiff has been damaged as a result of the breach of the relationships.

**WHEREFORE**, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court enter a judgment determining that Defendant LAKE COUNTY intentionally and unjustifiedly interfered with the relationship between Plaintiff and Defendant MAGRONE, and that Defendant MAGRONE intentionally and unjustifiedly interfered with the relationship between Plaintiff and Defendant LAKE COUNTY;
- C. That this Court award Plaintiff money damages for the tortious interference with its business relationships;

D. That this Court award Plaintiff its recoverable costs, including a reasonable attorney's fee; and

E. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

#### **COUNT IV**

##### **(Breach of Contract)**

As a fourth and separate Count, Plaintiff CENTRAL FLORIDA MULTIMEDIA, INC., d/b/a Fantasy Gentlemen's Club, realleges and incorporates paragraphs 1 through 86, of its Complaint and further alleges as follows:

106. This is an action for breach of contract.

107. The use provision of the Commercial Lease Agreement between Plaintiff and Defendant MAGRONE requires Plaintiff to operate an adult nightclub, serving alcohol and selling adult materials, at the leased premises.

108. On numerous occasions, as set forth above, Defendant MAGRONE breached the Commercial Lease Agreement by refusing to sign the affidavit required for Plaintiff's adult license, by obtaining his own adult license and by other acts and omissions.

**WHEREFORE**, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court enter a judgment determining that Defendant MAGRONE breached the Commercial Lease Agreement;
- C. That this Court award Plaintiff money damages for the tortious interference with its business relationships;
- D. That this Court award Plaintiff its recoverable costs, including a reasonable attorney's fee; and
- E. That this Court award Plaintiffs all other relief in law and in equity to which they may be entitled.

**JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

*/s/ Jacqueline Dowd* \_\_\_\_\_

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